

BEFORE THE GOVERNING BOARD
COMPTON UNIFIED SCHOOL DISTRICT
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Certificated Employees of the
Compton Unified School District,

Respondents.

Case No. 2015030393

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 30, 2015, in Compton, California.

Kerrie McNally, Attorney at Law, represented Darin Brawley (Brawley), Superintendent of the Compton Unified School District (District).

Michael R. Feinberg, Attorney at Law, represented Juana Aguilera (Aguilera), Audra Anderson (Anderson), Michael Armstrong (Armstrong), Francie Ayala (Ayala), Vanessa Barkus (Barkus), Nancy Bravo-Rius (Bravo-Rius), Aaron Brock (Brock), Audra Bronson (Bronson), Pennie Childs (Childs), Bridget Cole-Ero (Cole-Ero), Alicia Corrigan (Corrigan), Sheryl Croddy (Croddy), Rodney Curry (Curry), Katherine Diggs (Diggs), Alvaro Enriquez (Enriquez), Felecia Fernandez (Fernandez), Ana Gomez (Gomez), Jamica Hale (Hale), Anesa Hayes (Hayes), Corry Heard (Heard), Vianca Hildreth (Hildreth), David Holland (Holland), Cristina Jimenez-Burgos (Jimenez-Burgos), Sovichea Kang (Kang), Lacey Kent (Kent), Amaris Leiataua (Leiataua), Bruce Luu (Luu), Erik Madrigal (E. Madrigal), Silvia Madrigal (S. Madrigal), Edward McGill (McGill), Michelle McKinnon (McKinnon), Herman Miranda (Miranda), Mariellen Paul (Paul), Larissa Payan (Payan), Darleen Perez (Perez), Lisa Perkins (L. Perkins), Thea Marie Perkins (T. Perkins), Kimberly Ponce (Ponce), Ryan Porter (Porter), Gabriela Ramirez (Ramirez), Tammy Raphael (Raphael), Amy Razo (Razo), Rosalie Reinor-Machado (Reinor-Machado), Catalina Silvestre (Silvestre), Nancy Truong (Truong), Eric Wells (Wells), Kenya Williams (Williams), Lajoni Wilson (Wilson), Rachel Yancy (Yancy), and Gita Zubin (Zubin), who are collectively referred to as Respondents.

Respondent Ramon R. Zavala (Zavala), who is included in references to Respondents, represented himself.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2015-2016 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2015-2016 school year.

During the hearing, District rescinded layoff notices issued to Respondents Anderson, Bravo-Rius, Curry, Enriquez, Fernandez, Gomez, Jimenez-Burgos, Kent, Paul, Perez, Raphael, Williams, and Yancy, as well as those issued to Marie Pierre and Richee Holman.

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Superintendent Brawley filed the Statements of Reduction in Force in his official capacity.
2. Respondents are certificated employees of the District.
3. On March 6, 2015, the Governing Board of the District (Governing Board), following the recommendation of Superintendent Brawley, adopted Resolution Number 14/15-48, reducing or discontinuing the following services for the 2015-2016 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
Elementary and Middle School Core Teaching	25.0
English Teaching	8.0
Social Science Teaching	13.0
Physical Education Teaching	3.0
Health Teaching	2.0
ROP ² Auto Technician Teaching	0.4
ROP Auto Specialist Teaching	0.2
ROP Computer Applications Teaching	0.6
ROP Office Occupations Teaching	0.4
ROP Graphic Design Teaching	<u>0.2</u>
Total	52.8

¹ Full-time equivalent position.

² Regional Occupational Program.

4. Superintendent Brawley thereafter notified the Governing Board that he had recommended that notice be provided to Respondents that their services will not be required for the 2015-2016 school year due to the reduction of particular kinds of services.

5. On or about March 11, 2015, the District provided notice to Respondents that their services will not be required for the 2015-2016 school year due to the reduction of particular kinds of services.

6. a. Respondents Aguilera, Anderson, Armstrong, Ayala, Bravo-Rius, Brock, Cole-Ero, Corrigan, Diggs, Enriquez, Gomez, Heard, Hildreth, Holland, Jimenez-Burgos, Kang, Kent, Leiataua, Luu, E. Madrigal, McGill, McKinnon, Miranda, Paul, Payan, Andrew Pegan, Perez, L. Perkins, T. Perkins, Ponce, Porter, Ramirez, Raphael, Razo, Reinor-Machado, Silvestre, Wilson, Yancy, Zavala, and Zubin thereafter timely requested a hearing to determine if there is cause for not reemploying them for the 2015-2016 school year.

b. On March 19, 2015, Respondents' Counsel submitted a Joint Request for Hearing on behalf of all Respondents.

c. The Joint Request for Hearing inadvertently included the names of two District administrators, Marie Pierre and Ramon Zavala, and a First Amended Joint Request for Hearing was filed on March 24, 2015, without the two names.

d. District argued that inclusion of the two administrators in the Joint Request for Hearing raises questions about the validity of the requests of ten Respondents who did not file individual requests for hearing. This argument is not supported by any evidence pertaining to the ten individuals in question and is rejected.

e. All Respondents filed timely requests for hearing.

7. On March 27, 2015, the District issued a Statement of Reduction in Force to each Respondent, and served it and other documents on each Respondent, which documents included the Governing Board's Resolution Number 14/15-48, a Statement to Respondent, a Notice of Hearing, and a blank Notice of Participation for Respondents to use to contest the Statement of Reduction in Force.

8. a. Respondents Aguilera, Anderson, Armstrong, Ayala, Bravo-Rius, Brock, Bronson, Childs, Cole-Ero, Corrigan, Diggs, Enriquez, Fernandez, Hayes, Heard, Hildreth, Holland, Jimenez-Burgos, Kang, Kent, Luu, E. Madrigal, S. Madrigal, McGill, McKinnon, Miranda, Paul, Andrew Pegan, Perez, L. Perkins, T. Perkins, Ponce, Porter, Ramirez, Raphael, Razo, Reinor-Machado, Silvestre, Williams, Wilson, and Zavala thereafter submitted timely notices of participation.

b. On April 2, 2015, Counsel for Respondents submitted a timely Joint Notice of Participation on behalf of all Respondents, except Truong and Zavala.

c. All Respondents except Respondent Truong filed timely notices of participation.

9. All prehearing jurisdictional requirements have been met.

10. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code³ section 44955.

11. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of a shortfall in funding due to the loss of Federal funds received under the Quality Education Investment Act. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

12. The reduction of services set forth in factual finding number 3 is related to the welfare of the District's schools and its pupils, in the context of the loss of revenue and the need to continue providing services to students in the District, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

13. a. Respondent Diggs started working for the District on August 28, 2002. Her first employment contract, signed on August 27, 2002 and designated as an "Offer of Probationary I Contract," contained the following provision: "4. You are employed in a probationary status. You must serve 75% of the number of days of the school year to advance in status." (Exh. D, at p. 1.) She received a similar contract the following year, 2003, which was styled as an "Offer of Probationary II Contract" and which contained the same probationary status language as the first-year contract. Except as set forth in factual finding 13c below, no other employment contracts were presented for Respondent Diggs. Andrea D. Credille, Senior Director, Certificated Personnel, testified without contradiction that a search of District records did not reveal that Respondent Diggs had ever been tendered an employment contract designating her as a permanent employee. Respondent Diggs did not present an employment contract designating her as a permanent employee or present any other evidence establishing her permanent status.

b. Respondent Diggs was retained to teach for the 2004-2005 school year, and argues that she became a permanent employee by virtue of such retention after two years as a probationary employee.

³ Unless otherwise noted, all further statutory references are to the Education Code.

c. On August 13, 2014, Respondent Diggs signed a contract designated as "Offer of Probationary 0 Contract." She testified that she did not intend to waive her rights to a permanent position by signing the contract, but noted that she had been laid off and thought she had to sign this contract.

d. Respondent Diggs holds a clear designated subjects (Office Occupations and Computer Applications) credential, which she characterized as a vocational credential. She has primarily taught vocational classes, including computer applications and office occupations, but has also taught, last time during the 2007-2008 school year, computer literacy, a general curriculum class. Some of the computer vocational classes she teaches can be used to fulfill the District's computer literacy graduation requirement. During the 2014-2015 school year, she taught two periods of basic business, one period of computer applications, one period of elementary accounting, and one period of computer applications at Compton High School. All of these classes are vocational classes offered as part of the District's occupational program.

e. The District maintains that Respondent Diggs cannot attain permanent status because of the nature of her credential and retained a more senior probationary employee, Lucy Streets (Streets), to teach any remaining office and computer applications vocational classes. Streets holds a clear vocational credential in office occupations and computer applications and has a seniority date of June 1, 1998.

14. a. Respondent Holland has a seniority date of August 6, 2007, and holds a clear designated subject (auto mechanics and general contracting) credential. He teaches four periods of auto technology and one period of auto specialist at Centennial High School. In order to ensure students' safety and to allow proper supervision, classes are limited to 20 to 25 students, depending on the level of the class. His classes are popular, and there is usually a waiting list.

b. As set forth in factual finding number 3, the District is reducing .4 FTE of "ROP Auto Technician Teaching" and .2 FTE of "ROP Auto Specialist Teaching," and plans to retain Respondent Holland at .4 FTE. Respondent Holland testified that the funding for the auto technician classes no longer comes from ROP, but comes from another vocational education funding source, Career Technical Education, or CTE.

c. Respondent Holland argues that the notice of layoff is defective because it misstates the source of funding. This argument is not persuasive because the Governing Board's resolution clearly identifies the services being reduced, auto technician teaching and auto specialist teaching, and Respondent has received proper notice of the intended reduction and was able to present evidence on his behalf.

