

BEFORE THE
GOVERNING BOARD
CENTRAL UNIFIED SCHOOL DISTRICT
COUNTY OF FRESNO
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Ellana M. Alexander and Other
Certificated Employees of the
Central Unified School District,

Respondents.

Case No. 2010031368

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 19, 2010, in Fresno, California.

Rob V. Piacente, Attorney at Law, represented Mike Berg (Berg), Superintendent, Central Unified School District (District).

Ernest H. Tuttle, III, Attorney at Law, represented the certificated employees set forth in Appendix A, who are collectively referred to as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents and other certificated employees of the District notice of its intent not to reemploy them for the 2010-2011 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

At the hearing, the District withdrew the accusations against Respondents Kathy I. Sommer (Sommer) and Mary Vang (Vang).

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Superintendent Berg filed the Accusations in his official capacity.
2. Respondents are certificated employees of the District.

3. a. On February 23, 2010, the Governing Board of the District (Governing Board) adopted Resolution 09/10-31 reducing or discontinuing the following services for the 2010-2011 school year:

<u>Service</u>	<u>FTE¹ Positions</u>
Teacher – Multiple Subjects (K-12)	65.00
Teacher – Resource (Elementary School)	5.89
Teacher – Physical Education (Elementary School)	2.00
Teacher – Resource (Middle School)	2.00
Teacher – Physical Education (Middle School)	2.00
Teacher – English Learners (Middle School)	1.00
Teacher – Reading Intervention (Middle School)	2.00
Teacher – Social Science (High School)	1.00
Teacher – English (High School)	2.00
Teacher – Math (High School)	1.00
Teacher – Science (High School)	1.00
Teacher – Alternative Education (High School)	1.00
Teacher – Physical Education (High School)	2.00
Teacher – English Learners (High School)	3.00
Teacher – Reading Intervention (High School)	1.00
Emergency CLAD/BCLAD/EL (K-12)	15.00
(Pending Expiration of Certificate)	
Non-compliant CLAD/BCLAD/EL	5.00
Counselors	<u>2.00</u>
Total	113.89

b. The District expects to rescind layoff notices for those employees teaching English Language learners pursuant to expiring or non-compliant certificates, representing 20 FTE, if the employees obtain the requisite certification by August 1, 2010.

4. On or about March 5, 2010, Superintendent Berg notified the Governing Board that he had recommended that notice be provided to Respondents that their services will not be required for the 2010-2011 school year due to the reduction of particular kinds of services.

5. On or about March 5, 2010, Superintendent Berg provided notice to Respondents that their services will not be required for the 2010-2011 school year due to the reduction of particular kinds of services. Respondents timely requested a hearing to determine if there is cause for not reemploying them for the 2010-2011 school year.

¹ Full-time equivalent position.

6. On or about April 6, 2010, the District issued the Accusations, and served them on Respondents. Respondents thereafter filed timely notices of defense.

7. All prehearing jurisdictional requirements have been met.

8. 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 Code² section 44955.

9. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

10. The reduction or discontinuance of services set forth in factual finding number 3, in the context of the anticipated decline in revenue, 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. a. On February 23, 2009, as part of Resolution 09/10-31, the Governing Board adopted criteria to determine seniority among employees who first rendered paid service in a probationary position on the same date (tie-breaking criteria). Points were awarded for satisfaction of the following criteria: multiple and single subject credentials; type of credential; additional subject authorizations; English Learner teaching certification; and specialized GATE certification. The criteria are reasonable as they relate to the skills and qualifications of certificated employees.

b. Respondent Lisa Dauer (Dauer) challenges application of the tie-breaking criteria. She has a seniority date of August 7, 2006, and holds a multiple subject teaching credential. She seeks to add points for having changed her preliminary credential to a clear credential, on March 17, 2010, which change was retroactive to May 2008. The delay in effectuating the change was the result of, at least in part, of receiving incorrect information from District representatives. However, even if Respondent Dauer is given credit for the clear credential, this would not affect the order of layoff, as senior teachers possessing multiple subject credentials were also laid off.

12. Respondent Joanne Valenzuela (Valenzuela) holds a multiple subject credential. She was initially hired in August 2004. She tendered her resignation effective the end of the 2005-2006 school year, which resignation was accepted by the Governing Board. However, at the start of the 2006-2008 school year, Respondent Valenzuela received a call from her former school principal who offered her employment as a substitute teacher. Respondent Valenzuela returned to work at the start of the school year, and was given a new seniority date, August 7, 2006. She taught in the same classroom for the entire 2006-2007 school year.

² All further statutory references are to the Education Code.

13. 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 7.

2. The services listed in factual finding number 3 are particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

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 13.

4. Section 44955, subdivision (b), provides, in pertinent part: "As between employees who first rendered paid service on the same date, the governing board shall determine *the order of termination* solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose *order of termination* is so determined, the governing body shall furnish in writing . . . a statement of the specific criteria used in determining the *order of termination* and the application of the criteria in ranking each employee relative to other employees in the group. . . ." (Emphasis added.) Thus, in the instant proceeding the relevant inquiry is the order of termination not the order of rehire. Issues pertaining to Respondents' preferential rehiring rights are the subject of other statutory provisions, such as sections 44956 and 44957. Inasmuch as the application of the tie-breaking criteria to Respondent Dauer did not impact the order of termination of any Respondent, it is not necessary to decide whether the District correctly applied the criteria to assign a seniority date to her.

5. Under section 44848, if a certificated employee voluntarily resigns and is thereafter reemployed, her seniority date is the reemployment date. Respondent Valenzuela's situation is governed by this statute, as she voluntarily resigned and was thereafter rehired. The fact that she was rehired at the start of the following school year does not change the fact that there was a break in service. *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627 (*San Jose*) did not address the scope of section 44848, and the fact that, as Respondent Valenzuela correctly points out, the teachers in *San Jose*, unlike her, had in fact been absent from work for portions of a school year does not alter the foregoing conclusion. Rather, the court in *San Jose* held that another section, 44931, which states that permanent employees retain certain employment rights despite a break in service, was subject to the limitations contained in section 44848. Accordingly, the District correctly calculated Respondent Valenzuela's seniority date.

6. Cause exists to terminate the Respondents' services for the 2010-2011 school year, by reason of factual finding numbers 1 through 13 and legal conclusion numbers 1 through

5.

ORDER

The Accusations are sustained and the District may notify Respondents that their services will not be needed during the 2010-2011 school year due to the reduction of particular kinds of services.

DATED:_____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings