

BEFORE THE  
BOARD OF EDUCATION  
RIALTO UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2010030632

Respondents Listed on Exhibit A,

Respondents.

**PROPOSED DECISION**

On April 12, 2010, in Etiwanda, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

John W. Dietrich, Attorney at Law, represented the Rialto Unified School District.

Carlos Perez, Attorney at Law, represented all respondents listed on Exhibit A.

Prior to the hearing, the District withdrew layoff notices for 57 certificated personnel, and dismissed the accusations. At the hearing, the District withdrew the layoff notice and dismissed the accusation against Shontoyia Gilliard.

The matter was submitted on April 12, 2010.

**FACTUAL FINDINGS**

1. On or about March 12, 2010, Anna Maria Rodriguez, Assistant Superintendent, Personnel Services, Rialto Unified School District (hereafter, "the District"), made and filed the accusations against respondents in her official capacity.

2. Respondents are certificated employees of the District.

3. Before March 15, 2010, pursuant to Education Code sections 44949 and 44955, Harold L. Cebrum, Sr., Ph.D., Superintendent, notified the Board of Education of the District of the Superintendent's recommendation that respondents be notified their services will not be required for the ensuing school year. The Superintendent's notification to the Governing Board set forth the reasons for the recommendation.

4. On or before March 15, 2010, each respondent was given written notice that the Superintendent had recommended that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing year. Each written notice set forth the reasons for the recommendation. The notices satisfied the requirements of sections 44949 and 44955. *San Jose Teachers Association, Inc. v. Allen* (1983) 144 Cal.App.3d 627, 632; *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 803-04, distinguishing *Karbach v. Board of Education* (1974) 39 Cal.App.3d 355, 360-63.

5. Each respondent timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year. Accusations were timely served on respondents, and each respondent filed a timely Notice of Defense. All pre-hearing jurisdictional requirements have been met.

6. The Board of Education of the District took action in Resolution No. 09-10-47 to discontinue the following services for the 2010-11 school year:

|   |    |        |
|---|----|--------|
| Counselor-Special Education                 | 1  | F.T.E. |
| Elementary Multi-Handicapped Teacher        | 1  | F.T.E. |
| Elementary Music Teachers                   | 2  | F.T.E. |
| Elementary Special Day Class Teacher        | 1  | F.T.E. |
| Elementary Teachers                         | 68 | F.T.E. |
| Elementary VAPA Teacher                     | 1  | F.T.E. |
| High School Counselors                      | 6  | F.T.E. |
| High School Physical Education Teachers     | 2  | F.T.E. |
| High School Resource Specialist             | 1  | F.T.E. |
| High School Special Day Class Teacher       | 1  | F.T.E. |
| High School Social Science Teachers         | 3  | F.T.E. |
| Literacy Coaches                            | 15 | F.T.E. |
| Math Coaches                                | 15 | F.T.E. |
| Middle School <sup>6th</sup> Grade Teachers | 10 | F.T.E. |
| Middle School Counselors                    | 5  | F.T.E. |
| Middle School Social Science Teachers       | 5  | F.T.E. |
| Preschool Teachers                          | 3  | F.T.E. |
| Psychologist                                | 1  | F.T.E. |
| School Nurse                                | 1  | F.T.E. |

|   |            |               |
|---|------------|---------------|
| Speech Therapist  | 1          | F.T.E.        |
| Teacher on Special Assignment - EL Support              | 18         | F.T.E.        |
| Teacher on Special Assignment - Intervention Specialist | 1          | F.T.E.        |
| <b>TOTAL CERTIFICATED POSITIONS</b>                     | <b>162</b> | <b>F.T.E.</b> |

The resolution also provided:

“That “competency” as described in Education Code sections 44955(b), 44956, and 44957, for the purposes of bumping and rehire rights, shall necessarily include possession of a valid EL authorization and being No Child Left Behind Compliant in the subject area.”

The services set forth above are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. *California Teachers Association v. Board of Trustees of the Goleta Union School District* (1982) 132 Cal.App.3d 32, 34-37 and cases cited therein. *See also San Jose Teachers Association v. Allen, supra* at 635-38, in which the court specifically rejected the reasoning of *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571; *Zalac v. Governing Board* (2002) 98 Cal.App.4th 838, 853-54.

Furthermore, these services may be reduced because of budgetary difficulties. *Zalac v. Governing Board, supra*, and cases cited therein. The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

7. No certificated employee junior to any respondent is retained to perform services which any respondent is certificated and competent to render.

8. The reduction or 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 of the District as determined by the Board of Education.

9. The Board of Education considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

10. The Board of Education established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The Board provided the order of termination shall be based on the needs of the District and its students.

11. The District created a Seniority List which contains employees' seniority dates (first date of paid service), status, site, grade/subject, and credentials and authorizations. The District used the Seniority List to develop a proposed layoff and “bumping” list of the least

senior employees currently assigned in the two services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to “bump” other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could “bump” other employees.

12. Teresa Chandler teaches second grade at Myers Elementary School. She has a multiple subject credential and a CLAD certificate. Her seniority date is July 9, 2003. Ms. Chandler testified at the hearing that she was hired in August 2002 as a “teacher-in-training” and began shortly after the “red track” began. She was assigned to the classroom of Besse Borshe, a fifth grade teacher, where she was to learn to be a teacher for the following year. Ms. Chandler testified Ms. Borshe took a medical leave in September, did not return during the remainder of the school year, and retired. Ms. Chandler testified she taught the class for the remainder of the school year, and was paid as a substitute.