15. a. Respondent E. Madrigal has a seniority date of September 17, 2010. He holds a single subject (Social Science) credential and teaches three periods of Social Science

classes at Dominguez High School (Dominguez), and has a preparation period. He is also the coach of the varsity baseball team and has duties associated with his coaching assignment.

b. Respondent E. Madrigal is the athletic director at Dominguez, an assignment that must be fulfilled by a certificated employee with teaching duties. He receives two periods to discharge the athletic director duties. The job is very demanding and typically consumes the two allotted periods, plus the preparation period and time after school. As the athletic director, Respondent E. Madrigal is responsible for providing all logistical support for high school athletic competition, including scheduling games, ensuring transportation to away games, procuring referees and security for home games, screening coaches and students for eligibility, attending league meetings, and preparing and submitting budgets. Local school administration chooses the athletic director from those who apply, and the person occupying the position receives a stipend in addition to the regular certificated employee pay.

c. The athletic director position was not reduced in the layoff, but is not a stand-alone assignment and must be performed by a District employee otherwise certificated and competent to discharge teaching duties. Unless Respondent E. Madrigal can demonstrate that he is certificated and competent to render a service that a junior employee was retained to perform, he cannot remain employed as a certificated employee. He was unable to make the requisite showing and does not have the prerequisite qualification to remain in the athletic director position.

16. The District has taken into account all positively assured attrition in determining the need to layoff certificated employees.

17. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 9.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 10.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 24.

4. Section 44955 directs that certificated permanent and probationary employees are to be laid off by inverse order of seniority, consistent with their qualifications and status. Thus, subdivision (b), provides, in pertinent part: "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."

5. Respondent Diggs argues that she is a permanent employee and that by virtue of that status she can bump a more senior employee, Streets, who is a probationary employee. However, as set forth in factual finding number 13, she did not present evidence sufficient to establish that she is a permanent employee.

Moreover, as the District correctly concluded, she cannot attain permanent status because of the nature of her credential and assignment. As section 44910 provides, "Service by a person as an instructor in classes conducted at regional occupational centers or programs, as authorized pursuant to Section 52301, shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district. [¶] This section shall not be construed to apply to any regularly credentialed teacher who has been employed to teach in the regular educational programs of the school district and subsequently assigned as an instructor in regional occupational centers or programs, nor shall it affect the status of regional occupational center teachers classified as permanent or probationary at the time this section becomes effective."

In addition, were Respondent's argument to prevail, then Sweets, a certificated employee with the same type of credential and assignment as Respondent Diggs, but with more seniority, would also be a permanent employee, and Respondent Diggs would not be able to bump her.

6. Respondent Holland is the most junior certificated employee performing services being reduced or discontinued, vocational auto technician and auto specialist teaching.

7. Respondent E. Madrigal does not have sufficient seniority to retain a certificated position that would enable him to continue to perform the athletic director duties.

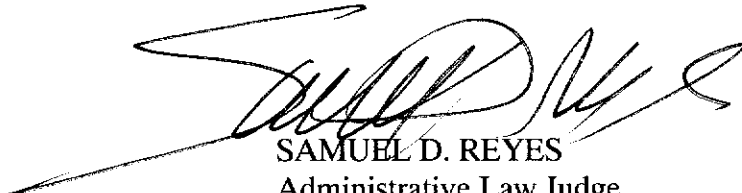
8. Cause exists to terminate the services of Respondents Aguilera, Armstrong, Ayala, Barkus, Brock, Bronson, Childs, Cole-Ero, Corrigan, Croddy, Diggs, Hale, Hayes, Heard, Hildreth, Holland (.6 FTE), Kang, Leiataua, Luu, E. Madrigal, S. Madrigal, McGill, McKinnon, Miranda, Andrew Pagan, Payan, L. Perkins, T. Perkins, Ponce, Porter, Ramirez, Razo, Reinor-Machado, Silvestre, Truong, Wells, Wilson, Zavala, and Zubin, by reason of factual finding numbers 1 through 17, and legal conclusion numbers 1 through 7.

ORDER

1. The Accusation is sustained.

2. District may notify Respondents Aguilera, Armstrong, Ayala, Barkus, Brock, Bronson, Childs, Cole-Ero, Corrigan, Croddy, Diggs, Hale, Hayes, Heard, Hildreth, Holland (.6 FTE), Kang, Leiataua, Luu, E. Madrigal, S. Madrigal, McGill, McKinnon, Miranda, Andrew Pagan, Payan, L. Perkins, T. Perkins, Ponce, Porter, Ramirez, Razo, Reinor-Machado, Silvestre, Truong, Wells, Wilson, Zavala, and Zubin, that their services will not be required during the 2015-2016 school year due to the reduction of particular kinds of services.

DATED: 5/7/15



SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings