

**BEFORE THE
GOVERNING BOARD
OF THE DELANO JOINT UNION HIGH SCHOOL DISTRICT
COUNTY OF KERN**

In the Matter of the Accusations Against:

OAH NO. 2011031612

Jens Andersen, Sergio Barajas, Andrew Barragan, Joanna Campbell, Delta Duran, Victor Duran, Paul Eveland, Dave Hammelmann, Gilbert Hernandez, Antonio Medina, Juan Antonio Mendez, Sandra Parrish, Gerardo Rodriguez, Kristin Spurlock, and Stephanie Thornton,

Respondents.

PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 4, 2011, in Bakersfield, California.

Peter Carton, Attorney at Law, represented the Delano Joint Union High School District. Paul A. Welchans, Attorney at Law, represented the Respondents listed in the "Notice of Request for Hearing and Notices of Defenses."

Evidence was received, and the matter was submitted for decision.

SUMMARY

The Governing Board (Board) of the Delano Joint Union High School District (District) decided to reduce particular kinds of services provided by certificated personnel for the 2011-2012 school year for budgetary reasons. District staff carried out the Board's decision by using a selection process involving review of credentials, seniority, and skipping.

FACTUAL FINDINGS

1. Rosalina Rivera, Superintendent of the District, filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.

3. On March 8, 2011, the Board adopted Resolution No. 2010/2011-21, to discontinue or reduce particular kinds of services for the 2011/2012 school-year as follows:

Advance Path Academy	3.0 FTE
Alternative Credit Recovery	1.0 FTE
Art	1.0 FTE
Business Education	2.0 FTE
Child Development – PMP/PACT	2.0 FTE
D.A.D.D. (DAS)	1.0 FTE
Foreign Language	1.0 FTE
Home Economics	1.0 FTE
Industrial Technology	3.0 FTE
In-House Retention	3.0 FTE
Mathematics	1.0 FTE
Music	1.0 FTE
<u>Science</u>	<u>1.0 FTE</u>
Total	21.0 FTE

4. The Board passed Resolution 2010/2011-21 pursuant to Education Code section 44955 and made a determination to decrease the number of certificated employees for the ensuing school year by a corresponding number of full-time equivalent (FTE) positions as set forth in Factual Finding 3.

5. The Board also passed Resolution 2010/2011-12, which established tie-breaking criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination would be based on the needs of the District and its students in accordance with the specific criteria set forth in the resolution. Respondents did not contest the validity of the tie-breaking criteria, nor did they assert that it was improperly applied.

6. The Board directed the Superintendent to notify the employees affected by the Board's resolution. On or before March 15, 2011, the Superintendent notified certificated employees, including Respondents, in writing that it had been recommended their services would not be required for the next school year. The mailing included the reasons for the notification. Respondents made timely requests for hearing.

7. On April 1, 2011, Superintendent Rivera made and filed Accusations against each Respondent. Mr. Welchans filed a Notice of Defense on behalf of Respondents.

8. 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. The District used the Seniority List to develop a layoff list of the least senior employees currently assigned in the various services being reduced.

9. On or about April 12, 2011, Superintendent Rivera notified Respondents Sergio Barajas, Andrew Barragan, Dave Hammelmann, Gilbert Hernandez, Juan Antonio Mendez, Delta Duran, and Stephanie Thornton that the District withdrew the Notice of Recommendation not to Reemploy these Respondents.

10. The seniority list (exhibit 7) specifies that Respondent Jens Andersen has a seniority date of August 21, 1996, and Respondent Victor Duran's seniority date is August 10, 2000.

11. Respondents Jens Andersen and Victor Duran asserted that they are qualified to teach in the In-House Retention Program. An In-House Retention Coordinator (Coordinator), a position currently held by Miguel Duran, supervises and instructs students who have violated school behavior standards. Both Respondents Jens Andersen and Victor Duran have more seniority than Miguel Duran. It is noted however, that Miguel Duran, who holds a supplemental physical education credential, was saved from layoff because he bumped into the physical education teaching position currently held by Respondent Antonio Medina.

The students in the In-House Retention Center are usually in this program from one to five days in lieu of a suspension. Required qualifications for a Coordinator include a Multiple Subjects Credential or a General Credential, which authorizes the holder to teach grades 9-12. In addition, the District may assign an employee to the position of Coordinator if that employee holds any credential, other than multiple subjects or general, and submits a consent form pursuant to Education Code section 44683. The District assigned Miguel Duran to the Coordinator position after he submitted a consent form. Respondent Andersen, who holds an Industrial Arts credential, taught in the In-House Retention Center from 2003 through 2009. He submitted a consent form for each of those years. Depending on the year, he taught in the program one or two periods a day. Respondent Andersen meets the qualifications to teach in the In-House Retention Center.

Human Resources Director James Hays testified that the Superintendent rescinded notices representing two FTEs in the In-House Retention program. These two FTEs will be filled by a combination of teachers, including Ilario Prieto, and Respondents Hernandez and Barajas. Respondent Hernandez also teaches in the adult school. Mr. Hays testified that the layoff notice to Respondent Hernandez was rescinded because of his position as an adult school teacher rather than the periods he teaches at the In-House Retention program. Respondent Barajas is a physical education teacher who has been bumped from his physical education teaching position. He also teaches certain periods in the In-House program

Respondent Andersen has more seniority than Respondents Hernandez, Barajas and Victor Duran. The evidence did not establish that Respondent Barajas has experience and training that would overcome the seniority rights of Respondent Andersen. Therefore the layoff notice issued to Respondent Andersen should be rescinded.

Respondent Victor Duran did not establish that he should also be able to bump into an In-House Retention Center position because the combination of Ilario Prieto and Respondents Andersen and Hernandez should adequately fill next year's available FTE positions in the In-House Retention Center.

12. Respondent Victor Duran also asserts that he is qualified to teach bump into the position of Student Activities Director/Credit Recovery, a position currently held by a teacher with less seniority than Respondent Duran. Respondent Victor Duran's assertion is not persuasive. He did not establish that he has experience in serving as an evaluator of student government, ASB Executive Council, Student Senate, Class Councils of the Associated Student Body.

13. The District considered positively assured attrition, including resignations and retirements, occurring prior to sending notices of non-reemployment to the certificated employees affected by the decision to reduce particular kinds of services.

14. 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.

15. With the exception of Respondent Andersen, Respondents are not certificated and competent to render a service being performed by any employee with less seniority who is being retained.

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 sections 44949 and 44955 to reduce the number of certificated employees due to the reduction of particular kinds of services. The Board's decision to reduce the identified services of respondents was neither arbitrary nor capricious. The decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949.

3. Cause exists to dismiss the Accusation against Respondent Jens Andersen based on Factual Finding 11.

4. Cause exists to dismiss the Accusations against Respondents Sergio Barajas, Andrew Barragan, Dave Hammelmann, Gilbert Hernandez, Delta Duran, Juan Antonio Mendez, and Stephanie Thornton based on Factual Finding 9.

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ORDER

1. Notice may be given to Respondents Joanna Campbell, Victor Duran, Paul Eveland, Antonio Medina, Sandra Parrish, Gerardo Rodriguez, and Kristin Spurlock in the inverse order of their seniority that their services will not be required for the 2011-2012 school year.

2. The Accusations against Respondents Sergio Barajas, Andrew Barragan, Dave Hammelmann, Gilbert Hernandez, Delta Duran, Juan Antonio Mendez, Stephanie Thornton and Jens Andersen are dismissed.

Dated: May 6, 2011

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings