

**BEFORE THE GOVERNING BOARD OF
THE BASSETT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH No. 2012030995

Certificated Employees of the Bassett
Unified School District,

Respondents.

PROPOSED DECISION

This matter was heard by Mark Harman, Administrative Law Judge (ALJ) of the Office of Administrative Hearings, on April 16, 2012, in La Puente, California.

Erika D. Anderson, Attorney at Law, represented the Bassett Unified School District (District).

Amy M. Cu, Attorney at Law, represented all of the Respondent teachers who appeared at the hearing,¹ except for Respondents Gabriel Griego, Essie Kashami and Adriana Sanchez-Pena, who appeared on their own behalf (collectively, Respondents).

Evidence was received and argument was made. The matter was submitted for decision on April 16, 2012.

FACTUAL FINDINGS

1. Sarah Brown, Ed.D. (Brown), Assistant Superintendent of the District for Human Resources, acting in her official capacity, caused all pleadings, notices and other papers to be filed and served upon each Respondent.

¹ The Respondents represented by Ms. Cu who appeared at the administrative hearing were: Roberto Alvarado, Amy Arreola, Israel Avila, Jessica Barajas, Latesha Black, Wendy Bowers, Vanessa Chavez, Rick Chorpenning, Steven Esquer, Teresa Fernandez, Christopher Fitch, Jesus Fuentes, Maria Teresa Garcia, Jesus Gutierrez, Nicole Klymkiw, Jacqueline Larson, Anne Merrel, Ryann Mora, Guadalupe Nieto, Stacy Oh, Stella Park, Sharon Quirarte, Isabel Reyes, Berenice Rios, Chona Santos, Sean Simpson, Denise Strickland, Rene Tiscareno, Luz Torres, and Van Truong.

2. Respondents are certificated employees of the District.

3. On March 13, 2012, the Governing Board of the District (Board) adopted Resolution number 22-12 (the Resolution) pursuant to Education Code² sections 44949 and 44955. The Resolution approved the recommendation made by the Superintendent that it was in the best interests of the District and the welfare of the students to reduce or discontinue certain particular kinds of services. The Resolution directed the Superintendent to serve notices of the Resolution to Respondents in the manner prescribed by law. The Resolution reduces or discontinues the following particular kinds of services of the District:

Elementary K-8 Multiple Subject Teachers	10	FTE ³
Middle School 6-8 Multiple Subject Teachers	5	FTE
Middle School Biological Science Teacher	1	FTE
Orthopedically Impaired Teacher	1	FTE
Education Specialist Mild/Moderate Teachers	3.5	FTE
High School Chemistry Teacher	1	FTE
High School Biological Science Teacher	1	FTE
Physical Education Teachers	2	FTE
Alternative/Genesis High School Teacher	1	FTE
High School English Teacher	1	FTE
High School Social Science Teacher	1	FTE
High School Health Science Teacher	1	FTE
High School Mathematics Teacher	1	FTE
Adult Education (A/E) Distance Learning Teachers	2	FTE
(A/E) Adult Basic Education Teacher	1	FTE
(A/E) Adult with Disabilities Teachers	2	FTE
(A/E) Parent Education Teacher	1	FTE

² All further statutory references are to the Education Code.

³ Full- Time Employee position(s).

(A/E) Office Occupations Computer Operator Teacher	1	FTE
(A/E) Medical Terminology/Forklift Teacher	1	FTE
(A/E) High School Completion Teacher	1	FTE
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TOTAL CERTIFICATED POSITIONS	38.5	FTE

4. On March 14, 2012, Brown gave written notice to 43 certificated employees pursuant to the Resolution. The notices state that it had been recommended to the Board that the District give notice to these employees that their services will not be required in the 2012-2013 school year, and stating the reasons for that recommendation. Approximately 39 of the employees who received these preliminary lay off notices requested a hearing to determine if there was cause for not reemploying them for the 2012-2013 school year. Brown caused an Accusation to be served on the employees who had requested a hearing on or about March 30, 2012. Approximately 38 of these employees filed Notices of Defense. All prehearing jurisdictional requirements have been met.

5. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

6. The Board's decision to reduce or discontinue particular kinds of services set forth in factual finding number 3 is not arbitrary or capricious, but rather, constitutes a proper exercise of its discretion. The reduction of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and its has become necessary to decrease the number of certificated employees as determined by the Board.⁴

7. The Resolution sets forth tie-breaking criteria for employees with the same seniority date. Respondents did not challenge any aspect of the tie-breaking criteria or its implementation.

Respondent Wendy Bowers

8. Wendy Bowers (Bowers) teaches two biological science honors classes and two general biological science classes at Bassett High School. Bowers also has one class period devoted to her work as high school coordinator for Advancement Via Individual Determination (AVID), a multi-faceted educational strategy to boost students in the academic middle by challenging them to become better academic achievers and to help them with meeting the criteria for admission to colleges. She has a Master's degree, holds a single subject credential to teach biological sciences, and has English Learner (EL) and Specially

⁴ The District rescinded the preliminary layoff notices and withdrew the Accusation as to Latesha Black, Angela De Jesus, Jesus Fuentes, Nicole Klymkiw, William Martin, Daniela Martinez, William McCandliss, Ryann Mora, Benilda Naluis, Linda Packard, Adriana Sanchez-Pena, Sean Simpson, and Rene Tiscareno.

Designed Academic Instruction in English (SDAIE) authorizations. Bowers' seniority date is June 27, 2005. She is not the most junior science teacher in the District. William Martin (Martin) has a seniority date of August 30, 2006. He has two single subject credentials that authorize him to teach geosciences and biological science. The District will retain him in his current position to teach at the District's continuation high school. In the District's implementation of layoffs, Latesha Black (Black) will "bump" into Bowers' position at the high school. Black is a middle school teacher at Edgewood Academy who holds a single subject credential to teach biological sciences and has a CLAD certificate, and who is senior to both Bowers and Martin. Bowers has raised a number of arguments why the District should retain her instead of Martin. First, Martin is more junior than Bowers. The reason given by the District for terminating Bowers instead of Martin is that Martin has a blended teaching position at the continuation school, i.e., he is teaching several fields of science, which neither Bowers nor Black are credentialed or competent to teach. The District is not required, under the rationale of *Hildebrandt v. St. Helena Unifed School District* (2009) 172 Cal.App.4th 334, and cases cited therein, to carve up Martin's position into part-time positions to save Bowers from being terminated.

9. Second, Bowers has spent many hours attending multi-day summer trainings, on-line courses, and instructional seminars to become, first, an AVID elective teacher in 2009, and now, the AVID coordinator. As coordinator, she must write reports, coordinate college trips, work with seniors to make sure they are finishing their on-line courses, analyze data, work at fundraising, attend booster meetings and parent nights, hire tutors, manage money for trips and training expenses, and work with the other five AVID high school teachers. Bowers estimated she spends an additional 10-20 hours per week performing this work. The AVID classes currently contain 85 students, and 45 new students have signed up for the coming year. Bowers believes there are no other District employees that have taken the training to be the AVID coordinator, and that the District will need at least 50-60 students participating in the coming year in order to remain accredited by AVID overseers. Bowers seems to be arguing that the District should "skip" her because of the value of the AVID program to the District and her personal investment in it, but skipping is the prerogative of the Board. A teacher cannot require the Board to deviate from the order of seniority.

10. Bowers also argues that the Resolution improperly identified Black's position for elimination. Black teaches two or three periods of mathematics, life sciences, and one period of Health Academy, but no periods of biological science. No one teaches one full-time equivalent of biological science in the middle school. If the Resolution failed to identify a service to be eliminated that Black is providing, Black does not need to bump into Bowers' position. The Board, however, did not err when it identified Black's position by reference to the subject matter she is credentialed to teach, instead of referencing the assignments that she is teaching under a Board resolution. Finally, Bowers asserts that her one class period as AVID coordinator was not identified as a particular kind of service in the Resolution, and therefore, it may not be eliminated. Black is bumping into and will be teaching four periods of biology that Bowers now teaches. The AVID coordinator services are in the nature of an extra assignment, and the District is not required to create a new position for Bowers to render one class period of AVID coordinator services.

Respondent Jacqueline Larson

11. Jacqueline Larson (Larson) has a seniority date of August 4, 2003. She has a Master's degree in education, holds a multiple subject credential, has a Cross-cultural Language and Academic Development (CLAD) certificate, and has a supplemental authorization that allows her to teach Spanish to ninth graders. She currently is assigned to teach eighth grade language arts, social studies, and AVID at Torch Middle School. She has previously taught Algebra I, sixth grade earth science, seventh grade life science, and eighth grade physical science. She believes she is credentialed and competent to teach English Language Development in grades 12 and below, as well as Target 380 classes, which offers instruction that helps students to pass the California High School Exit Examination (CAHSEE). Daniel Ramirez (Ramirez) teaches Target 380 at Bassett High School, and has been identified as being scheduled for retirement on the District's list of positively assured attrition for 2012-2013. Ramirez has submitted paperwork to retire, but the evidence did not establish whether Ramirez's position, or any of the other positions identified on this attrition list, will be filled by another employee in the 2012-2013 school year. The District, therefore, should examine this issue and, if the position remains open, reassign the most senior person receiving a lay off notice who has the qualifications to teach this course. Otherwise, Larson has not identified any specific assignment that is being taught by a District employee with less seniority, and which she is credentialed and competent to teach.

Respondent Luz Torres

12. Luz Torres (Torres) first date of paid service in a probationary position is October 16, 2008. She holds a multiple subject credential, EL and SDAIE authorizations, and is authorized to teach introductory English. She teaches English/9 at Bassett High School; previously, she taught CAHSEE preparation, Read 180, and in a self-contained classroom. She is the only high school English teacher identified for layoff. Torres, like Larson, also may be competent to teach Target 380; however, at this time, there does not appear to be any employee with less seniority than Torres, whom the District will retain to teach any of the subjects that Torres is certificated and competent to teach.

Respondent Denise Strickland

13. Denise Strickland (Strickland) has a seniority date of June 28, 2005. She currently teaches five periods of math to ninth graders at Bassett High School. She holds a multiple subject credential and a single subject credential in foundational level math. She has EL and SDAIE authorizations. Strickland is the only high school math teacher scheduled for lay off. Strickland maintains that her credentials authorize her to teach Algebra 1 and 2 in grades 12 and below, as well as probability, statistics, and consumer math. According to Strickland, the District routinely has assigned several high school math teachers one extra period to teach math since 2007, which means that these teachers are working more than full-time assignments. Strickland suggests that the District should take the extra-period assignments back from these teachers with which to craft one full-time position and, therefore, it would not need to lay her off. She also believes her credential would allow her

to teach the two periods of “Algebra 1 Support” that William Baca (Baca), a more senior teacher, currently teaches. Baca holds a single subject credential in geosciences, and a supplemental authorization in introductory physical education. Baca is teaching these math assignments under a Board authorization because he has sufficient units of course work in math to teach this subject. The District is not required to reassign Baca so that it can reassign his two math periods to Strickland. The District also is not required to take away the extra assignments of other math teachers to create a position for Strickland.

Respondent Anne Merrel

14. Anne Merrel (Merrel) holds a Preliminary Level I Education Specialist: Physical and Health Impairments credential. She is authorized to work with students who have traumatic brain injuries, and other conditions that involve multiple disabilities and present with special orthopedic health care needs. Merrel’s seniority date is June 12, 2009, and the District has identified her for lay off under the “Orthopedically Handicapped Teacher” particular kind of service. In her testimony, Merrel provided a detailed analysis of the District’s continuing need for special education teachers. The District’s special education programs are utilized by the larger Special Education Local Plan Area (SELPA), which collaborates and coordinates with many of the surrounding school districts to provide services to special education students. Merrel’s presentation was interesting and informative. She believes that, next year, the District will have 23 students and, without her, only two credentialed teachers to meet all of the needs identified in these students’ Individualized Education Plans. Many students have severe physical disabilities, but may not have cognitive impairments. These students can pursue all of the academic subjects toward graduation. Some may require a great deal of physical assistance and, at times, it is difficult to get them all of the instruction to which they are entitled, despite their having the ability to become proficient in English, life and social skills, mathematics, and the art disciplines. Some people are in large wheelchairs and require assistance with routine tasks. Merrel believes that the District also will be losing four instructional aides. Although Merrel appears to be very knowledgeable and to have thoroughly investigated the situation (see Exhibit L), the Board is charged with the responsibility and duty to exercise its discretion to determine what level of services and supports it will be providing in the coming school year.

Respondent Steven Esquer

15. Steven Esquer (Esquer) is literally a jack-of-all-trades. He holds credentials in designated subjects, career technical education – full time, in the following: public service, transportation, agriculture and natural resources, health science, and medical terminology. He currently teaches medical terminology at the adult education campus and has a seniority date of December 17, 2007. According to the seniority list, he also teaches gardening and SGVTC Enclave. Esquer believes that he is qualified to teach the courses that are being taught by more junior teachers, such as Medical Assistant Instructor, Medical Biller and Coder Instructor, and Advanced Private Security Instructor. Esquer also raised an issue as to the seniority date of Atousa Pakzad, who teaches the medical assistant course, but this issue could not be resolved based on the evidence that was presented at the hearing, and the

District agreed to investigate her seniority date. Esquer outlined some of his skills and his work experience in various occupations, including firefighter, emergency medical technician, arson investigator, training in arrest procedures, and training in the use of firearms. Despite all of these things, Esquer failed to establish that he has the skills or qualifications to bump into a junior position in the adult education program. The District successfully showed that Esquer's credentials, skills, and other qualification do not enable him to render these services. The District maintains that he does meet neither the educational nor the experience requirements. The District offered copies of its job bulletins for Medical Assistant Instructor, Medical Biller and Coder Instructor, and Advanced Private Security Instructor. (Exhibits 14-16.) Based on these documents, Esquer has not demonstrated that he has the work experience to render teaching services in these subjects.

Respondent Gabriel Griego

16. The District conceded its error in assigning Gabriel Griego (Griego) a seniority date of August 24, 2006. Griego was a school site administrator, principal and assistant principal before his first teaching assignment in August 2011. Therefore, he is entitled to a seniority date established under the provisions of section 44956.5, which states: "For a certificated employee initially employed in an administrative position on or after July 1, 1983, who transfers to a teaching position, the period of employment in the administrative position shall not be included in determining seniority for purposes of Sections 44955 and 44956, except for school site administrators who shall earn up to a maximum of three years seniority while serving as site administrators." The change in Griego's seniority date has saved the position of Sean Simpson, who was slated to be bumped by Angela De Jesus. Jesus Guterrez will now be bumped, instead.

17. All other arguments presented by Respondents were unconvincing and were not established by the evidence. Respondents' did not establish that the District did not follow the required procedures or that the District acted in an arbitrary and capricious manner.

18. The District did not retain any certificated employee junior to Respondent Roberto Alvarado, Amy Arreola, Israel Avila, Jessica Barajas, Wendy Bowers, Vanessa Chavez, Rick Chorpenning, Steven Esquer, Teresa Fernandez, Christopher Fitch, Maria Teresa Garcia, Gabriel Griego, Jesus Gutierrez, Jacqueline Larson, Anne Merrel, Guadalupe Nieto, Stacy Oh, Stella Park, Sharon Quirarte, Isabel Reyes, Berenice Rios, Chona Santos, Denise Strickland, Luz Torres, and Van Truong to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 4.

2. Each of the services set forth in factual finding number 3 is a particular kind of service that may be reduced or discontinued.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 6.

4. The District did not retain any junior employee to perform a job which any one of the Respondents is certificated and competent to perform.

5. Cause exists to terminate the services provided by Respondents Roberto Alvarado, Amy Arreola, Israel Avila, Jessica Barajas, Wendy Bowers, Vanessa Chavez, Rick Chorpenning, Steven Esquer, Teresa Fernandez, Christopher Fitch, Maria Teresa Garcia, Gabriel Griego, Jesus Gutierrez, Jacqueline Larson, Anne Merrel, Guadalupe Nieto, Stacy Oh, Stella Park, Sharon Quirarte, Isabel Reyes, Berenice Rios, Chona Santos, Denise Strickland, Luz Torres, and Van Truong for the 2012-2013 school year, by reason of factual finding numbers 1 through 12 and legal conclusion numbers 1 through 4.

ORDER

The Accusation is sustained and the District may notify Respondents Roberto Alvarado, Amy Arreola, Israel Avila, Jessica Barajas, Wendy Bowers, Vanessa Chavez, Rick Chorpenning, Steven Esquer, Teresa Fernandez, Christopher Fitch, Maria Teresa Garcia, Gabriel Griego, Jesus Gutierrez, Jacqueline Larson, Anne Merrel, Guadalupe Nieto, Stacy Oh, Stella Park, Sharon Quirarte, Isabel Reyes, Berenice Rios, Chona Santos, Denise Strickland, Luz Torres, and Van Truong that their services will not be needed during the 2012-2013 school year due to the reduction of particular kinds of services.

Dated: May ____, 2012.

MARK HARMAN
Administrative Law Judge
Office of Administrative Hearings