

BEFORE THE
BOARD OF TRUSTEES
PORTERVILLE UNIFIED SCHOOL DISTRICT
TULARE COUNTY, CALIFORNIA

In the Matter of the Accusations Against:

ROSEANNA ALCARAZ
SALVADOR ARREDONDO
REGINA BENNETT
MONICA BROWN
BRIANNA BURGDORF
JUANITA CAMPOS-GARIBAY
KIMBERLY COTTINGHAM
EYOSEPH EFSEAFF
ARTURO FRANCO
LINDA GONZALEZ
CHRISTINE MATTHIESEN
TRENTON MATTHIESEN
PRISCILLA PENA
NOEMI GARCIA REYES
CRYSTAL RICHARDSON
LEISHA ROMAN
RYAN SMEE
EMILY VANWAGONER
ANGELICA VELAZQUEZ
MARY ANN WOODRUFF

OAH No. 2012030870

Respondents.

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 25, 2012, in Porterville, California.

Desiree Y. Serrano, Deputy County Counsel, County of Tulare, represented the Porterville Unified School District.

Ernest H. Tuttle III, Attorney at Law, Tuttle & McCloskey, represented all respondents, except for Linda Gonzalez.

Linda Gonzalez (respondent) appeared and represented herself.

Evidence was received and the parties offered oral closing arguments. The record was then closed, and the matter was submitted for decision on April 25, 2012.

FACTUAL FINDINGS

1. John Snavelly is the Superintendent of Porterville Unified School District (district). Anthony Monreal, Ed.D., is the Assistant Superintendent of Human Resources. The district serves a total of 16,000 students in ten elementary schools, three middle schools, four comprehensive high schools, a continuation school, an adult school, and three alternative program sites.

2. The actions of Superintendent Snavelly, and those of the district's staff and governing body, the Board of Trustees (board), were taken solely in their official capacities.

3. Due to the fiscal instability of the state, the district is facing a budget shortfall for the 2012-2013 school of approximately \$5 million.

4. On February 23, 2012, Superintendent Snavelly recommended to the board that written notice be given to respondents that their services would not be required for the ensuing school year, and the reasons therefor.

5. On February 23, 2012, the board adopted Resolution No. 15, reducing or eliminating particular kinds of services (PKS) of the district, affecting 43.0 Full Time Equivalent (FTE) certificated positions.

6. The Resolution states that it will be necessary to reduce the following PKS of the district, and to decrease a corresponding number of certificated employees in the district not later than the beginning of the 2012-2013 school year:

SERVICE	F.T.E.
K-6 Elementary Classroom Teaching	23.0
High School Librarian Services	3.0
Counseling Services	2.0
Administrative Services	5.0

Continuation High School Instruction	5.0
Community Day School Instruction	1.0
Single Subject Social Science Instruction	1.0
Single Subject Trades and Industry Instruction	1.0
Single Subject English Instruction	1.0
Special Education Instruction	1.0
Total	43.0

7. As a result of the above PKS reductions and/or eliminations, the board determined that it was necessary to decrease 43.0 FTE positions for certificated employees in the district at the close of the 2011-2012 school year, in accordance with Education Code section 44955.¹

8. On February 24, 2012, Superintendent Snavelly timely served a letter entitled “Notice of Recommendation Not to Reemploy a Certificated Employee” (Preliminary Notice) on each of the permanent and probationary certificated employees affected by the PKS reductions and/or eliminations set forth in the Resolution. The Preliminary Notice advised that it had been recommended to the board that the recipient be given preliminary written notice that his/her services might not be required for the 2012-2013 school year, due to reductions in PKS.

9. All the respondents in this action timely filed a Request for Hearing to determine whether there was cause for not reemploying them for the 2012-2013 school year.

10. On March 26, 2012, Superintendent Snavelly made and filed the Accusation, and caused it to be served on respondents. All respondents timely filed a Notice of Defense requesting a hearing in this matter.

¹ All further statutory references are to the California Education Code unless otherwise indicated.

Implementation of Layoff Procedure

11. In anticipation of the PKS reduction, Dr. Monreal and his staff began updating the district's seniority list. In January 2012, district staff requested that the teachers report inaccurate information and request corrections to the district's certificated seniority list.

12. Dr. Monreal identified the individuals serving in the positions affected by the PKS reductions. District staff used the updated seniority list to identify vacant positions and to identify the least senior persons occupying the positions affected by the PKS reductions. District staff took into account known attrition and existing vacancies.

13. When the least senior persons occupying the positions affected by the PKS reductions were identified, Dr. Monreal looked at each individual's credentials to determine whether he or she could displace any less senior certificated employees. On February 24, 2012, district staff served the Preliminary Notices identified in Factual Finding 8, on the most junior employees affected by the PKS reduction.

Date of Hire – Crystal Richardson

14. The district's seniority list indicates that Crystal Richardson is a probationary 1 employee and has a seniority date of 8/8/11. Ms. Richardson maintains that her seniority date should be 7/20/11, because on that day she was paid by the district to attend a Standardized Testing and Reporting (STAR) training course from 9 a.m. to noon and site training at Bartlett Middle School from 1 p.m. to 3 p.m. Ms. Richardson was paid by a time card, which was outside of her regular employment contract. Ms. Richardson contends that she received an email which "highly recommended" that she attend those training sessions. According to Ms. Richardson, the entire English department attended, including the English Language Development (ELD) teacher. Ms. Richardson asserted that as a first year English teacher, she needed the training, and expected to use the reading assessments within the first two weeks of school. She admitted that she did not request corrections to her date of hire when the district requested verification of the information on its certificated seniority list, but asserted that she did not realize that her attendance at the training sessions would "count" until she spoke with counsel for the teachers.

15. Dr. Monreal confirmed that Ms. Richardson attended the training courses on 7/20/11, but asserted that her attendance was voluntary. In addition, the district paid Ms. Richardson through "Time Card," the process used by the district for payment for ancillary services. According to Dr. Monreal, the training courses were not part of Ms. Richardson's services under her employment contract with the district. Dr. Monreal also contends that because Ms. Richardson made no changes to the district's certificated seniority list, her date of hire should be 8/8/11.

16. Education Code section 44845 provides, in pertinent part, that a probationary employee is “deemed to have been employed on the date upon which he first rendered paid service” The evidence established that Ms. Richardson was notified to attend two training courses on 7/20/11, and that she and the entire English department attended because it was “highly recommended.” The evidence also established that the district paid Ms. Richardson to attend those courses. While the district argued that Ms. Richardson was paid through a process that handles ancillary services, the statute makes no distinction regarding the means by which a teacher is paid for their services. It establishes the date of hire once the teacher first renders paid service. For Ms. Richardson, the date on which she first rendered paid service was 7/20/11. She did not waive her right to contest her date of hire when she signed the district’s certificated seniority list. The district is retaining two junior teachers, Marc Salazar (#642) and Stacey Palmer (#656), to teach English in the 2012-2013 school year, which Ms. Richardson is credentialed and competent to teach.² Therefore, the district must rescind Ms. Richardson’s preliminary layoff notice.

Skipping Certain Certificated Teachers

17. The district seeks to skip certain certificated employees pursuant to section 44955, subdivisions (b), (c) and (d)(1). These sections provide in pertinent part:

(b) ... 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....

(c) ...services of such employees shall be terminated in the inverse of the order in which they were employed...

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The District demonstrates a specific need for personnel to teach a specific course or course of study ... and that the certificated employee has special training and experience necessary to teach that course or course of study... which others with more seniority do not possess.

² At hearing, Dr. Monreal also identified Emily VanWagoner as a junior teacher being retained to teach English. However, according to the district’s Seniority List with Impact of Layoff, Ms. VanWagoner was “[b]umped by Librarian Services.”

[¶] ...[¶]

18. In Resolution No. 15, the board determined that:

there is a specific need to retain the services of certificated employees ... who possess the special training and experience necessary to teach the following programs or courses of study:

Special Education (Mild to Moderate) (Moderate to Severe)
Speech Therapy
Nursing Services
K-7 Dual Immersion Program
9-12 Linked Learning Pathway Program

Skipping Teachers in the K-7 Dual Immersion Program (DIP)

19. At hearing, Dr. Monreal explained that the Dual Immersion Program (DIP) is in its seventh year of implementation in the district. It is a “50/50” program in which 12 students who speak predominantly English and 12 students who speak predominantly Spanish take courses 50 percent in English and 50 percent in Spanish so that they become biliterate. The courses require teachers to be trained in the development of assessments in secondary language acquisition, and the development of units to meld within the primary and secondary languages, as well as to collaborate, plan, attend parent-teacher meetings, and commit to developing assessment tools to move the program forward. The district did not adopt a specific job description for the DIP. According to Dr. Monreal, teaching a secondary language requires more than just the rudimentary skills gained from securing Cross-Cultural, Language and Academic Development (CLAD) or Specially Designed Academic Instruction in English (SDAIE) authorizations. The district reviewed teacher resumes, training information, and professional development, and conducted interviews, and determined that the teachers who were skipped have the special training and experience necessary to teach the K-7 DIP.

20. Guadalupe Moreno has a seniority date of 8/8/11. She is a probationary 1 employee with the district. She holds a Preliminary Multiple Subject Credential and EL Authorization. She is one unit short of receiving her Bilingual, Cross-Cultural, Language and Academic Development (BCLAD) authorization. According to Dr. Monreal, Ms. Moreno has special training and experience in language content, development of the English language and secondary language acquisition, and has studied bilingual education by Jim Cummings. She teaches Kindergarten English in the DIP at Santa Fe Elementary School. The district proposes to skip Ms. Moreno, pursuant to section 44955, subdivision (d)(1).

21. Mayra Romero has a seniority date of 8/8/11. She is a probationary 1 employee with the district. She holds a Preliminary Multiple Subject Credential, and

BCLAD authorization. According to Dr. Monreal, Ms. Romero has special training and experience in English language acquisition, and professional development in Spanish instruction. She teaches 1st grade Spanish in the DIP at Santa Fe Elementary School. The district proposes to skip Ms. Romero, pursuant to section 44955, subdivision (d)(1).

22. Yuliana Ceballos has a seniority date of 8/8/11. She is a probationary 1 employee with the district. She holds a Preliminary Multiple Subject Credential, and BCLAD authorization. She teaches 6th grade Spanish in the DIP at Santa Fe Elementary School. The district proposes to skip Ms. Ceballos, pursuant to section 44955, subdivision (d)(1).

23. Daniel Velazquez has a seniority date of 8/9/10. He is a probationary 1 employee with the district. He holds a Preliminary Multiple Subject Credential, and BCLAD authorization. He teaches Life Science and Language Arts at Pioneer Middle School. According to Dr. Monreal, Mr. Velazquez visited ten 7/8 schools across state that have implemented the DIP, and will be the key person to implement the DIP in the district in the 2012-2013 school year. He has special training and experience in identifying secondary language acquisition, differentiating language, transition programs, recruitment development, curriculum instruction, and has expressed a commitment to students and parents. The district proposes to skip Mr. Velazquez, pursuant to section 44955, subdivision (d)(1).

24. Juanita Campos-Garibay has a seniority date of 8/9/10. She is a probationary 2 employee with the district. She holds a Preliminary Multiple Subject Credential, and BCLAD authorization. She teaches sixth grade at John J. Doyle Elementary School. She was laid off pursuant to the board's Resolution to reduce 23.0 FTE in K-6 Elementary Classroom Teaching. Ms. Campos-Garibay maintains that she can bump into the DIP because her BCLAD authorization allows her to teach Spanish in the DIP. No other evidence was presented to establish that Ms. Campos-Garibay has special training or experience to teach in the DIP.

25. Dr. Monreal confirmed that Ms. Campos-Garibay is authorized to teach Spanish because she holds a BCLAD authorization; however, the district is unaware if Ms. Campos-Garibay has special training and experience to teach in the DIP, other than what she has gained from working for the district.

26. The district has properly identified the Dual Immersion Program as a specific course or course of study that will be taught in the district in the 2012-2013 school year. The district established that Guadalupe Moreno, Mayra Romero, and Daniel Velazquez have the special training and experience necessary to teach in that program. Ms. Campos-Garibay did not establish that she has special training and experience that would require her to be skipped in order to teach in the DIP. Therefore, the district properly skipped Ms. Moreno, Ms. Romero, and Mr. Velazquez.

27. The district did not establish that Yuliana Ceballos has the special training and experience necessary to teach in the DIP. Because she did not receive a Preliminary Notice, the district has retained a junior certificated employee while noticing more senior certificated employees with multiple subject credentials. Therefore, the district is required to retain the most senior multiple subject credentialed teacher otherwise slated for layoff.

Application of the Tie-Breaking Criteria

28. On February 23, 2012, the board adopted Resolution No. 13, setting forth criteria for determining the order of release of district employees with the same first date of paid service (Tie-Breaking Criteria). The criteria were as follows:

1. Five points for each clear credential
2. Four points for each advance degree (Master's or Doctorate)
3. Four points for one year of teaching experience in the Dual Immersion Program
4. Four points for one year experience in the District Linked Learning Pathways Program
5. Three points for a BCLAD authorization in Spanish on file with the district
6. One point for each year of verified teaching experience in a position requiring a valid California credential

In the event that any employees still have equal ranking after application of all these criteria, the District will then break all ties by utilizing a lottery.

29. Victoria Duran has a seniority date of 8/9/10. She is a probationary 2 employee with the district. She holds a Preliminary Multiple Subject Credential and EL authorization. She teaches third grade at Vandalia Elementary School. Dr. Monreal explained that Ms. Duran was inappropriately awarded points in the district's application of the tie-breaking criteria. As soon as the district learned of this issue, they rectified it immediately, but not in time to serve a Preliminary Notice on Ms. Duran. As a result of their error, the district has indicated that it is willing to rescind one of the Preliminary Notices issued to either Tara Downs or Art Franco, who each have six points after application of the tie-breaking criteria. According to Dr. Monreal, although the district has conducted a rehire lottery, it has not conducted a layoff lottery. The district has no preference as to whether the rehire lottery is utilized or a layoff lottery is conducted to determine which teacher should have their preliminary notice rescinded.

30. Counsel for the represented respondents asserted that although Ms. Downs and Mr. Franco received preliminary notices of layoff, Mr. Franco timely filed

a Request for Hearing, and Ms. Downs waived her right to contest the layoff proceedings. As Mr. Franco is a respondent in this matter, counsel contends that the district should rescind his Preliminary Notice.

31. The evidence is undisputed that the district inappropriately awarded tie-breaking points to Ms. Duran and as a result did not issue her a Preliminary Notice. As a consequence, the district is required to rescind the Preliminary Notice of the most senior multiple subject credentialed teacher identified for layoff. Counsel for the represented respondents argued for the rescission of respondent Franco's preliminary notice because Ms. Downs waived her right to contest the layoff proceedings by failing to file a Request for Hearing. This argument is without merit.

32. The district conducted a lottery to determine the order of rehire of individuals with an 8/9/10 seniority date, who were tied after the awarding of points under the Tie-Breaking Criteria. Although Dr. Monreal referred to this as a "rehire lottery," there was no credible explanation given as to why the same order could not be used to determine the order of layoff among affected employees. The district's designation of the application of tie-breaking criteria as a rehire lottery is irrelevant, and the district is not required to conduct a layoff lottery. It is appropriate for the district to use the rehire lottery to determine the seniority rights of teachers with the same date of hire, and the most senior certificated employee with a date of hire of 8/9/10 who holds a multiple subject credential and is slated for layoff, must be retained.

Challenge to the Tie-Breaking Criteria - Noemi Reyes

33. Noemi Reyes has a seniority date of 8/8/11. She is a probationary 1 employee with the district. She holds a Preliminary Single Subject Credential in Social Science, and EL authorization. She teaches Social Science at Bartlett Middle School. She was laid off as a result of the board's Resolution to reduce 1.0 FTE in Single Subject Social Science Instruction. The district's Application of Tie Breaking Criteria indicates that Ms. Reyes has four points for a Master's degree and one point for the number of verified years of teaching experience, for a total of five tie-breaking points. Ms. Reyes maintains that she should receive 12 points for her degrees, in addition to the one point for the number of verified years of teaching experience, for a total of 13 tie-breaking points. According to Ms. Reyes, she has a Master's degree in History from Stanford University, and a Master's degree in History and Master's degree in Ethnic Studies from the University of California at Berkeley. Ms. Reyes contends that she notified the district of her degrees when she was hired and during her interview, and gave the official transcripts to the district "long before March 2012."

34. Dr. Monreal asserted that the district did not have notice of Ms. Reyes' two additional Master's degrees as of March 15, 2012, and therefore did not consider them in compiling the points for the tie-breaking for all employees with a seniority

date of 8/8/11. In addition, even if Ms. Reyes had eight additional points, she would still be laid off as the most junior teacher serving 1.0 FTE in Social Science Instruction.

35. The evidence was insufficient to establish that Ms. Reyes notified the district “long before March 2012,” or that the district was aware of her two additional Master’s degrees. As set forth in Factual Finding 34, she is still subject to layoff. However, as the tie-breaking points are critical to the rehire rights of Ms. Reyes, within the group of teachers with a rehire date of 8/8/11, Ms. Reyes should immediately provide the official transcripts to the district, and the district should amend its application of the tie-breaking criteria to reflect the appropriate tie-breaking points for Ms. Reyes as a result of two additional Master’s degrees.

Challenge to the Competency Criteria – Angelica Velazquez

36. In Resolution No. 15, the board defined “competency” for purposes of Education Code sections 44955, 44956 and 44957 as:

Fully credentialed or qualified internship credential in the subject or service area

At least one year of experience in the subject or service area within the last three years

High qualified under No Child Left Behind (NCLB) in the relevant core subject area: English, Math, Social Science, Arts, Foreign Language and Self-Contained (Multiple Subject).

37. Enrique Chavez has a seniority date of 8/9/10. He is a probationary 2 employee with the district. He holds a Preliminary Single Subject Credential in Social Science, and EL authorization. He teaches Social Science at Sequoia Middle School. The district did not serve Mr. Chavez with a Preliminary Notice, and he is being retained to teach Social Science in the 2012-2013 school year.

38. Angelica Velazquez has a seniority date of 8/9/10. She is a probationary 2 employee with the district. She holds a Preliminary Single Subject Credential in Social Science, a Preliminary Multiple Subject Credential, and EL authorization. She teaches sixth grade social science at Roche Avenue Elementary School. She was laid off pursuant to the board’s Resolution to reduce 23.0 FTE in K-6 Elementary Classroom Teaching. Ms. Velazquez maintains that she can bump Mr. Chavez who is being retained to teach social science. According to Ms. Velazquez, she is in the process of completing the California Beginning Teacher Support and Assessment (BTSA) program to clear her credentials, and expects to do so on June 9, 2012. She has a degree in political science, and is interested in teaching social science. She has at least one year of experience teaching social science, is

credentialed to teach social science, and is highly qualified under NCLB in the core subject area of social science, due to her degree in political science. The district did not permit Ms. Velazquez to bump into Mr. Chavez's position, because the board's Resolution reduced K-6 Elementary Classroom Teaching, and not middle school Social Science, and the district does not consider employees with the same date of hire to be more senior to each other. The district's arguments are without merit.