The District did not submit any records to establish when Ms. Chandler began teaching during the 2002-03 school year or her status for that year. The District’s seniority list indicates she was hired as a probationary teacher on July 9, 2003, and she is now tenured.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter relating to the elimination of 162 full-time equivalent positions exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Cause exists under Education Code sections 44949 and 44955 for the District to discontinue particular kinds of services relating to 162 full-time equivalent positions. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Accusation. It is recommended that the Board give respondents notice before May 15, 2010, that their services will no longer be required by the District.

3. Education Code section 44918 provides in part:

*(a) Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year.*

4. Based upon the testimony of Ms. Chandler, it appears she was hired as a substitute or temporary teacher in August 2002, and she served more than 75 percent of the

number of days the regular schools of the district were maintained during the 2002-03 school year, and she performed the duties normally required of a certificated employee of the district. Accordingly, she must be deemed to have completed the school year as a probationary employee, since she was employed as a probationary employee for the following school year.

Ms. Chandler did not know the day she began her service as a “teacher-in-training.” The District is therefore ordered to review its records to determine when she began serving in the capacity of a substitute or temporary teacher for the 2002-03 school year, and change her seniority date to reflect the date she began service with the District during that school year.

Changing Ms. Chandler’s seniority date to some time in early August 2002 does not, however, mean she will not be laid off. The seniority list indicates that elementary school teachers senior to Ms. Chandler, with seniority dates as far back as August 6, 2001, will be laid off. Thus, the accusation against Ms. Chandler must be sustained.

#### ORDER

1. The accusation served on respondent Shontoyia Gilliard is dismissed.
2. The Accusations served on the remaining 103 respondents set forth in Exhibit A, below, are sustained. Notice shall be given to each respondent before May 15, 2010 that his or her services will not be required for the 2010-11 school year pursuant to the Board of Education’s resolution because of the reduction of particular kinds of services.

Notice shall be given in inverse order of seniority.

DATED: \_\_\_\_\_

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ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings

Exhibit A

**RIALTO UNIFIED SCHOOL DISTRICT**

The following certificated personnel will receive a layoff notice:

- |                              |                              |
|------------------------------|------------------------------|
| 1. Adams, Liddy              | 37. Hudson, Taryn            |
| 2. Adcock, Shannon           | 38. Hunter, Holly            |
| 3. Aguirre, Miriam           | 39. Israel, Steve            |
| 4. Alas, Claudia             | 40. Jones, Jennifer          |
| 5. Alvarez-Villalobos, Jorge | 41. Klein, Cynthia           |
| 6. Austin, David             | 42. Kovich, Ronnie           |
| 7. Barrera, Diana            | 43. Le, Ky                   |
| 8. Bashaw, Gail              | 44. Lemaster, Elizabeth      |
| 9. Begley, Ken               | 45. Leon-Urteaga, Lupe       |
| 10. Breden, Denise           | 46. Lewis, Abina             |
| 11. Burchett, Michael        | 47. Lopez, Elizabeth         |
| 12. Carlson, Tamara          | 48. Lorber, Frederick        |
| 13. Caruthers III, Theodore  | 49. Manuel, Nora             |
| 14. Chamberlain, Stefanie    | 50. McParland, Vanessa       |
| 15. Chandler, Teresa         | 51. Mena-Khellafi, Autumn    |
| 16. Chapman, Robert          | 52. Monge, Graciela          |
| 17. Collins, Caroline        | 53. Montano, Michael         |
| 18. Copeland, Brent          | 54. Montry, Mindy            |
| 19. Cox, Billie              | 55. Morales, Doreen          |
| 20. Cristales, Joaquin       | 56. Morrill, Laura           |
| 21. De La Torre, Jorge       | 57. Mullane, Timothy         |
| 22. Dix, Susan               | 58. New, Donald              |
| 23. Dominguez, Jennifer      | 59. Noden, Barry             |
| 24. Duran, Rita              | 60. Olmos, Alejandro         |
| 25. Espinoza, Brenda         | 61. Palmer, Carolyn          |
| 26. Estrada, Ilene           | 62. Piepenhagen, Susanne     |
| 27. Ferrante, Susan          | 63. Powers, Maureen          |
| 28. Florence IV, Eugene      | 64. Prachachalerm, Pavinee   |
| 29. Folden, Elizabeth        | 65. Quintana-Hernandez, Irma |
| 30. Funke, Steven            | 66. Quintero, Antonio        |
| 31. Gray, Germaine           | 67. Quinto, Kellen           |
| 32. Guzman, Francisco        | 68. Ralph, Jo                |
| 33. Hague, Elizabeth         | 69. Realegeno, Karla         |
| 34. Hernandez, Angelica      | 70. Regalado, Sandra         |
| 35. Hertwick, Kelly          | 71. Ressa, Vincent           |
| 36. Holguin, Karen           | 72. Robles-Wallace, Mary     |

73. **Rodriguez, Ramona**
74. Rollins, Lisa
75. Rosas, Agnim
76. Ross, Debbie
77. Ruffin, Julie
78. Sambrano, Melissa
79. Samuel, Eddie
80. **Sankey, LaNaja**
81. Shewmake, Wendy
82. Sigala, Debra
83. Soriano, Jose
84. Stitt, Suzette
85. **Streff, Kristy**
86. **Taylor, Kent**
87. Thies, Gabriela
88. Timboe, Mandy
89. Tomaselli, Joseph
90. **Toomey, Michael**
91. Toor, Sandeep
92. Torrey, Sarah
93. **Truax, Billy**
94. **Turner, Meghan**
95. Uribe, Griselda
96. **Urteaga, Armando**
97. Valadez, Annemarie
98. **Vela Figuerola, Jamie**
99. Velasco, Aldo
100. **Wales, Jessica**
101. **Watkins, Amy**
102. Whitley, Leona
103. Wright, Joni