

BEFORE THE
GOVERNING BOARD OF THE
AZUSA UNIFIED SCHOOL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2013030787

GUADALUPE ALVARADO, et al.,

Respondents.

PROPOSED DECISION

This matter was heard by Laurie R. Pearlman, Administrative Law Judge (ALJ) of the Office of Administrative Hearings, State of California, on April 30, 2013, in Azusa, California.

Sharon J. Ormond and Jabari A. Willis, Attorneys at Law, represented the Azusa Unified School District (District). Richard Schwab, Attorney at Law, represented Guadalupe Alvarado, Eugenia Behnamfar, Alicia Braaksma, Xiomara Calzadiaz, Rena Esther Campos-Ball, Nancy De Lap, Darla Elliott, Whytnie Grennan, Olivia Martin, Silvio Quintas, Timothy Relph, Nora Sandoval-Gutierrez, and Andrea Sherman. Keven Gayton was present during the morning session only and represented herself.¹ These individuals will be collectively referred to as Respondents.

The District decided to reduce or discontinue certain educational services and gave Respondents and other certificated District employees notice of its intent not to reemploy them for the 2013-2014 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2013-2014 school year.

Oral and documentary evidence was received. The matter was submitted for decision on April 30, 2013.

¹ Ms. Gayton was present at the morning session at which time the ALJ offered her the opportunity to present her case at the conclusion of the District's case, before the represented Respondents. Ms. Gayton told the ALJ that she planned to attend a meeting at 1 p.m. and that she would prefer to present her case after the represented Respondents had completed their testimony. However, Ms. Gayton did not return for the afternoon session. She had contacted the District Office during the lunch break to inform the District that she would not be returning to the hearing.

FACTUAL FINDINGS

1. Linda Kaminski is the Superintendent of the District. She filed the Accusation in her official capacity. Corey James, Assistant Superintendent, Human Resources, and his staff were responsible for implementation of the technical aspects of the layoff.

2. Respondents are certificated employees of the District.

3. On March 5, 2013, the Superintendent recommended to the Governing Board of the District (Governing Board) that it reduce or discontinue particular kinds of services for the 2013-2014 school year and, for that reason, that it give notice to certain certificated employees that their services will not be required for the 2013-2014 school year. On the same date, the Governing Board adopted Resolution No. 12-13:69 to reduce or discontinue 37.00 Full-Time Equivalent (FTE) classroom teaching services, as follows:

PARTICULAR KINDS OF SERVICES	NO. OF FULL-TIME EQUIVALENT (FTE) POSITIONS
K-5 Classroom Teaching Services	20.00
6 th Grade Classroom Teaching Services	3.00
Middle School Math Teaching Services	1.00
Middle School Art Teaching Services	.80
Middle School Leadership Teaching Services	.20
Middle School English/Language Arts Teaching Services	1.00
High School Business Teaching Services	1.00
Continuation High School English Teaching Services	1.00
Continuation High School U.S. History Teaching Services	1.20

Continuation High School World History Teaching Services	.60
Continuation High School Government Teaching Services	.20
Continuation High School Yearbook Teaching Services	.20
Continuation High School Social Studies Elective Teaching Services	.80
High School Assistant Principal	2.00
Continuation High School Assistant Principal	1.00
Director, Adult Education	1.00
Program Specialist-Staff Development	1.00
Director, Categorical Programs-Instruction Support	1.00
<u>Total FTE Reduction</u>	<u>37.00</u>

4. Pursuant to Resolution 12-13:69, prior to March 15, 2013, the District served preliminary layoff notices, via personal service, to 35 certificated employees currently serving as K-12 teachers or management, including Respondents, that the District's Superintendent had recommended to the Governing Board that the District give notice to these employees that their services will not be required in the 2013-2014 school year. The Preliminary Layoff Notice packets included a Request for Hearing form that, if returned to the District by March 22, 2013, would constitute a request for hearing. On or before March 22, 2013, 22 of the 35 individuals served returned this form.

5. The Governing Board modified Resolution 12-13:69 on March 19, 2013 when it adopted Resolution 12-13:79, which rescinded the reductions of five FTE K-5 Classroom Teaching Services, leaving a reduction of 15 FTE for that particular kind of service.

6. During the time that employees were permitted to submit requests for hearing, the Governing Board decreased by five F.T.E. the total number of K-5 classroom teaching services to be reduced, as set out in Factual Finding 5. As a result, the District rescinded five of the preliminary layoff notices which had been issued to K-5 teachers. Three of the five teachers had already submitted requests for hearing and subsequently withdrew their requests for hearing.

7. On April 8 and 9, 2013, the District served 19 employees with an Accusation and related materials, including the Governing Board's resolution adopting the Superintendent's recommendation. Of the 19 employees served with an Accusation packet, 14 submitted Notices of Defense, four withdrew their Requests for Hearing, and one failed to submit any Notice of Defense (Madelí Nanda, who is currently out on maternity leave).

8. All prehearing jurisdictional requirements have been met.

9. The services set forth in Factual Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code (the Code) section 44955.²

10. The Governing Board took action to reduce the services set forth in Factual Finding 3 primarily because of the State's proposed reduction of funding for education. The decision to reduce services was not related to the capabilities and dedication of the individuals whose services are proposed to be reduced or eliminated. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious, but is rather a proper exercise of the District's discretion.

11. The reduction or discontinuance of services set forth in Factual Finding 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees, as determined by the Governing Board.

12. On December 11, 2012, the Governing Board adopted Resolution 12-13:43 which includes criteria for determining the order of seniority of those employees with the same first date of paid service (tie-breaking criteria). These tie-breaking criteria included: credentialing; authorization to teach English Language Learners; experience within the District; and number of higher education credits/degrees. The District applied these criteria to determine the order of seniority among employees who had the same seniority date.

13. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments, and credentials. The District used the seniority list to develop a proposed lay-off list of the least senior employees currently assigned to the various services being reduced. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies and determined the impact on incumbent staff in inverse order of seniority. The District then determined whether these employees held credentials in another area and were entitled to "bump" other, more junior employees.

14a. Respondent Rena Esther Campos-Ball (Campos-Ball) holds a clear multiple subject credential³ and a supplementary authorization to teach introductory social science.⁴

² All further statutory references are to the Education Code.

Campos-Ball is teaching business classes at the high school level currently and is one of only three teachers authorized to teach accounting and marketing. Ten years ago, she taught Social Science at the high-school level. Matthew Lee Snyder, who is less senior, is being retained. Snyder holds a Social Science credential and has taught History in a District K-8 classroom setting for at least one complete year out of the past 10 years, while Campos-Ball has not. Campos-Ball maintains, in turn, that she has the credentials and competence to “bump” Mr. Snyder, who is being retained by the District to teach middle school history classes under single subject social science credentials.

14b. The District has assigned August 28, 2003, as Campos-Ball’s seniority date. Since 2005, Campos-Ball has taught core subjects to fifth and sixth graders.

14c. The Governing Board’s Resolution No. 12-13:69 established competency criteria for purposes of allowing an employee currently assigned in a position subject to layoff to “bump” a less senior employee holding another position not subject to layoff. In order for Campos-Ball to be eligible for reassignment to a position held by an employee with less seniority, she must be both credentialed and competent to render the services currently being performed by the junior employee. Resolution No. 12-13:69 provides, “For purposes of implementing this Resolution, a more senior employee is defined as competent for reassignment into a position currently held by a more junior employee, if he or she: (a) currently possesses a clear or preliminary credential which authorizes instruction in each subject(s) or grade level to which the employee will be assigned at the beginning of the 2013-2014 school year; (b) has previously taught under the credential(s) required for the entire assignment to which the employee will be assigned at the beginning of the 2013-2014 school year in the District for one complete school year within the last 10 school years; . . . In no event may a more senior employee displace a more junior employee unless the more senior employee is both competent and credentialed for the entire assignment of the more junior employee.” (Exhibit 1.)

14d. Campos-Ball did not teach in a District departmentalized history classroom for one complete school year within the last 10 school years, which is necessary under the District’s competency criteria to enable her right to “bump” any middle school history teachers with less seniority. Although Campos-Ball has previously taught .4 social science in a core sixth grade curriculum, she has used her multiple subject credential to authorize her to perform this assignment, not her supplementary authorization to teach introductory social

³ A clear multiple subject credential authorizes the holder, among other things, to teach core classes consisting of two or more subjects to the same group of students in grades five through eight, and to teach any of the core subjects she is teaching to a single group of students in the same grade level as the core for less than fifty percent of her work day.

⁴ Authorization allows the holder to teach only the subject matter content typically included for the introductory subject or subjects listed, in curriculum guidelines and textbooks approved for study in grades 9 and below, to students in preschool, kindergarten, grades 1-12, or in classes organized primarily for adults.

science. Campos-Ball does not meet the District's competency criterion requiring her to have teaching experience under her supplementary authorization for one complete school year within the last 10 school years, and thus, she is not "competent" to "bump" into a middle school history assignment requiring such credential. In contrast, Snyder taught History in a K-8 classroom setting using his Social Science subject credential, which is the credential required to teach a middle school History class. Campos-Ball failed to establish that she is competent to "bump" into Snyder's position.

15a. Alicia Braaksma has a seniority date of August 23, 2007. She has been teaching a Ninth Grade curriculum in middle school, consisting of .8 English, .2 Journalism, and .2 Yearbook, utilizing a multiple-subject credential. While she does not yet have a single-subject English teaching credential, she is very close to obtaining one.

15b. Braaksma is being "bumped" by Joo Hyon Ko, a middle school English teacher who is senior to her. The District sought to eliminate one middle school English teacher and Ko was the most junior English teacher among those teaching K-8. Braaksma does not contend that she should not be "bumped" by Ko. Rather, she contends that since she has been teaching English, as well as a sought-after journalism elective, she should be placed into the vacancy which may be created if an English teacher who is senior to her, Timothy Conklin, retires.⁵

15c. Braaksma has used a multiple subject credential to perform her teaching assignment. She does not yet have a single subject credential to teach English. Thus, she does not meet the District's competency criterion requiring her to have teaching experience under a single subject credential for one complete school year within the last 10 school years, and thus, she is not "competent" to "bump" into any assignment requiring such a credential. As for her contention that the District should place her into a slot which may open up if Conklin chooses to retire, lay-off decisions can only be based on positively assured attrition that has occurred by the date of the lay-off resolution. The District cannot be required to account for possible future attrition in issuing lay-off notices. Braaksma failed to establish that she should be "skipped"⁶ or is competent to "bump" into another position.

⁵ The District produced an attrition list (Exhibit 16.) In addition to known attrition, which the District accounted for in its lay-off resolution, nineteen teachers are listed as possible retirees, pending Governing Board approval of a retirement incentive, which will be taken up at the Governing Board's May 7, 2013 meeting.

⁶ "Skipping" refers to the District's exercise of its discretion to deviate from the order of seniority by choosing to retain a more junior individual who has special skills, training, or qualifications. Education Code section 44955, subdivision (d)(1), allows the District to deviate from the order of seniority if there is a need for personnel to teach a specific course or course of study, and if a junior certificated employee has special training and experience necessary to teach that course or course of study which others with more seniority do not possess.

16a. Darla Elliott has a seniority date of January 17, 2007. She is the most junior of five teachers who teach English at a continuation high school. Like Braaksma, Elliott contends that she should be “skipped” over more senior employees or placed into the vacancy which may be created if an English teacher who is senior to her, Timothy Conklin, retires.

16b. Elliott has used a multiple subject credential to perform her teaching assignment, although she also holds a single subject credential to teach Introductory English (up to 9th grade.) Thus, she does not meet the District’s competency criterion requiring her to have teaching experience under a single subject credential for one complete school year within the last 10 school years, and thus, she is not “competent” to “bump” into any assignment requiring such a credential. As for her contention that the District should place her into a slot which may open up if Conklin chooses to retire, lay-off decisions can only be based on positively assured attrition that has occurred by the date of the lay-off resolution. The District cannot be required to account for possible future attrition in issuing lay-off notices. Elliott failed to establish that she should be “skipped” or is competent to “bump” into another position.

17a. Olivia Jean Martin has a seniority date of August 29, 2002. She holds a multiple subject credential and a single subject credential in Introductory Science, which allows her to teach 7th to 9th grade science. She currently teaches 6th grade (.4 Language Art/.4 History/.2 Language Arts Support.) Martin previously taught 9th and 10th grade science at a private all-girls school.

17b. Martin contends that she should be permitted to “bump” a science teacher who is junior to her. However, because she has not utilized her single subject credential to teach science for a full day in a departmental setting, she does not meet the District’s competency criterion requiring her to have teaching experience under a single subject credential for one complete school year within the last 10 school years, and thus, she is not “competent” to “bump” into any assignment requiring such a credential. Martin failed to establish that she is competent to “bump” into another position.

18. At the hearing, the district announced that due to additional attrition, it has rescinded its preliminary layoff notices and dismissed the Accusation pertaining to Xiomara Calzadias, Jacqueline Palmeira, and Nora Sandoval-Gutierrez.

19. The District did not retain any certificated employee junior to Respondents Guadalupe Alvarado, Eugenia Behnamfar, Alicia Braaksma, Rena Esther Campos-Ball, Nancy De Lap, Darla Elliott, Whytnie Grennan, Olivia Martin, Silvio Quintas, Timothy Relph, Andrea Sherman, and Keven Gayton, to render a service which these Respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of Factual Findings 1 through 8.

2. The services listed in Factual Finding 3 are particular kinds of services that could be reduced or discontinued under section 44955.

3. Cause exists for the District to reduce or discontinue the particular kinds of services listed in Factual Finding 3, which cause relates solely to the welfare of the District's schools and pupils within the meaning of section 44949, as set forth in Factual Findings 1 through 11.

4. Cause exists within the meaning of Education Code section 44955 to terminate the employment of Respondents Guadalupe Alvarado, Eugenia Behnamfar, Alicia Braaksma, Rena Esther Campos-Ball, Nancy De Lap, Darla Elliott, Whytnie Grennan, Olivia Martin, Silvio Quintas, Timothy Relph, Andrea Sherman, and Keven Gayton for the 2013-2014 school year due to the reduction of particular kinds of services, by reason of Factual Findings numbers 1 through 19, and Legal Conclusions 1 through 3.

5. Cause does not exist within the meaning of Education Code section 44955 to terminate the employment of Respondents Xiomara Calzadias and Nora Sandoval-Gutierrez for the 2013-2014 school year, by reason of Factual Finding 18.

ORDER

Accusations are sustained against Respondents, Guadalupe Alvarado, Eugenia Behnamfar, Alicia Braaksma, Rena Esther Campos-Ball, Nancy De Lap, Darla Elliott, Whytnie Grennan, Olivia Martin, Silvio Quintas, Timothy Relph, Andrea Sherman, and Keven Gayton. Notice may be given to those Respondents that their services will be reduced or terminated for the 2013-2014 school year due to the reduction or discontinuation of particular services. Notice shall be given in inverse order of seniority.

The Accusations are dismissed against Respondents Xiomara Calzadias and Nora Sandoval-Gutierrez.

Dated: May 6, 2013

LAURIE R. PEARLMAN
Administrative Law Judge
Office of Administrative Hearings