

BEFORE THE GOVERNING BOARD
OF THE RIO SCHOOL DISTRICT

In the Matter of the Layoffs of:

WILLIAM ALMSTROM and other
Certificated Employees of the Rio School
District,

Respondent.

OAH No. L2010031168

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Oxnard, California, on April 5, 2010.

Pamela A. Dempsey, Attorney at Law, represented the Complainant.

Tareq M. Hishmeh, Attorney at Law, represented all Respondents.

Oral and documentary evidence and evidence by way of stipulation and official notice was received.

The Administrative Law Judge now finds, concludes and orders as follows:

SUMMARY

The Governing Board (Board) of the Rio School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2010/2011 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 and breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

Seniority Number	Seniority Date	First Name	Last Name	Employee Id
151	9/9/2004	William	Almstrom	91050
188	8/22/2007	Diana	Barrera	91031
204	9/29/2008	Rebecca	Bautista	91021
191	9/10/2007	Wendy	Bjork	91030
223	8/28/2010	Holly	Bordwell	91017
143	8/25/2004	Amanda	Bruski	91058
183	8/22/2007	Patricia	Cabrera	91033
177	8/23/2006	Irene	Carranza	91036
198	8/25/2008	Maria	Carranza-Casimiro	91026
167	8/24/2005	Ruben	Castillo	91043
148	8/27/2004	Mireya	Chavez	91053
144	8/25/2004	Bernadette	Cisneros	91057
155	8/24/2005	Sylvia	Contreras	91048
168	8/29/2005	Jacqueline	Coronado	91042
203	9/29/2008	Stephanie	Devericks	91022
139	8/25/2004	Lisette	Garcia	91060
184	8/22/2007	Amber	Gibson	91032
176	8/23/2006	Annette	Gonzalez	91037
201	9/29/2008	Annie	Graton	91024
138	8/25/2004	Hugo	Guzman	91061
161	8/24/2005	Angela	Handley	91044
197	8/25/2008	Kyla	Kay	91027
149	9/3/2004	Heather	Knauer	91052
174	8/23/2006	Jennifer	Koslow	91039
179	8/22/2007	Jacqueline	Leal	91035
221	11/16/2009	Lynette	Lucas	91018
173	8/23/2006	Hernan	Martinez	91040
140	8/25/2004	Maria	Mauricio	91059
169	10/3/2005	Fred	Messeccar	91041
207	11/14/2008	Sandra	Morales	91019
150	9/9/2004	Nancy	Pearson	91051
180	8/22/2007	Terilyn	Regalado	91034
158	8/24/2005	Erica	Rodriguez	91045
156	8/24/2005	Heriberto	Rojas	91047
202	9/29/2008	Crystal	Rorex	91023
200	9/29/2008	Brooke	Rose	91025
145	8/25/2004	Ruth	Salas	91056
137	7/1/2004	Andres	Sanchez	91062
195	8/25/2008	Lara	Savage	91028
192	10/11/2007	Alisha	Shushan	91029
147	8/25/2004	Jay	Sorensen	91054

Exhibit A

175	8/23/2006	Kristen	Steiner	91038
136	1/5/2004	Stephanie	Terrazas	91063
146	8/25/2004	Erin	Trujillo	91055
157	8/24/2005	Richard	Valdivia	91046
153	10/25/2004	Mary	Walzer	91049
205	9/29/2008	Jacqueline	Winton	91020

Precautionary Notices

Seniority Number	Seniority Date	First Name	Last Name	Employee Id
170	8/23/2006	Pablo	Hernandez	91072
133	9/24/2003	Robert	Mitchell	91066
134	9/25/2003	Margaret	O'Sullivan	91065
154	8/24/2005	Mariela	Plascencia	91073
135	10/13/2003	Cesar	Rosales	91064
132	9/22/2003	Martha	Sheppard	91067
131	8/29/2003	Kristin	Theis	91068
171	8/23/2006	Aurora	Zamudio	91071

FACTUAL FINDINGS

Parties

1. Complainant Julie Cavaliere, Ed. D brought the accusations in this proceeding in her official capacity as Interim Director of Human Resources.
2. The Respondents herein, are identified in Exhibit A attached hereto and made a part hereof.

Reduction of Services

3. On March 10, 2010, the Governing Board of the District, upon recommendation by the Superintendent, adopted and issued resolution number 0910/13 entitled “Reduction of Elimination of Particular Kinds of Services” (Resolution 13) to reduce or discontinue particular kinds of certificated service no later than the beginning of the 2010-2011 school year because of financial constraints resulting from school year because of financial constraints resulting from revenue being insufficient to maintain the current levels of programs and necessary program changes resulting there from. The District has determined it is necessary to increase class sizes, eliminate certain program and reduce certificated staff in order to reduce District expenses and maintain solvency.

4. Resolution 13 specifies the Reduction of Elimination of Particular Certificated Services as follows:

<u>TYPE OF PROGRAM</u>	<u>FTE(Full-Time Equivalent)</u>	
Grades (6-8) Art, Music, and Computer Applications Middle Schools Teaching Services	1.80	F.T.E.
Grades(6-8) Middle Schools Teaching Services	6.00	F.T.E.
Grades 4-5 Teaching Services	10.00	F.T.E
Grades K – 3 Class Size Reduction	29.00	F.T.E
TOTAL CERTIFICATED POSITIONS	46.80	F.T.E.

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.

5. With regard to services provided by the District, on February 4, 2010, the Board adopted Resolution No. 0910/11 to determine the order of layoff for those certificated employees with the same date of first paid probationary service.

6. 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 the budgetary constraints, other factors considered by the Board, and the manner in which the decision to reduce or discontinue services was reached.

7. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and has become necessary to decrease the number of certificated employees as determined by the Board.

8. In determining the amount of service to be reduced, the Board has considered all assured attrition known at the time of Resolution 13, that is, all deaths, resignations, retirements, and nonreelection of probationary employees, in the services identified in Finding 4.

Notice and Process

9. On March 8, 2010, pursuant to Education Code sections 44949 and 44955, the Governing Board directed that notice be given to Respondents that their services will no be required for the ensuing school year, and stating the reasons therefore.

10. Prior to March 15, 2010, within the deadlines set forth in Education Code section 44949, the Respondents were provided written notice by personal service or registered mail of the recommendation that Respondents receive notice pursuant to Education Code section 44949 and 44955 that their services will not be required for the ensuing school year, and stating the reasons therefore.

11. Each Respondent timely requested a hearing. Thereafter, an accusation was served upon each of the Respondents, and the Respondents filed notices of defense, which were timely, or accepted by the District without objection.

Competency

12. In order for an employee serving in a position identified for reduction or discontinuance to be eligible for reassignment to a position held by an employee with less seniority, the senior employee must be both credentialed and competent to render the service currently being performed by the junior employee pursuant to Education Code section 44955.

13. Resolution 13 set forth the following express mandate with regard to competency;

Competency: shall be determined based on current possession of a clear or preliminary credential in the subject matter or grade level and an appropriate EI authorization.

Dual Immersion Program

14. The Dual Immersion Program is one where English language speakers and Spanish language speakers are placed together in a class to create a dual language class. The class is not state-mandated, but has been taught since approximately 2004, with the goal of educating students to attain literacy in two languages, English and Spanish. The teachers assigned to such classes must hold a BCLAD certificate. The Program begins in kindergarten and continues through fifth grade. The program is open to students countywide.

Findings Re: Certain Respondents

15. During the course of the proceeding, upon motion of the complaint, the accusations against Stephanie Terrazans, Robert Mitchell, Margaret O’Sullivan, Cesar Rosales, Martha Sheppard, Kristin Theis, Aurora Zamudio, Pablo Hernandez and Mariela Plascencia were dismissed.

16. Andres Sanchez, Seniority Number (SN) 137,¹ currently teaches fourth grade studies at Rio Del Mar Elementary School. He is literate in the English language. He is literate in the Spanish language. He is certificated to teach in the Dual Immersion Program. The evidence established that said Respondent met the mandate of competency as set forth by the District in Finding 13. He is, therefore, both competent and is credentialed to teach in the Dual Immersion Program.

17. Hugo Guzman, SN 138, currently teaches at Rio Del Valle School. He is literate in the English language. He is literate in the Spanish language. He is certificated to teach in its Dual Immersion Program. The evidence established that said Respondent met the mandate of competency as set forth by the District in Finding 13. He is therefore, both competent and is credentialed to teach in the Dual Immersion Program.

18. Lisette Garcia, SN 139, currently teaches fourth grade studies at Rio Del Norte Elementary School. She is literate in the English language. She is literate in the Spanish language. She is certificated to teach in its Dual Immersion Program. The evidence established that said Respondent met the mandate of competency as set forth by the District in Finding 13. She is therefore, both competent and is credentialed to teach in the Dual Immersion Program.

19. By reason of Findings 16, 17 and 18, respectively, Respondents Andres Sanchez, Hugo Guzman, and Lisette Garcia are competent and certificated to teach in the Dual Immersion Program. However, three teachers junior – SNs 154, 170 and 171- to each of said Respondents may be retained to perform a service-teaching in the Dual Immersion Program- which each of said Respondents is both competent and credentialed to teach.

¹ The Seniority List (see Finding 20) ranges from the most senior certificated employee SN 1, to the least senior certificated employee, SN 223.

Seniority

20. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service) current assignments and locations, credentials, authorizations and employment status (permanent, probationary or temporary). The District did send a "verification" letter to each certificated employee of the District with regard to their current credentials. The District did receive some responses thereto and did, when warranted, make changes to the Seniority List. The evidence established that the Seniority List utilized in the layoff process is accurate as to the information contained therein. Other than as set forth in Finding 19 no junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

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 by reason of Findings 9, 10 and 11.

2. Cause exists to dismiss the accusations as to the respondents named in Finding 15, by reason of Finding 15.

3. 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 by reason of Findings 3, 4 and 5. The Board's decision to reduce or eliminate the identified services set forth in Finding 4 was neither arbitrary nor capricious in that the decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949, by reason of Findings 6 and 7.

4. Cause exists to dismiss the accusations as to Respondents Andres Sanchez, Hugo Guzman and Lisette Garcia, by reason of Findings 16, 17, 18 and 19.

5. Other than as set forth in Finding 19 no permanent or probationary employee with less seniority is being retained to render a service for which Respondents are certificated and competent by reason of Finding 20.

6. Cause exists to give notice to Respondents other than those set forth in Findings 15 and 19 that their services will not be required for the 2010/2011 school year by reason of the whole of the Findings herein.

ORDER

1. The accusations against Stephanie Terrazas, Robert Mitchell, Margaret O'Sullivan, Cesar Rosales, Martha Sheppard, Kristin Theis, Aurora Zamudio, Pablo Hernandez, Mariela Plascencia, Andres Sanchez, Hugo Guzman and Lisette Garcia are dismissed.

2. Notice may be given to the remaining Respondents that their services will not be required for the 2010/2011 school year.

Dated: _____

RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:mjn