

**BEFORE THE
GOVERNING BOARD OF THE
POMONA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation
Against:

CERTIFICATED EMPLOYEES OF THE
POMONA UNIFIED SCHOOL DISTRICT,

Respondents.

OAH No. 2010030087

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge, on April 28, 29 and 30, 2010, in Pomona, California.

Complainant Pomona Unified School District was represented by Howard A. Friedman and L. Carlos Villegas, Attorneys at Law. Respondents, who are listed in an attachment to Respondents' closing brief, were represented by Joshua B. Adams and Emma Leheny, Attorneys at Law.

Oral and documentary evidence was introduced and the record was left open to allow the parties to submit written closing argument and briefs by May 4, 2010. On the morning of May 4, 2010, Respondents' counsel requested an extension of time to file their written brief. Counsel for the District agreed to the extension. The parties also stipulated to extend and continue the submission date of this matter to May 5, 2010, and to extend the time for issuance of the proposed decision to May 13, 2010. On May 4, 2010, the undersigned issued an order extending the deadline for issuance of the proposed decision to May 13, 2010, and extending the time for the District to issue Notices of Termination pursuant to Education Code section 44955, subdivision (c). The parties submitted their closing arguments and briefs on May 5, 2010. The District's closing brief was marked exhibit 11 for identification only. Respondents' closing brief was marked exhibit H for identification only. The matter was submitted for decision on May 5, 2010. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions and Order.

FACTUAL FINDINGS

1. The Accusation was made and filed by Richard Martinez in his official capacity as Superintendent of the Pomona Unified School District (District).
2. Respondents are certificated employees of the District.

3. On February 24, 2010, pursuant to the recommendation of the Superintendent, the Governing Board of the Pomona Unified School District adopted Resolution No. 10 (2009-10) in which it determined that particular kinds of services may be reduced or discontinued at the close of the 2009-2010 school year. The Governing Board resolved to reduce or eliminate 321.7 full-time equivalent positions (FTE) in certain services or programs performed by probationary or permanent certificated employees specifically delineated as follows:

<u>SERVICES</u>	<u>FTE</u>
Intervention Counselor-Secondary	12.0
Intervention Specialist	7.0
School Nurse	2.0
School Psychologist	7.0
Teacher-Adult School-Adults with Disabilities (13 positions, 12 months reduced to 10 month assignments)	2.3
Teacher-Adult School-Adults with Disabilities (10 month assignment)	7.2
Teacher-Adult School-English as Second Language and Citizenship	2.0
Teacher-Adult School-Vocational Education (Cosmetology)	1.0
Teacher-Adult School-Older Adults	2.0
Teacher-Adult School-Parent, Family and Consumer Awareness	3.0
Teacher-Child Development	3.0
Teacher on Assignment	42.0
Teacher-Elementary	110.0
Teacher-Secondary-Art	6.4
Teacher-Secondary-English	19.0
Teacher-Secondary-Foreign Language-French	1.2
Teacher-Secondary-Foreign language-Spanish	5.0
Teacher-Secondary-Discovering Industrial Technology	1.0
Teacher-Secondary-Technology Proficiency	6.4
Teacher-Secondary-Math	19.0
Teacher-Secondary-Music	6.4
Teacher-Secondary-Physical Education	10.6
Teacher-Secondary-Science-Earth	0.8
Teacher-Secondary-Science-Life	6.6
Teacher-Secondary-Science-Physical	7.0
Teacher-Secondary-Social Science	19.0
Teacher-Special Education	5.0
Teacher-Specialist	5.0
Teacher Specialists—Special Education	2.0
Teacher Specialists—Technology	1.0
TOTAL FTE Reduced or Discontinued	321.7

4. In its resolution, the Governing Board directed the Superintendent or his designee to serve notices of termination in accordance with and in the manner prescribed by Education Code Sections 44949 and 44955.

5. The Governing Board also adopted criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the District in a probationary position on the same date. The Governing Board resolved that the order of termination of said employees shall be determined by reference to certain tiebreaker criteria and to points assigned to each category of tiebreaker criteria. The Governing Board further resolved that such criteria are determined to best serve the needs of the District and its students and would be applied in the layoff hearing in which the issue may arise.

6. On or about March 5, 2010, pursuant to the resolution of the Governing Board and the provisions of Education Code Sections 44949 and 44955, Superintendent Martinez gave written notice to Respondents that the Superintendent had recommended to the Governing Board that notice be given to respondents that their services may not be required for the ensuing 2010-2011 school year. Respondents requested a hearing to determine if there is cause for not employing them for the ensuing school year.

7. On or about March 30, 2010, the District filed and timely served an Accusation, Resolution No. 10 (2009-10), a Statement to Respondent, a blank Notice of Defense, Request for Discovery, pertinent sections of the Government and Education Codes, and Notice of Hearing upon 259 certificated employees. Respondents (176 certificated employees) filed timely Notices of Defense. All pre-hearing jurisdictional requirements have been met.

8. At the hearing, the District rescinded the layoff notices issued to Respondents Lisa Andrews, Maria Angelica Azurin, Rebecca Bulsombut, Victor Calagna, Alejandrina Cendejas, Amparo Lopez Chacon, Euna Chae-Montez, Trian Soai Chan, Arturo Chavez, Jose Chavez, Imelda Clark, Norma Contreras-Guillen, Cynthia Corona, Nathan Crozier, Prudence Dacillo, Kirk Daffron, Melissa D. De Nova, Ivette Decasas, Elizabeth Dimauro, Erika Cristina Duran, Alicia Edwards, Claudia Escobedo-Perea, Arturo Farin, Bridgette Gardea, Ashley Hedrick, Lupe Kanouse, Natalie Kirkbride-Escobedo, Namiko Kobayashi, Islene Leon, Isreal Lim, Hemali Long, Christina Longstaff, Judith Leandra Macias, Leila McFarlin, Rosa Miranda-Zimmer, Cheryl Moore, Maria Esther Mora, Lydia Moreno, Abigail Ramirez, Laura Romero, Michael Seelig, Sanita Shropshire, Tina Solorzano, Cesar Torres, Esmiralda Vargas and Mark Wiseman. The District also rescinded the layoff notice issued to certificated employee Douglas Perez.

9. Respondents Kathy Castillo, Yvonne Reaza, and Katie Porter testified that they did not receive layoff notices contained in exhibit 6. As a result, these respondents contend that their layoff notices should be rescinded. However, respondents Castillo, Reaza and Porter conceded that the District had their correct addresses on record. Further, Darren Knowles, Director of Personnel Services for the District, testified that all respondents, including Castillo, Reaza and Porter, were served with layoff notices by certified mail with return receipt requested.

10. The services or programs set forth in Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code Section 44955. The determination of the Governing Board of the District to reduce or discontinue these services or programs is within the sound discretion of the District and is not arbitrary or capricious. 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 as determined by the Governing Board.

11. The District has considered personnel changes due to attrition, retirements, and the releases of temporary employees in making its determination to issue layoff notices.

12. The District maintains a seniority list which contains employees' seniority dates, current assignments and locations, credentials, and authorizations. The District then identified the most junior employees working in a particular kind of service being reduced or discontinued and determined which employees would receive layoff notices.

13. During the hearing, the parties presented evidence of errors in the seniority dates that had been assigned to certain certificated employees set forth in exhibits 2 and 3. As a result, the District made the following changes to the seniority list:

<u>Certificated Employee</u>	<u>Listed Seniority Date</u>	<u>New Seniority Date</u>
Marie Anderson	January 7, 2008	October 19, 2007
Jasmine Aburas	August 21, 2007	October 10, 2006
Elvira Baeza	October 12, 2005	September 23, 2005
Jamie Beckel	October 12, 2005	September 8, 2005
Tonya Brookhart	August 21, 2002	August 12, 2002
Antonio Caballero	August 27, 2007	March 5, 2007
Elsa Cabral	August 31, 2007	November 6, 2006
Javier Cayetano	August 27, 2008	November 13, 2007
Cecilia Gonzales	January 7, 2008	August 29, 2007
Jennifer Larea	September 26, 2006	March 30 2006
Monica Medina-Jimenez	September 6, 2006	September 20, 2005
Yolanda Marinez	October 10, 2007	August 27, 2007
Donavon MacLeod	August 21, 2007	January 19, 2007
Thelma Newsome-Cox	August 22, 2006	March 22, 2006
Mark Orozco	August 22, 2006	September 6, 2005
Karena Owen	September 5, 2006	October 5, 2005
Laura Patricia Ramirez	August 22, 2006	January 25, 2006
Paula Rafael	October 12, 2005	December 12, 2003
Maria Del Carmen Sanchez	January 7, 2008	September 17, 2007
Monica Whisenhunt	September 3, 2002	August 21, 2002

14. Some of the above mentioned Respondents who were assigned new seniority dates in Factual Finding 13, contest their new seniority dates. These include Respondents Jamie Beckel, Antonio Caballero, Donovan MacLeod and Mark Orozco. In its closing brief, the District noted that it rescinded Respondent Mark Orozco's layoff notice. Respondents Caballero's, Macleod's and Beckel's contention that their newly assigned seniority dates are in error, even if true, would not affect their layoff status. Therefore, the undersigned does not make a determination or finding regarding the disputed seniority dates for Respondents Orozco, Caballero, MacLeod and Beckel.

15. The District rescinded Respondent Arturo Farin's layoff notice. He nevertheless disputes his seniority status. Since he is not being laid off the undersigned does not make a determination or finding regarding his disputed seniority date.

16. Respondent Puga disputes her assigned seniority date of December 1, 2005. She testified that she worked as a long term substitute from September to December 2005, however, she did not present any documentary evidence to support her contention. Further, in her testimony, Respondent Puga did not specify an exact first date of paid service to the District. In any event, her proposed change in her seniority date would not affect her layoff status. Therefore, the undersigned will not disturb the District's determination of her seniority date.

17. Respondent Vanessa Saenz disputes her assigned seniority date of August 19, 2008, and claims that her employment status should be changed from probationary II to permanent. She worked a substitute from October 2, 2007 through December 13, 2007. She then worked under a temporary contract from January 16, 2008, to the end of the 2007/2008 school year. It was not established that she worked at least 75 percent of the 2007/2009 school year. Her proposed changes in seniority would not affect her notice of layoff. Therefore, the undersigned will not make a determination or finding regarding her disputed seniority date and will not change her employment status.

18. Respondent Marilyn Mendieta disputes her assigned seniority date of September 4, 2007. She claims that she should have earned seniority at the beginning of the 2002/2003 school year. Her testimony did not establish that she should be assigned seniority as of the 2002/2003 school year.

19. Certain Respondents (19) dispute their seniority dates based on claimed attendance at mandatory training. The sign-in sheets for the training do not support the assertions of these respondents that they attended the training in question. In any event, the proposed changes in seniority would not affect the layoff status of these Respondents.

20. The Seniority List also contained certain errors in the employment status of some of the respondents and other certificated employees. As a result, the District made changes to the employment status of the following certificated employees: Cecilia Gonzalez's employee status was changed to permanent as of the 2009/2010 school year ; Maria Del Carmen Sanchez's employee status was changed to permanent as of the 2009/2010 school year; Yvonne Reaza's employee status was changed to permanent as of the 2009/2010 school

year; Brenda Vasquez's employee status was changed to permanent as of the 2009/2010 school year; Christina Galit's employee status was changed to probationary II as of the 2009/2010 school year; and Jeanette Goss's employee status was changed to permanent as of the 2009/2010 school year.

21. At the hearing, the District assigned a new seniority date of October 19, 2007, for Respondent Maria Anderson. She started working for the District in November 1994 and worked consecutive years until June 2005. She requested a leave of absence for the 2005-2006 school year, which was denied by the District. Respondent Anderson chose to resign. She returned to the District in October 2007 as a long term substitute. In January 2008 she was given permanent status. The District properly determined that Respondent Anderson's new seniority date was the date of her rehire. (Section 44848; *San Jose Teachers Assn. v. Allen* (1983) 144 Cal. App. 3d 627, 631 "When a permanent certificated employee resigns and is reemployed within 39 months, the reemployment restores all individual rights, benefits and burdens of a permanent employee; however, for seniority purposes, the employee does not regain his or her original hiring date.") Accordingly, the District's calculation of Ms. Anderson's seniority date is correct.

22. Respondent Bridget Bushong disputes her assigned seniority date of February 9, 2005. She testified that she filled a vacant position as a long term substitute during the first part of the 2004/2005 school year although she was not specific as to the date she filled this vacant position. She was offered and accepted a temporary contract in February 2005, and was rehired for the 2007/2008 school year under another temporary contract. In September 2008 she was given probationary II status. While it did not address Ms. Bushong's contention at hearing, in its written closing brief, the District noted that a check of Ms. Bushong's records indicated that she was first hired to fill a vacant position on September 22, 2004. The District has offered to change her seniority date to September 22, 2004. The undersigned will not making a finding as to Ms. Bushong's seniority date because neither side presented specific evidence at the hearing of an exact first date of paid service to the District. In any event, there is no evidence that changing her seniority date would have an effect on her layoff status.

23. Respondent Mark Orozco contends that he has greater seniority and is qualified to teach a history classes currently being taught by Darryl Hutchinson, who did not receive a layoff notice. Respondents Orozco and Rene Natividad are both qualified to teach social science classes. However, there is only one position at issue, and Respondent Orozco has more seniority that Respondent Natividad. Therefore, Respondent Orozco's contention that he should bump into Mr. Hutchinson's position is correct as he is qualified to teach Mr. Hutchinson's class and had more seniority than both Respondent Natividad and Mr. Hutchinson. In its closing brief, the District stated that it had rescinded Mr. Orozco's layoff notice.

24. Respondent Jose Sanchez teaches at the adult school and contends that he has greater seniority and is qualified to teach the adult ESL (English as a Second Language) classes currently taught by Clotilde Rodriguez and Esther Johnson. In its closing brief, the

District conceded that respondent Jose Sanchez is authorized to teach ESL at the adult school, and noted that it would rescind his layoff notice.

25. (a) Respondent Marilyn Prehn disputes her assigned seniority of December 9, 1999. Ms. Prehn was hired by the District as an independent contractor from June 1999 to December 1999, and contends that she should be given seniority credit for this prior service to the District. Ms. Prehn's contention is not persuasive as she did not cite legal authority to support her contention.

(b) Respondent Prehn testified that she is credentialed to teach "any business class" and claims that she has bumping rights over Dave Rosenthal, Patrick Trejo, Willie Harris, and Joanne Leone. Dave Rosenthal teaches high school physical education and also teaches a class entitled Gateway to Technology: Level I. Patrick Trejo teaches classes entitled "Advisory 8, Educ Media, Intro Micro, and Study Skills." Respondent Prehn contends that she is credentialed and competent to teach the classes currently taught by Mr. Trejo and the Gateway to Technology class currently taught by Mr. Rosenthal. However, the record is unclear as to whether the above referenced classes are considered "business classes." In fact, the exact content of the above referenced classes was not clearly developed during the hearing. Therefore, the undersigned cannot make a finding that Respondent Prehn is credentialed and competent to teach the courses currently being taught by Messrs. Trejo and Rosenthal. In any event, the District determined that Douglas Perez and Respondent Roberta Roell, who are credentialed to teach Secondary – Technology Proficiency, have more seniority than Respondent Prehn and have bumping rights into the approximate 1.4 FTE that was available in secondary business classes.

(c) Willie Harris and Joanne Leone teach in the adult school. According to the seniority list (exhibit 2), Willie Harris and Joanne Leone have not been assigned to teach classes this school year. The District argues that a K-12 teacher should not be able to bump a less senior teacher who teaches adult education. The District argues that Education Code sections 44929.25 and 44929.26 provide a separate mechanism for an adult education teacher to acquire permanency. These statutes prohibit concurrent tenure for day school and adult education. As such, service in a regular day school does not count towards permanency in adult school, and visa versa. Therefore, respondent Prehn's contention that she should bump Willie Harris and Joanne Leone is rejected.

26. (a) Respondent Pauline Espinosa de Los Monteros claims bumping rights over teachers Chester Tadeja, Dave Rosenthal, Patrick Trejo, Bonnie Pless, Lupe Marin, Willie Harris, and Joanne Leone. Willie Harris, Joanne Leone, Bonnie Pless and Lupe Marin teach in the adult school. Respondent Espinosa de Los Monteros testified at the hearing that she received her credential to teach adult education on April 1, 2010. Respondent Espinosa de Los Monteros has never taught in adult school. Therefore, she cannot bump Willie Harris, Joanne Leone, Bonnie Pless or Lupe Marin based on Education Code sections 44929.25 and 44929.26, and for the reasons set forth in Factual Finding 25(c). Finally, it is noted that the District was not made aware of Respondent Espinosa's adult school credential prior to March 15, 2010.

(b) Respondent Espinosa also contends that she has bumping rights over Chester Tajeda, Dave Rosenthal and Patrick Trejo because she is credentialed to teach classes in technology. Respondent Espinosa's contention is not persuasive because the District determined that Douglas Perez and Respondent Roberta Roell, who are credentialed to teach Secondary – Technology Proficiency, have more seniority than Respondent Espinosa and have bumping rights into the approximate 1.4 FTE that was available in secondary business classes.

27. Respondent Rafael Duran has been assigned a seniority date of September 9, 2004. He claims that he has bumping rights over Israel Lim, Alicia Edwards, and Jose Chavez, all of whom have less seniority than Mr. Duran. Mr. Lim teaches special education classes in Biology and Introduction to Physical Science. Ms. Edwards teaches special education courses in English and Reading. Mr. Chavez has not been assigned to teach a class this school year. Respondent Duran testified that he is pursuing a special education credential and is currently authorized to teach special education classes because of his internship through Cal Poly Pomona, however, he admitted that he could only teach special education courses under the supervision of a teacher credentialed in special education. Respondent Duran did not provide documentation at the hearing which supported his contention that he has an internship credential. Even if he has such a credential, he did not present proof to the District prior to March 15, 2010. Therefore, respondent Duran's contention is rejected.

28. Respondent Roberta Roell claims bumping rights over teachers Chester Tadeja, Dave Rosenthal, Patrick Trejo, Willie Harris, and Joanne Leone. In its Closing Brief, the District noted that it will rescind Ms. Roell's layoff notice because she is credentialed and competent to teach a Secondary Technology Proficiency class that is now being taught by a less senior teacher who did not receive a layoff notice.

29. Angelina Orozco is a math teacher who was not served with a layoff notice. The evidence established that Respondents Maria Elena Garcia, Henry Aguinaga, Carlos Aguirre Jr., Ramona Dinger, and Richard Tran have more seniority than Ms. Orozco and are credentialed to teach the classes that she teaches. These Respondents assert that the District should rescind all of their layoff notices. However, there is only one position or FTE at issue here and only the most senior of the above named respondents (Respondent Maria Elena Garcia) bumps into the position held by Ms. Orozco.¹ Therefore, Respondent Maria Elena Garcia should be retained for the 2010/2011 school year.

¹ Respondents' counsel, in his closing brief, named three other teachers who are credentialed to teach math and who have more seniority than Ms. Orozco. However, these employees were not named respondents and the undersigned will not make a finding regarding these employees.

30. Respondents' counsel submitted a credential for Respondent Darshelle Lapworth indicating that she is authorized to teach English and is therefore entitled to bump into the position currently held by Rebecca Molinar, who has less seniority. However, Respondent Lapworth did not testify and it is unclear whether she submitted this credential to the District prior to March 15, 2010. Therefore, the undersigned does not find that Respondent Lapworth is entitled to bump into the position held by Rebecca Molinar.

31. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 3, related to the welfare of the District and its pupils.

32. As noted in Factual Finding 23, Respondent Renee Natividad remains subject to layoff because Respondent Mark Orozco, who has greater seniority than Respondent Natividad, bumps into the position currently held by Darryl Hutchinson. As noted in Factual Finding 29, Respondents Henry Aguinaga, Carlos Aguirre Jr., Ramona Dinger, and Richard Tran, remain subject to layoff because Respondent Maria Elena Garcia, who has greater seniority than Respondents Aguinaga, Aguirre, Dinger and Tran, bumps into the position currently held by Angelina Orozco. All remaining Respondents, whose layoff notices have not been rescinded or who have not bumped into a position of a less senior certificated employee, are not certificated and competent to render a service being performed by any employee with less seniority who is being retained.

LEGAL CONCLUSIONS

1. Jurisdiction exists for the subject proceedings pursuant to Education Code Section 44949 and 44955; and all notices, accusations, and other related papers and reports required by said sections have been provided in timely manner and, as such, the District has complied with the requirements of said sections.

2. The District complied with Education Code sections 44949 and 44955 in serving Respondents Kathy Castillo, Katie Porter and Yvonne Reaza by mailing all jurisdictional documents by certified mail, return receipt requested. All three of these Respondents testified and otherwise participated in the hearing.

3. Cause was established under Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services. The Board's decisions to reduce or eliminate the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949.

4. Cause exists to dismiss the Accusation issued against Respondents Lisa Andrews, Maria Angelica Azurin, Rebecca Bulsombut, Victor Calagna, Alejandrina Cendejas, Amparo Lopez Chacon, Euna Chae-Montez, Trian Soai Chan, Arturo Chavez, Jose Chavez, Imelda Clark, Norma Contreras-Guillen, Cynthia Corona, Nathan Crozier, Prudence Dacillo, Kirk Daffron, Melissa De Nova, Ivette Decasas, Elizabeth Dimauro, Erika Cristina Duran, Alicia Edwards, Claudia Escobedo-Perea, Arturo Farin, Maria Elena Garcia, Bridgette Gardea,

Ashley Hedrick, Lupe Kanouse, Natalie Kirkbride-Escobedo, Namiko Kobayashi, Islene Leon, Isreal Lim, Hemali Long, Christina Longstaff, Judith Leandra Macias, Leila McFarlin, Rosa Miranda-Zimmer, Cheryl Moore, Maria Esther Mora, Lydia Moreno, Mark Orozco, Douglas Perez, Abigail Ramirez, Roberta Roell, Laura Romero, Jose Sanchez, Michael Seelig, Sanita Shropshire, Tina Solorzano, Cesar Torres, Esmiralda Vargas and Mark Wiseman, based on Factual Findings 8, 23, 24, 28 and 29.

5. Cause exists, due to the reduction or discontinuation of particular kinds of services pursuant to Education Code Section 44955, to give notice to the remaining respondents in this matter whose layoff notices have not been rescinded. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

ORDER

1. The Accusation issued against Respondents Lisa Andrews, Maria Angelica Azurin, Rebecca Bulsombut, Victor Calagna, Alejandrina Cendejas, Amparo Lopez Chacon, Euna Chae-Montez, Trian Soai Chan, Arturo Chavez, Jose Chavez, Imelda Clark, Norma Contreras-Guillen, Cynthia Corona, Nathan Crozier, Prudence Dacillo, Kirk Daffron, Melissa De Nova, Ivette Decasas, Elizabeth Dimauro, Erika Cristina Duran, Alicia Edwards, Claudia Escobedo-Perea, Arturo Farin, Maria Elena Garcia, Bridgette Gardea, Ashley Hedrick, Lupe Kanouse, Natalie Kirkbride-Escobedo, Namiko Kobayashi, Islene Leon, Isreal Lim, Hemali Long, Christina Longstaff, Judith Leandra Macias, Leila McFarlin, Rosa Miranda-Zimmer, Cheryl Moore, Maria Esther Mora, Lydia Moreno, Mark Orozco, Abigail Ramirez, Roberta Roell, Laura Romero, Jose Sanchez, Michael Seelig, Sanita Shropshire, Tina Solorzano, Cesar Torres, Esmiralda Vargas and Mark Wiseman, is dismissed.

2. The District may give notice to the remaining respondents and the certificated employees who did not request a hearing, that their services will not be required for the 2010-2011 school year.

Dated: May 12, 2010

Humberto Flores
Administrative Law Judge
Office of Administrative Hearings