

**BEFORE THE BOARD OF EDUCATION
OF THE EL MONTE CITY SCHOOL DISTRICT**

In the Matter of the Accusation Against:)	OAH NO. L2008030261
)	
Respondents Listed on Exhibit "A" Who)	
Have Returned a Request for Hearing form)	
)	
Respondents.)	
_____)	

PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 23, 2008, at the Board Room of the El Monte City School District, El Monte, California.

Susan Ormond, Attorney at Law, represented the El Monte City School District.

Richard J. Schwab and Laurence Trygstad, Attorneys at Law, represented the Respondents.

Evidence was received and the matter was submitted for decision. During the hearing, the District submitted the "District's Prehearing Brief," which was marked as exhibit 17. Respondents submitted "Respondents' Administrative Law Brief," which was marked as exhibit K.

SUMMARY

The Board of Education of the El Monte City School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2008-2009 school year for budgetary reasons. The decision was not related to the competency and dedication of the teachers whose services were proposed to be reduced or eliminated.

District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

1. Jeff Seymour, the Superintendent of the District, filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. On or about March 10, 2008, Mr. Seymour recommended that the Board of Education adopt a resolution to reduce or discontinue particular kinds of services for the 2008-2009 school year. Mr. Seymour recommended the reduction and/or elimination of 46 full-time-equivalency (FTE) certificated employees as follows:

Nursing Services	1.0 FTE
School Psychologist Services	1.0 FTE
Kindergarten through 8th Grade Special Education Mild/Moderate Classroom Teaching Services	6.0 FTE
Kindergarten through 8th Grade Inclusion Specialist Services	4.0 FTE
Special Education: Physically Handicapped Teaching Services	2.0 FTE
Kindergarten through 8th Grade Self-Contained Classroom Teaching Services	24.0 FTE
6th Grade through 8th Grade Departmentalized Classroom Teaching Services (core setting)	2.0 FTE
Assistant Principal	5.0 FTE
<u>Administrator of Alternative Education</u>	<u>1.0 FTE</u>

TOTAL CERTICATED POSITIONS	46.0 FTE
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4. On March 10, 2008, the Board adopted Resolution No. 07-08:04, to discontinue or reduce the particular kinds of services as set forth in Factual Finding 3. The Board further determined that based on the discontinuance or reduction of services, it would be necessary to decrease the number of certified employees at the close of the present school year by a corresponding number of full-time equivalent positions. The Board also directed the Superintendent to "take all actions necessary and proper to the accomplishment of the purposes of this Resolution."

5. On March 11, 2008, the superintendent notified Respondents in writing that he had recommended to the governing board their services would not be required for the next school year. The mailing included the reasons for the notification. All but one respondent made timely requests for hearing.

6. The Superintendent made and filed Accusations against each of the employees who requested a hearing.

7. The Notice of Accusation stated that "unless a written request for hearing signed by you or on your behalf is received by the Governing Board on or before 4:30 p.m. on Monday, April 7, 2008, the Board may proceed on the Accusation without a hearing. The request for a hearing may be made by mailing or delivering the enclosed form entitled 'Notice of Defense' or by delivering or mailing in a Notice of Defense as provided in Section 11506 of the Government Code, to: . . ." All but two of the respondents filed Individual Notices of Defense by April 7, 2008. Respondents Michelle Aviles and Stella Redenbaugh each submitted an individual Notice of Defense on April 9, 2008. The District contends that respondents Aviles and Redenbaugh do not have a right to a hearing because their failure to submit a timely Notice of Defense. The District's contention is not persuasive. It is noted, that on March 12, 2008, respondents' counsel served the District with a Special Notice of Defense specifically citing Government Code section 11506. In this Notice of Defense, respondents' counsel states that he is representing all respondents and that he is requesting a hearing on behalf of all respondents. This satisfies the requirements of section 11506. Therefore, all named respondents, including respondents Aviles and Redenbaugh are entitled to a hearing. All other prehearing jurisdictional requirements were met.

8. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 3, related to the welfare of the District and its pupils.

9. The Board considered attrition, including resignations, retirements and requests for leave, in determining the necessary layoff notices to be delivered to employees.

10. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations.

11. Employee Laura King, who is not a respondent in this matter, is classified as a probationary employee and is listed as number 226 in the seniority list based on a first date of hire of September 1, 1994. Ms. King was hired to work in the Child Development Program in 1994 and became a permanent employee. She resigned from that position prior to the 2007/2008 school year. Ms. King was then rehired on September 4, 2007, to teach a kindergarten class for students in special education – mild/moderate. The District reclassified Ms. King as probationary when she was rehired.

12. With respect to Ms. King, the District's seniority list is incorrect for two reasons. Ms. King's seniority date should be September 4, 2007, and she should have been classified as a permanent employee. In *San Jose Teacher Assn. v. Allen* (1983) 144 Cal.App. 3d 627, the Court of Appeal states on page 641, "If a certificated employee resigns and is thereafter reemployed, his date of employment is normally deemed by section 44848 to be the date of reemployment" The court also held that, under section 44931, a permanent employee does not lose permanent status if the employee is rehired within 39 months after resigning. The court stated, "We hold that section 44931 provides that a break in service shall be 'disregarded' as to individual rights, burdens and benefits, but not as to seniority rights which affect other employees."

13. Therefore, Ms. King should be classified as a permanent employee under Education Code section 44931, with a seniority date of September 4, 2007, pursuant to Education Code section 44848. Ms. King's proper place in the seniority list should be number 627. As a result, seven named respondents who teach in special education – mild/moderate have more seniority than Ms. King.

14. Respondents argue that all seven of the respondents who teach in special education should be retained because they have more seniority than Ms. King. Respondents' argument is rejected. Education Code section 44955, subdivision (b), states in pertinent part, "Except as otherwise provided by statute, 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." In this case, all of the seven special education teachers who received notices are probationary. Under Education Code section 44955, they are not entitled to "bump" Ms. King.

15. Respondent Leticia Serrano submitted evidence that she has earned a Supplementary Subject Matter Authorization – Introductory English. However, Ms. Serrano did not submit this supplemental authorization to the District for inclusion in her employee file. Even if respondent Serrano were given credit for this supplemental authorization, she would nevertheless be subject to layoff as she would only move up one spot on the seniority list.

16. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

17. The District served seven respondents with precautionary notices in the event the District erred in preparing the seniority list or in the event that the District improperly skipped a certificated employee.

18. The District also served precautionary notices on respondents Stephanie Lai and Kimberly Mejia. The District contends that respondents Mejia and Lai are temporary employees providing services in a categorically funded program. However, there was no evidence presented at the hearing that these categorically funded programs will lose funding

for the 2008/2009 school year. In an abundance of caution, the District served respondents Mejia and Lai with a notice of recommendation and an accusation. Both filed timely requests for hearing and a timely Notices of Defense. Respondent Lai holds a clear school psychologist credential and provides services as a school psychologist. As noted in Factual Finding 3, the District is reducing school psychologist services by 1 FTE, and respondent Lai is the least senior employee providing such services. The evidence did not establish that the District's decision to reduce psychologist services by 1 FTE is arbitrary.

19. The evidence established that respondent's are all outstanding teachers. However, the District has projected a budget deficit for the ensuing school year of 6.9%, amounting to several million dollars.

20. During the hearing, the District withdrew and made a motion to dismiss the accusations against three respondents who were served with precautionary notices, including respondents Andrea Delgado, Pedro Galindo and Tina Hu. The District also made a motion to dismiss the accusations against respondents Jennifer Park and Rosanna Pitassi. The motions to dismiss the Accusations against respondents Delgado, Galindo, Hu, Park and Pitassi were granted.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services. The Board's decisions to reduce or eliminate the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949.

3. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

4. Cause exists to layoff respondents Pamela Alderete, Stephanie Arnold, Michelle Aviles, Angelica Bahena, Eliza Blanco, Ava Brooks, Coleen Casado, Betty Castaneda, Denise Contreras, Kara De Belius, Allan Edpao, Nicandro Gutierrez, Jeff Ha, Susan Halcomb, Demetria Hall, Joy Healy, Laura Jasso, Oscar Lopez, Christina Mendoza, Gabriella Montoya, Nicole Morris, Sylvia Najera, Tammy Okado, Monica Ortiz-Salazar, Bellanira Pesina, Stella Redenbaugh, Whitney Relf, Bertha Rodriguez, Ronald Sais, Maria Sanchez, Leticia Serrano, Darlene Sleight, Randel Syrja, Joanne Tran, and Stephanie Lai

5. Cause exists to dismiss the Accusations against employees Jennifer Park, Rozanna Pitassi, Andrea Delgado, Pedro Galindo, and Tina Hu, pursuant to Factual Finding 20.

6. Cause exists to dismiss the Accusations against Jasmine Gamboa, Yajaira Mancia, Alfredo Plazas, Lucia Soltero and Kimberly Mejia. These respondents were given precautionary notices and the evidence established that it would be unnecessary to layoff the respondents who were given precautionary notices in order for the District to meet its goal of reducing particular kinds of services.

ORDER

1. Notice may be given to respondents Pamela Alderete, Stephanie Arnold, Michelle Aviles, Angelica Bahena, Eliza Blanco, Ava Brooks, Coleen Casado, Betty Castaneda, Denise Contreras, Kara De Belius, Allan Edpao, Nicandro Gutierrez, Jeff Ha, Susan Halcomb, Demetria Hall, Joy Healy, Laura Jasso, Oscar Lopez, Christina Mendoza, Gabriella Montoya, Nicole Morris, Sylvia Najera, Tammy Okado, Monica Ortiz-Salazar, Bellanira Pesina, Stella Redenbaugh, Whitney Relf, Bertha Rodriguez, Ronald Sais, Maria Sanchez, Leticia Serrano, Darlene Sleight, Randel Syrja, Joanne Tran, and Stephanie Lai, that their services will not be required for the 2007-2008 school year.

2. The Accusations against respondents Jennifer Park, Rozanna Pitassi, Andrea Delgado, Pedro Galindo, and Tina Hu, Jasmine Gamboa, Yajaira Mancia, Alfredo Plazas, Lucia Soltero and Kimberly Mejia are dismissed.

Dated: _____

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings