

BEFORE THE  
BOARD OF EDUCATION  
MOUNT DIABLO UNIFIED SCHOOL DISTRICT

In the Matter of the Proposed Layoff of:

Certificated Employees,

Respondents.

OAH No. 2011030856

**PROPOSED DECISION**

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on April 20, 2011, in Concord, California.

Deborah Cooksey, Associate General Counsel, represented the Mount Diablo Unified School District.

Ernest M. Tuttle III, Attorney at Law, Tuttle & McCloskey, represented all respondents except for Jean Bernstein, Michael Mason, Josie Pascal and Lorena Soto.

There was no appearance by or on behalf of respondents Jean Bernstein, Michael Mason, Josie Pascal or Lorena Soto.

The matter was submitted on April 20, 2011.

**FACTUAL FINDINGS**

1. Dr. Steven Lawrence made and filed the accusation in his official capacity as Superintendent of the Mount Diablo Unified School District.
2. Respondents are listed on Appendix A, attached hereto and by this reference incorporated herein. Each of the 127 respondents is a certificated employee of the district.
3. On March 8, 2011, the Board of Education adopted Resolution No. 10/11-49, reducing or discontinuing particular kinds of services for the 2011-2012 school year and directing the superintendent or his designee to give appropriate notices to certificated employees whose positions will be affected by the action.
4. Prior to March 15, 2010, Superintendent Lawrence gave written notice to respondents of the recommendation that their services will not be required for the 2011-2012

school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2011-2012 school year. An accusation was served on respondents, and all respondents are deemed to have filed timely notices of defense. All prehearing jurisdictional requirements have been met.

6. On March 8, 2011, in order to address a projected budget deficit, the board took action to reduce or discontinue the following particular kinds of services for the 2011-2012 school year:

<b>District Wide</b>	
Principals	2.00 FTE <sup>1</sup>
Program Specialist Site Based	1.00 FTE
Student Services Coordinators	10.00 FTE
PAR/BTSA Coach	9.00 FTE
Music	33.55 FTE
Library Media Teachers	20.50 FTE
Adult Education Coordinators	6.00 FTE
Adult Basic Education/Adult Secondary Education	6.00 FTE
Adult English as a Second Language	9.00 FTE
Adult Career Technical Education	4.00 FTE
Adult Parent Education	2.00 FTE
Resource Specialist	.80 FTE
Special Day Class	1.00 FTE
<b>Elementary Teaching Positions</b>	
K-5 Classroom Teachers (Multiple Subject)	27.00 FTE
PE Prep Teachers	5.00 FTE
<b>Middle School Teaching Positions</b>	
Core	9.00 FTE
English	.34 FTE
<b>High School Teaching Positions</b>	
Foods	.60 FTE
US History	1.40 FTE
PE	1.00 FTE
Geometry	.20 FTE
English	7.80 FTE
AVID	.40 FTE

<sup>1</sup> Full-time equivalent positions.

Library	1.00 FTE
Math	5.80 FTE
Art	1.60 FTE
Social Science	.20 FTE
Video Production	.20 FTE
Foreign Language: Spanish	.60 FTE
Woodworking	.20 FTE
Industrial Computer Skills	.60 FTE
Work Experience Education (WEE)	.30 FTE
EIA-LEP	.20 FTE
Photo	.20 FTE
Ceramics	.20 FTE
Introduction to Film	.20 FTE
Math Coach	1.00 FTE
Academic Literature	2.00 FTE
AIMS	1.00 FTE
Earth Science	2.00 FTE
Academic Success	2.00 FTE
Biology	3.00 FTE
Auto Shop	.40 FTE
<b>Total:</b>	<b>180.29 FTE</b>

7. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition. The district also determined that it would not be necessary to make all of the service reductions set forth in the board resolution for music and library services. Accordingly, notices were sent to only 127 certificated employees.

8. The district has a growing Latino population, and the percentage of English Learner (EL) students is at least 40 percent. Pursuant to the board's resolution, the district intends to retain regardless of seniority (i.e., "skip" in the layoff process) certificated employees who possess a BCLAD<sup>2</sup> certificate and bilingual school psychologists. All employees with a BCLAD certificate will be assigned next year to positions requiring such certification.

9. Under Education Code section 44955, subdivision (b),<sup>3</sup> "the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." Subdivision (c) of this statute requires a school district to "make assignments and

<sup>2</sup> Bilingual, Cross-Cultural, Language and Academic Development.

<sup>3</sup> All statutory references are to the Education Code.

reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.” To meet these requirements, the district is retaining certificated employees whose current positions are being eliminated who are qualified to teach in other positions not impacted by the reduction of services. In a detailed “bumping” chart, the district has worked out which employees will be reassigned next year to positions now held by less senior employees.

10. To serve the needs of its many EL students, the district has a longstanding policy of requiring multiple subject classroom teachers to possess a CLAD<sup>4</sup> certificate. A number of respondents whose librarian positions are being eliminated hold multiple subject teaching credentials but not CLAD certificates. Several of these librarians have enough seniority to bump into classroom teaching positions, except that the district will not give them these assignments because they lack CLAD certification.

Respondents argue that because the board’s resolution makes no mention of CLAD certification being a standard of competence or skipping criterion, the district is precluded from making CLAD a requirement for a librarian to be retained in a multiple subject teaching position. This argument is not persuasive. The district’s requirement of CLAD as a prerequisite for bumping into a multiple subject teaching position is in accordance with its longstanding policy and need not be set forth in the board’s resolution.

11. Under section 44845, a certificated employee’s seniority begins with the date he or she “first rendered paid service in a probationary position.” Under section 44918, subdivision (a), substitute or temporary service counts for seniority if the teacher served for at least 75 percent of the school year and then is hired as a probationary employee for the following school year. However, teachers do not get the benefit of this provision if they did not substitute in a single class for 75 percent of the school year.<sup>5</sup>

12. Respondent Philip Kubota challenges his seniority date of August 20, 2007, but his challenge is rejected. Kubota was a respondent in the district’s layoff proceeding for the 2009-2010 school year, and at the administrative hearing in that matter in April 2009 he also challenged his seniority date.<sup>6</sup> The following findings were made in that case:

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<sup>4</sup> Cross-Cultural, Language and Academic Development.

<sup>5</sup> The predecessor statute to section 44918, with similar language to that in subdivision (a), was interpreted by the court in *Centinela Valley Secondary Teachers Assoc. v. Centinela Valley Union High School Dist.* (1974) 37 Cal.App.3d 35 to exclude substitute service covering the absences of multiple teachers during the year.

<sup>6</sup> Official notice is taken of the proposed decision of the undersigned administrative law judge in OAH No. 2009030327, which was adopted by the board as its decision in the matter.

Respondent Philip Kubota has a seniority date of August 20, 2007, but claims the date should be August 22, 2006, when he attended new teacher orientation prior to starting a long-term substitute assignment for the 2006-2007 school year. For the first half of the school year, Kubota worked as a substitute for one teacher on maternity leave. After one week off, he worked the rest of the year as a substitute for another teacher on maternity leave. When Kubota was hired for the 2007-2008 school year, it was as a temporary employee. Later that year, he became a probationary employee. Kubota is not entitled to an earlier seniority date because 1) he did not serve as a substitute in a single class for 75 percent of the 2006-2007 school year, and 2) he was not employed as a probationary teacher for the 2007-2008 school year.

Since Kubota's challenge to his seniority date was litigated in the prior layoff proceeding, the findings in that case apply in the current proceeding.

13. Respondent Kimberly Anderson has a seniority date of August 31, 2007, but claims it should be August 20, 2007, the day she started working in the classroom that year. During the previous year, Anderson taught as a long-term substitute under a short-term staff permit, and during the summer she finished her academic work for a teaching credential. When she started work on August 20, 2007, her short-term staff permit had expired and she did not yet have her teaching credential. After applying for her credential, Anderson obtained a temporary county certificate (TCC) signed on August 30, 2007. Presumably, the district received this TCC the following day. Anderson is not entitled to a seniority date earlier than the date her TCC was on file with the district.

14. Respondent Anne Meyer has a seniority date of November 9, 2006, but claims it should be the first day of the 2006-2007 school year. Meyer set the classroom up and worked that entire year teaching the same class. However, she was initially hired as a substitute while the regular teacher was on maternity leave, and only after the teacher went on unpaid family leave did the district give Meyer a contract as a temporary employee. Meyer signed that contract on November 9, 2006. The district is not required to count her prior substitute service for purposes of seniority.

15. Respondent June Kirske questions her seniority date of August 22, 2007. Two days earlier, on August 20, the school principal interviewed her in the morning and in the afternoon offered her a teaching position. He told Kirske her starting date would be August 22, but he invited her to attend the grade level planning meeting held on August 21. Kirske attended this meeting, and also on August 21 she was fingerprinted by the district.<sup>7</sup> On

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<sup>7</sup> Kirske was required to be fingerprinted for the teaching job, even though she had worked for the district since 1999 as a noon league coordinator and been fingerprinted for that job.

August 22, she signed her contract. Kirske is not entitled to a seniority date earlier than the date of her contract.

16. Respondent Katrina Samoa has a seniority date of January 17, 2007, but claims it should be October 30, 2006. On that day she started in the classroom teaching sixth grade core. Because she did not yet have a teaching credential, Samoa was allowed to work in that classroom for only six weeks. She then worked as a roving substitute until January 17, 2007, when her credential was issued and she returned to the classroom where she had started on October 30. Samoa is not entitled to a seniority date earlier than the date she had a credential.

17. Respondent Ryann Kuiper started working for the district as a librarian on August 23, 2007, and she questions why she is at the bottom of the seniority list, along with the interns. Kuiper's lack of seniority is because she is employed under an emergency librarian credential. Service under an emergency credential does not count toward attaining permanent status (§ 44911; *Summerfield v. Windsor Unified School Dist.* (2002) 95 Cal.App.4th 1026), and the district is not required to count such service for seniority purposes. To do so could result in an employee with only an emergency credential having greater seniority than a fully-credentialed employee.

Kuiper holds a multiple subject credential, but that does not entitle her to accrue seniority from her hire date because she has not worked under that credential for this district.

18. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

19. No certificated employee junior in seniority to any respondent is being retained by the district to perform services that any respondent is certificated and competent to render.

### LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

2. Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2011-2012 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given to respondents that their services will not be required for the 2011-2012 school year because of the reduction or elimination of particular kinds of services.

DATED: April 26, 2011

Nancy L. Rasmussen  
NANCY L. RASMUSSEN  
Administrative Law Judge  
Office of Administrative Hearings

### Appendix A – Respondents

Last Name	First Name
Abella	Rachel
Aguilera	Claudia .67
Almond	Josh
Anderson	Kimberly
Angel	Nicole
Arcangelo	Karen
Ballard	Benjamin
Banks	Hilary
Batson	Jennifer
Bernstein	Jean
Blank	Angela
Blubaugh	Erin
Bollinger	Amelia
Brauer	Sherry
Brown	Dorann
Campbell	Allison
Campopiano	Benjamin
Carney	Bridget
Cook	Julie
Correa	Richard
Corris	Elizabeth
Cristea	Cristina
Dean	Cynthia
DeAngelis	Jennifer
Delanoy	Stephanie
Della Santa	Carole
Demmon	Teri
Deol	Ramanpreet
Didion	Deirdre
DiMaggio	Sarah
Doster	Dennis
Dwyer	Kerri
Endo	Cynthia
Farhadi	Jeskika
Feil	Stephany
Gamez	Sarah
Gann	Cherie
Garcia	Vanessa
Graham	Emily
Hatch	Suzanne
Hile	Gregory .60



Hood	James
Howisey	Michelle
Jaquez	Magic
Kaiser	Kimberly
Kalin	Michael
Kearns	Jennifer
Kelly	Matt
Kennedy	Jane
Keys	Erika
Kirske	June
Klaas	Karin
Knighten	Raychael
Krause	Cynthia
Kriel	Travis
Kubota	Philip
Kuiper	Ryann
Kulunk	April
Leal	Barbara
Lingenfelter	Karen
Littrell	Lisa
Lomas	Socorro .20
Maharry	Michael
Malian	Sharon
Martini	Nancy
Mason	Michael
McCollum	Bryan
Melone	Lucia
Meyer	Anne
Miller	Robert
Mills	Virginia
Minglana	Ernesto
Montez	Roberto
Moore	Carolyn .60
Moseley	Brenden
Moseley	Jane
Moser	Michael
Moura	Karly
Murphy	Wendy
Nesbeth	Keya
Ng	Mary
Nicoll	Marilyn
Niven	Patricia
Ortiz	Cesar

Oswood	Carol
Pascal	Jose
Patton	Emilie
Paynton	Christine
Perkins	Kirsten
Phan	Khoa
Piotrasch	Michael
Redd	Patrinia
Reed	Kari
Reposa	Sharon
Reyes	Kathryn
Rodemsky	Linda
Rosa	Deborah
Rounds	Wendy
Sain	Timotny
Samoa	Katrina
Sanchez	Alicia
Sargent	Diane
Saxton	Beverly
Schieber	Judith
Schoelkopf	Patricia
Shaw	Erica
Shumate	Ruth
Sinquefield	Danielle
Smith	Susanne
Smythe	Amanda
Soto	Lorena
Stanley	Susan
Stoyer	Nancy
Sugden	Carissa
Terriguez	Saul
Thomas	Marcus
Thompson	Eric
Tong	Jennifer
Townsend	Danya
Townsend	Mary
Trujillo	Erin
Von Boltensern	Adam .40
Welker	Tammy
Wheeler	Janeen
Winterich	Anne
With	M. Lynn
Zamorano Pingarron	Lucia

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OAH No. 2011030856

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Education of Mount Diablo Unified School District as the Decision in the above-entitled matter.

This Decision shall become effective on \_\_\_\_\_.

IT IS SO ORDERED \_\_\_\_\_.

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