

BEFORE THE
GOVERNING BOARD
OF THE
RIVERSIDE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Jaimianne Brewer, Luis Diaz, Jr., Daniel
Genung, Jerry McKinnie, Callie Neal,
Tamara Peltz, Arlene Rangel, and Janice
Webb,

Respondents.

OAH No. 2008030386

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Riverside, California on April 21, 2008.

Melanie A. Petersen, Fagen Friedman & Fulfroast, LLP, represented the Riverside Unified School District.

Marianne Reinhold, Reich, Adell & Cvitan, represented respondents.

The matter was submitted on April 21, 2008.

FACTUAL FINDINGS

1. Susan J. Rainey, Superintendent of the Riverside Unified School District, made and filed the accusations dated April 1, 2008 in her official capacity.
2. Respondents are certificated District employees.
3. In March 2008, in accordance with Education Code sections 44949 and 44955, the Superintendent, through Glenn King, Assistant Superintendent, Human Resources, notified the Governing Board of the District in writing of her recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The Superintendent stated the reasons for the recommendation.

4. On March 10, 2008, the Governing Board adopted Resolution No. 2007/08-63, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The Governing Board determined that the particular kinds of services that must be reduced for the 2008-2009 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Secondary Instructional Coaches	7.0 FTE
Staff Development Specialists	6.0 FTE
High School Counselors	9.2 FTE
School Librarians	6.0 FTE
English Teachers	15.0 FTE
Mathematics Teachers	7.0 FTE
Home/Hospital Teachers	3.0 FTE
Riverside Against Drugs/ TOSA	1.0 FTE
Elementary Music Teachers	5.4 FTE
English Learner Teachers	10.6 FTE
Elementary Instructional Coaches	11.0 FTE
Art Teachers	2.0 FTE
Science Teachers	4.8 FTE
Social Studies Teachers	8.8 FTE
Spanish Teachers	3.6 FTE
Health Teachers	1.6 FTE
Physical Education Teachers	2.2 FTE
French Teacher	1.0 FTE
District Librarian	1.0 FTE
	<hr/> 106.2 FTE's

The proposed reductions totaled 106.2 full-time equivalent (FTE) positions.

5. The Governing Board further determined in Resolution No. 2007/08-63 that it would be necessary to retain certificated employees who possess special training and competency that other certificated employees with more seniority might not possess, to wit:

- a. Teaching experience within the past three years in one of the following areas: marching band, vocal music, or instrumental music at the secondary level; and
- b. an undergraduate degree in music performance, vocal performance, instrumental performance, and/or music.

6. The Governing Board directed the Superintendent or her designee to determine which employees' services would not be required for the 2008-2009 school year as a result of the reduction of the aforementioned particular kinds of services. The Governing Board further directed the Superintendent or her designee to send appropriate notices to all

certificated employees of the District who would be laid off as a result of the reduction of particular kinds of services.

7. On or before March 15, 2008, the District timely served on respondents a written notice that the Superintendent had recommended that their services not be required for the upcoming school year. The recommendation that respondents be terminated from employment was not related to their competency as teachers.

8. Each respondent timely filed a written request for hearing to determine if there was cause for not reemploying that respondent for the upcoming school year. Accusations were thereafter timely served on each respondent. Each respondent timely filed a Notice of Defense. All pre-hearing jurisdictional requirements were met.

9. The services the Board addressed in Resolution No. 2007/08-63 were "particular kinds of services" that could be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of discretion.

10. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

11. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

12. On August 21, 2007, Daniel Genung received and accepted an offer of employment at the District's Chemawa Middle School. As discussed below, the first day of school for new District teachers was August 22, 2007. However, the District could not hire Mr. Genung effective August 22, because Mr. Genung did not yet have a tuberculosis clearance. He received the clearance on August 23, 2007, which thus became his contract date. The contract explicitly stated, "Seniority Date: 8/23/07," and bore an asterisk, which stated "Pending pre-employment clearance (#5)." Item five stated, "Prior to rendering service under this offer, you must have on file with the District Human Resources Office: 1) A certificate showing you are free from active tuberculosis"

August 23, 2007 was the first regular teaching day of the current school year. August 22, 2007 was a staff development day, when teachers could report to their school site, set up their classrooms, receive training and engage in other related activities of a preparatory nature. Pursuant to the union contract, participation on the August 22 staff development day was optional for returning teachers. If teachers chose to participate, they

received a set \$285 "buy-back" amount for their work that day. This \$285 did not represent a pro rata fraction of their annual salary.¹

Though returning teachers were not required to attend the August 22 staff development day, new teachers were. Because Mr. Genung was technically not yet employed by the District on August 22, he could not be required to report for duty on August 22. However, District staff strongly advised (i.e., "highly, highly encouraged") him to do so, which he did, and for which he received the \$285 buy-back amount. Mr. Genung performed all duties and participated in all activities that any new employee was required to perform and participate in during the staff development day.

Based on the foregoing, it is found that the District correctly determined Mr. Genung's seniority date to be August 23, 2007. In particular, it is noted that: (a) August 22, 2007 was not part of the regular 185-day school year; (b) Mr. Genung's participation in the August 22 staff development day, while was strongly encouraged, was not required; and (c) his contract explicitly specified that August 23, 2007 was his seniority date.

13. None of the respondents challenged their tiebreaker point determinations at the hearing. In return, the District agreed, pursuant to a stipulation of the parties, that it would afford all respondents on the District's updated April 4, 2008 "credential listing for certificated personnel" an opportunity to meet with District personnel, to review the documentation demonstrating how their tiebreaking points were determined, and to offer to the District additional information concerning their status in this regard.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notice and jurisdictional requirements contained in those sections were satisfied.


2. Cause exists under Education Code sections 44949 and 44955 for the District to reduce or discontinue particular kinds of services. 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, 2008, that their services are no longer required by the District.

¹ Pursuant to contract, teachers worked 185 days in the school year. The \$285 payment for the staff development day thus did not represent 1/185th of a teacher's annual salary.

ORDER

The accusation served on respondents Jaimianne Brewer, Luis Diaz, Jr., Daniel Genung, Jerry McKinnie, Callie Neal, Tamara Peltz, Arlene Rangel, and Janice Webb is sustained and notice shall be given to respondents before May 15, 2008 that their services will not be required in the next school year because of the reduction or discontinuance of particular services as indicated.

Dated: 4/22/08



Donald P. Cole
Administrative Law Judge
Office of Administrative Hearings