39. Dr. Monreal confirmed that Mr. Chavez and Ms. Velazquez hold Single Subject Credentials in Social Science, have the same date of hire, and were tied with two points each when the district applied tie-breaking criteria to determine rehire rights. However, as set forth in Factual Finding 32, it is appropriate for the district to use the rehire lottery to determine the seniority rights of teachers with the same date of hire. In this case, when the district conducted the "rehire lottery" in accordance with the Tie-Breaking Criteria, Ms. Velazquez was more senior to Mr. Chavez. Ms. Velazquez is certificated and competent to teach social science. Thus, Mr. Chavez is being retained to provide a service that Ms. Velazquez is certificated and competent to render. The preliminary notice to Ms. Velazquez must be rescinded, and she shall be retained for the 2012-2013 school year.

Other Defenses to Layoff

40. Any other assertions raised by the parties at hearing which are not addressed above are found to be without merit.

LEGAL CONCLUSIONS

1. As set forth in the Factual Findings, all notice and jurisdictional requirements set forth in sections 44944 and 44945 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the board's Resolution and in the notices, adequately describes particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. The board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. The services identified in PKS Resolution No. 15 are particular kinds of services that may be reduced or discontinued pursuant to sections 44949 and 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 discontinuance of services relates solely to the welfare of the district's schools and pupils within the meaning of section 44949.

4. The preliminary layoff notice issued to respondent Crystal Richardson must be rescinded because the district is retaining junior employees to provide services which Ms. Richardson is certificated and competent to render, by reason of Factual Findings 14 through 16.

5. Using the Application of Tie Breaking Criteria, the district must retain the two most senior certificated employees with a date of hire of 8/9/10 who hold multiple subject credentials and are slated for layoff, by reason of Factual Findings 27 and 32.

6. Using the Application of Tie Breaking Criteria and Competency Criteria, the district must rescind the preliminary notice issued to Angelica Velazquez, and she shall be retained for the 2012-2013 school year, by reason of Factual Findings 36 through 39.

7. Respondent Noemi Reyes has two additional Master's degrees. Once she provides the official transcripts to the district, the district should amend its application of the tie-breaking criteria to reflect the appropriate tie-breaking points for Ms. Reyes as a result of two additional Master's degrees, by reason of Factual Finding 35.

8. Except as set forth in Legal Conclusions 4, 5 and 6 and the Factual Findings, no employee with less seniority than any respondent is being retained to render a service which any respondent is competent to render.

9. Except as set forth in Legal Conclusions 4, 5 and 6, the board may give respondents final notice that their services will not be required for the 2012-2013 school year.

RECOMMENDATIONS

1. Except as set forth in Legal Conclusions 4, 5 and 6, the Accusations served on respondents are sustained.
2. As set forth in Legal Conclusion 4 and the Factual Findings, the district shall rescind the Preliminary Notice issued to respondent Crystal Richardson.
3. As set forth in Legal Conclusion 5 and the Factual Findings, the district shall rescind the Preliminary Notices of the two most senior certificated employees with a date of hire of 8/9/10 who hold a multiple subject credential.
4. As set forth in Legal Conclusion 6 and the Factual Findings, the district shall rescind the Preliminary Notice issued to respondent Angelica Velazquez.
5. The district shall comply with Legal Conclusion 7 as it relates to the application of the tie-breaking criteria to respondent Noemi Reyes.
6. Final Notices shall be given to the remaining respondents that their services will not be required for the 2012-2013 school year because of the reduction or discontinuation of particular kinds of services.
7. Final Notices shall be given to respondents in inverse order of seniority.

Dated: May 3, 2012

REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings