

**BEFORE THE GOVERNING BOARD  
OF THE PARAMOUNT UNIFIED SCHOOL DISTRICT**

In the Matter of the Accusation Against:

OAH Case No. 2011030904

Certain Certificated Employees of the  
Paramount Unified School District,

Respondents.

**PROPOSED DECISION**

The hearing in the above-captioned matter was held on April 26, 2011, at Cerritos, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by Barbara J. Ginsberg, Esq., Atkinson, Andelson, Loya, Ruud & Romo.

The following persons were represented by Carlos R. Perez, Esq., Reich, Adell & Cvitan:

Denise Besler, Barbara Bowman, Cordiya Butler, Joan Camiling, Tracy Chavarria, Christina Cunningham, Christina Escobar, Veronica Granados, Lorie Higgins, Christine Humble, Jissal Juarez, Gina Kaspar, Cecile Kim, Charlene Landry, Elaine Lopez, Nancy Lopez, Marci Maldonado, Jose Mendez, Matthew Moore, Nancy Moua, Tyler Nguyen, Yessinia Orozco, Julie Ortiz, Monica Plascencia, Kimberly Rosales, Fatima Ruiz, Gisela Saenz-Torres, Sofia Silva, Kirsan Veith, and Douglas Weller.

Oral and documentary evidence was received at the hearing, the case was argued, and the matter submitted for decision on the hearing date. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follow.

**FACTUAL FINDINGS**

1. Complainant Myrna Morales filed the accusations<sup>1</sup> in this proceeding in

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<sup>1</sup> The term “accusation” refers to a type of pleading utilized under the Administrative Procedure Act, Government Code sections 11500 and 11503, which provides the procedural framework for hearings of this type. It should be made clear that the Respondents are not “accused” in the every-day sense of that word; they have done nothing wrong. Instead, it might be said that they are accused of not having enough seniority or qualifications to retain their positions with the District in the face of a resolution to reduce positions.

her official capacity as Assistant Superintendent of Human Resources of the Paramount Unified School District (District)

2. The following persons are certificated employees of the District, and are hereafter referred to as Respondents:

Denise Besler, Barbara Bowman, Cordiya Butler, Mandy Butler, Joan Camiling, Tracy Chavarria, Christina Cunningham, Christina Escobar, Veronica Granados, Lorie Higgins, Christine Humble, Jissal Juarez, Gina Kaspar, Cecile Kim, Charlene Landry, Elaine Lopez, Nancy Lopez, Marci Maldonado, Jose Mendez, Matthew Moore, Nancy Moua, Tyler Nguyen, Yessinia Orozco, Julie Ortiz, Monica Plascencia, Kimberly Rosales, Fatima Ruiz, Gisela Saenz-Torres, Daniel Sepulveda, Sofia Silva, Kirsan Veith, and Douglas Weller.<sup>2</sup>

3. (A) On March 9, 2011, the Board of Education (Board) of the District adopted resolution number 10-31, entitled “Reduction or Discontinuance of Particular Kinds of Certificated Services” (Reduction Resolution). The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2011-2012 school year. Specifically, the resolution requires the reductions of 122 “FTE”—Full Time Equivalent—by reducing various types of services.

(B) The FTE’s that the Board determined to reduce are described in the Reduction Resolution, as follows:

K-5 Elementary Classroom Instruction	21.0 FTE
K-5 Counselors	7.0 FTE
Total FTE	28.0

(C) During the hearing, Complainant noted that only 20.5 FTE of K-5 Elementary Classroom Instruction would be eliminated, and thus, the total FTE noted above is correspondingly reduced.

(D) Furthermore, the Board resolved to reduce or continue particular kinds of categorically funded services which, during the 2010-2011 school year, were being performed by temporary employees, as follows:

Early Childhood Education Teachers	2.0 FTE
K-5 Itinerant Music Instruction—Special Funds	1.0 FTE
JROTC Instruction	2.0 FTE

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<sup>2</sup> As noted below, neither Elaine Lopez nor Nancy Lopez filed a timely notice of defense, but there was no objection, at the hearing, to their participation, and Mr. Perez represented their interests.

6-8 Language Arts Instruction—QUIA	2.0 FTE
High School Counselor—Title I	2.0 FTE
K-5 Instructional Coach/Intervention Teacher—Limited English Proficient	1.0 FTE
K-5 Teachers—CSR/Various Categorical Funds	7.0 FTE
6-8 Math/Science Instruction—QUIA	2.0 FTE
6-8 Music Instruction—Special Funds	1.0 FTE
6-8 Instructional Coach/Intervention	1.0 FTE
K-8 Intervention Teacher—Title I	1.0 FTE
 Total FTE	 22.0

4. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.<sup>3</sup>

5. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District’s discretion given uncertainty regarding the state budget and the District’s financial resources. The evidence established that the District faces a significant budget deficit for the 2011-2012 school year unless expenditures are reduced. At the time of the hearing, the projected shortfall would be approximately six million dollars unless expenditures are reduced.

6. The reduction and discontinuation of services 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 Board. No legally-mandated services will be reduced as a result of the planned reduction or discontinuance of services.

7. The Board, in the Reduction Resolution, also adopted tie-breaker criteria, to be used in the event that one or more teachers shared the same first date of paid probationary service. The criteria meet the particular needs of the District, and look to matters such as (but not limited to) credential status in a teacher’s current assignment, whether the teachers are Highly Qualified under the No Child Left Behind Act, number of credentials, and academic degrees. The District did not abuse its discretion in the adoption of the tie-breaking and competency criteria.

8. (A) On March 9, 2011, the Board adopted Resolution number 10-32, entitled “Reduction or Discontinuance of Particular Kinds of Services and Release of Temporary Certificated Employees.” (Ex. 3.) By that resolution, the District determined to release all temporary employees in the District, and not just those

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

teaching the categorically funded services described in the Reduction Resolution and in Factual Finding 3(D).

(B) As part of Resolution 10-32, the Board also determined that the temporary employees teaching in the categorically-funded positions would be given notices pursuant to section 44949 and 44955, even though such temporary employees would not be entitled to such notice.

9. (A) On March 10, 2011, each Respondent was given written notice that pursuant to Education Code sections 44949 and 44955, their services would not be required in the 2011-2012 school year (hereafter the preliminary notices). In issuing the preliminary notices, the District issued such to more persons that might be necessary, so that it would have flexibility in the event some discrepancy arose in the lay-off process, such as an incorrect seniority date or failure of notice.

(B) Other certificated employees besides the Respondents herein were served with preliminary notices. Twenty of those teachers did not file a timely request for hearing.

(C) Some of the Respondents in this case were among the teachers in the categorically-funded positions. Those teachers received a "Precautionary Notice" that their services would not be required in the upcoming school year.

10. Respondents requested a hearing, and on or about March 22, 2011, each was served with an Accusation and other documents, including a blank notice of defense. Thereafter, each Respondent filed a notice of defense.<sup>4</sup> Respondent Elaine Lopez filed her notice of defense one day late, and Respondent Nancy Lopez also filed a late notice of defense. They appeared at the hearing, but there was no objection to their participation in this proceeding.

11. In the course of the reduction in force process, the District created a seniority list. That seniority list took into account a number of factors, the primary factor being each certificated employee's first date of paid service. However, other factors, such as credential types, current assignment, and information that would be pertinent to any tie-breaking, were set forth on the seniority list.

12. (A) The District reviewed its records and the seniority list to determine which employees might "bump" other employees, because they held credentials in another area and were entitled to displace a more junior employee. The District ultimately allowed some senior employees to bump other employees. For example, Ayanna Holland, a counselor, was able to bump Kristie Robertson, a more junior

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<sup>4</sup> Not every teacher who received a preliminary notice, whether it was precautionary or not, requested a hearing. Such persons were not served with an accusation.

employee. Analysis of Ms. Robertson's credential showed that she could not use her multi-subject credential to bump any employee junior to herself, so Ms. Robertson received notice she would be laid off. (See Ex. 7.)

(B) As another example, employee Wendy Hunt was able to bump Wendy Settles, who could not utilize her Pupil/School Counseling credential to bump another employee. However, because Ms. Settles also possess a Multi-Subject credential, she was able to bump a more junior employee, Tyler Nguyen, who has only a Multi-Subject credential. The latter therefore received a preliminary notice.

(C) Review of the relevant exhibits establishes that all other bumping performed by the District was correct.

13. During the hearing, no Respondent adduced evidence that they could bump a more junior employee from their position. Likewise, no Respondent adduced evidence that they were given a wrong seniority date, or that tie-break criteria was not properly utilized, nor did they provide any other evidence that might show why they should not be laid off.

14. The Respondents who are temporary employees in a categorically funded program are: Cordiya Butler, Mandy Butler, Joan Camiling, Lorie Higgins, Gina Kaspar, Charlene Landry, and Sofia Silva. None of those Respondents provided evidence that they were a probationary or permanent employee.

15. The District intends to rescind the preliminary notices served on Gisella Saenz-Torres and Daniel Sepulveda so long as no other Respondent is dismissed from this proceeding. Because no other Respondent shall be dismissed, those two rescissions should issue.

16. No certificated employee junior to any Respondent was retained by the District to render a service for which a Respondent was certificated and qualified to render.

### **LEGAL CONCLUSIONS**

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 10.

2. (A) A District may reduce a particular kind of services (PKS) within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The Court of Appeal has made clear that a PKS reduction does not have to lead to less classrooms

or classes; laying off some teachers amounts to a proper reduction. (*Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-85; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject; any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

(B) The services to be discontinued are particular kinds of services within the meaning of section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. This Conclusion is based on Factual Findings 4 through 6, and the foregoing authorities.

3. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) No Respondent established that they had the right to bump a junior employee, based on the foregoing rules, and Factual Findings 11 through 13.

4. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, based on Factual Findings 11 through 14.

5. Those Respondents who are temporary employees teaching in a categorically funded program (see Factual Finding 14) were not entitled to notice of this proceeding, or the protection of sections 44949 and 44955, which pertain to permanent and probationary employees. Therefore, they may be released regardless of whether they received notice in this proceeding.

6. The District may lay off the Respondents, in reverse order of seniority, in order to reduce services, based on all the foregoing, except as to Saenz-Torres and Sepulveda, whose preliminary notices shall be rescinded.

### **ORDER**

1. The following Respondents may receive final layoff notices in inverse order of seniority: Denise Besler, Barbara Bowman, Tracy Chavarria, Christina Cunningham, Christina Escobar, Veronica Granados, Christine Humble, Jissal Juarez, Cecile Kim, Elaine Lopez, Nancy Lopez, Marci Maldonado, Jose Mendez, Matthew Moore, Nancy Moua, Tyler Nguyen, Yessinia Orozco, Julie Ortiz, Monica Plascencia,

Kimberly Rosales, Fatima Ruiz, Gisela Saenz-Torres, Daniel Sepulveda, Kirsan Veith, and Douglas Weller.

2. Final lay off notices need not be served on Respondents Cordiya Butler, Mandy Butler, Joan Camiling, Lorie Higgins, Gina Kaspar, Charlene Landry, and Sofia Silva, who are temporary employees already given notice of their release.

3. Rescission notices shall issue to Gisela Saenz-Torres and Daniel Sepulveda.

May 3, 2011

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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings