

BEFORE THE GOVERNING BOARD
OF THE
EAST SIDE UNION HIGH SCHOOL DISTRICT

In the Matter of the Layoff of:

CERTIFICATED EMPLOYEES OF THE
EAST SIDE UNION HIGH SCHOOL
DISTRICT

OAH No. 2010030281

Respondents.

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in San Jose, California, on April 30, 2010.

Patricia R. McKernan, Rehon & Roberts, represented Dan Moser, Interim Superintendent, East Side Union High School District.

Christopher Schumb, Attorney at Law, represented the respondents, who are listed in Attachment A.

The matter was submitted on April 30, 2010.

FACTUAL FINDINGS

1. Dan Moser, Interim Superintendent, East Side Union High School District (District), issued the accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. The parties stipulated that all of the jurisdictional requirements of Education Code sections 44949 and 44955 have been met in this proceeding.
4. On March 6, 2010, the Governing Board of the District (Board) adopted Resolution No. 2009/2010-37, entitled "Reduction of a Particular Kind of Service" (the PKS resolution), in which it determined that it shall be necessary to reduce the following particular kinds of service no later than the beginning of the 2010 – 2011 school year.

<u>Kind of Service</u>	<u>FTE¹ Positions</u>
Activity Director	6.6
Counselor	36.0
Psychologist	10.0
MST Coordinator	0.2
Subject Area Coordinator – Art	0.2
Subject Area Coordinator – Business	0.2
Subject Area Coordinator – Counseling	0.2
Subject Area Coordinator – Health/Physical Education	0.2
Subject Area Coordinator – Library Services	0.2
Subject Area Coordinator – Science	0.2
Subject Area Coordinator – Social Studies	0.2
Social Worker	4.0
Math Teacher	2.2
Biology Teacher	2.4
Social Science Teacher	1.4
English Teacher	3.2
Total FTEs	73.2

The Board further determined that it will be necessary to terminate at the end of the 2009 – 2010 school year the employment of certificated employees of the District in a quantity and kind equal to the FTEs specified above.

The Board further adopted tie-breaking criteria to distinguish among certificated employees who first rendered paid probationary service to the District on the same date. The tie-breaking criteria provided points for possession of credentials as follows:

- 4 points for each professional clear credential
- 3 points for each preliminary credential
- 2 points for intern credential
- 1 point for provisional internship permit or short-term staff permit
- 1 point for Bilingual Cross-Cultural Language and Development certificate or equivalent

5. The services set forth in the PKS resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44945. None of the reductions is of a mandated service.

¹ Full-Time Equivalent.

6. Each respondent was given written notice of his/her employment status, seniority date and credentials by posting and circulating the District certificated seniority list. Each respondent was asked to verify his/her credentials and hire date.

7. The District created a list of employees proposed to be laid off, “bumped,” or reassigned, taking into account the tie-breaking criteria, positively-assured attrition (including resignations, retirements, and deaths), leaves of absence and extensions of leaves of absence, and non-reelections of temporary employees.

8. The District has withdrawn the accusations served on the following respondents:

Sandra Albini
Laureen Andona
Leslie Bannerman
Robert Bernard
Joshua Berry
Jeffrey Bettencourt
Thomas Bingham (0.4 FTE)
John Braun
Norman Brown
Maximo T. Bustos
Imani Butler
Barbara Castleton
Jinsue Choi
Kimberly Conroy-Tuohy
Michael Cross
John Daniels
Pamela Darin
Adam DeLaRosa
Gwendolyn Dixon
Kira Dixon
Benjamin Ellison (0.2 FTE)
John Estrela
Epifanie Fenton
Michael Ghali
Dominic Giorgi
Jeremy Goebel
Michael Gomez
Julie Gonzalez
Heather Haas
Linda Han
Krystal Hart
Van Huang
Jonathan Hubbs

Raymond Iniguez
Diana Jarman
Eun Kim
Theodora Koumoustakis
Peggy Lee
Griselda Lopez
Lori Martinson
Jason Mcham
Michelle Melby
Osvaldo Mendoza Gonzalez
Bobbie Miller
Paul Miller
Virgina Monge
Winnie Nguyen
Thanh-Lam Nguyen
Maria Orban
Ana Parra
Irene Perez
Lauran Pratt
Nieves Quiroga
Stephanie Rabelo
Ian Rowe
Mirra Shernock
Hortencia Simbron
Christopher Smith
John Sphar
James Staten
Dennis Tacci
Lesley Tatum
Joe Te
Janice Traje
Lynda Tran
Tsfamicael Ueldegiorghis
Ryan Vera
Jose Victorino
Paulette Waters
Lawrence Yee
Edward Youngblood
Allana Zacaria
Ting Zhu

9. The District acknowledged and has corrected its records to reflect that Myla Perkins has a first date of paid service of June 18, 2008.

10. No permanent or probationary certificated employee with less seniority than a respondent is being retained to provide a service for which a respondent is credentialed and competent to render.

11. The reduction or discontinuation of services is related to the welfare of the district and of its pupils.

LEGAL CONCLUSIONS

Because of the reduction or elimination of particular kinds of services set forth in Factual Finding 4, cause exists pursuant to Education Code section 44955 to give notice to the remaining respondents, i.e. those whose accusations have not been rescinded, that their services will not be required for the 2010 – 2011 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given to the remaining respondents that their services will not be required for the 2010 – 2011 school year.

DATED: May 5, 2010

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A: LIST OF RESPONDENTS

Juan Aguila - MST	Kathy Lair - English
Sandra Albini - English	Sue Ann Lee - Counselor
Kira Allen - English	Binh Lieu - Counselor
Laureen Andona - Physical Education	Yesenia Marquez - Counselor
Joyce Armstrong - Counselor	Lori Martinson - Counselor
Maria Baeza - Spanish	Michelle Melby - Biological Science
Thomas Bingham - Social Science	Virginia Monge - Spanish
Troy Brown - Counselor	Angie Nguyen - Biological Science
Rosemary Bulaich - Counselor	Winnie Nguyen - Vietnamese
Rachel Bull - Social Worker	Myla Perkins - Advisor
Marie-Chris Busque - Social Worker	Nieves Quiroga - Spanish
Tamra Chavez - MST	Sylvia Rabago - Counselor
Amy Choy - Counselor	Luz Griselda Ramirez - Spanish
Leah Cohen - MST	Ana Reid - Spanish
Miguel Cortez - Physical Education	Ashley Riley - Counselor
Pamela Darin - Counselor	Natalie Rodriguez - Counselor
Jeanine Davis-Guarente - MST	Joel Romo-Gonzalez - Counselor
Gwendolyn Dixon - English	Ian Rowe - Spanish
Victoria Duran - Activity Director	Mary Servin - Counselor
Benjamin Ellison - Biological Science	Mirra Shernock - English
Martha Espinoza - Biological Science	Jill Shoopman - Counselor
Martha Esquivel - Counselor	Hortencia Simbron - Spanish
Angela Estrella - Social Science	Laura Solof - Counselor
Ashlee Girardin - Biological Science	Tesfamicael Ueldeghiorghis - Spanish
Cristelda Guillen - Spanish	William Uken - Biological Science
Juliet Hamak - Biological Science	Jose Victorino - Spanish
Jennifer Higareda - English	Charity Wooden - Physical Education
Diana Jarmann - Biological Science	
Jennifer Klassen - Social Worker	
Jason Kubo - Counselor	

