

BEFORE THE GOVERNING BOARD OF THE
ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Layoff Accusations of:

CERTIFICATED EMPLOYEES OF THE
ALUM ROCK UNION ELEMENTARY
SCHOOL DISTRICT,

Respondents.

OAH No. 2010030480

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in San Jose, California, on April 11 and 26, 2011.

Attorney E. Luis Saenz, Rehon & Roberts PC, represented the Alum Rock Union Elementary School District.

Attorney Christopher E. Schumb represented the respondents. They are listed in Attachment A.

The matter was submitted for decision on April 26, 2011.

FACTUAL FINDINGS

1. Trevor E. McDonald, Assistant Superintendent of Human Resources, Alum Rock Union Elementary School District, issued the accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. Whether the jurisdictional requirements with respect to respondent Kathy Marie Williams were met will be considered separately. As to the other respondents, the parties stipulated that the jurisdictional requirements of Education Code sections 44949 and 44955 have been met.
4. On March 10, 2011, the board adopted Resolution No. 36-10/11 ("Reduction of Particular Kinds of Service"), in which it determined that it was necessary to reduce K-8 Classroom Teacher services by an equivalent of 53.0 Full-Time Equivalent (FTE) positions. The resolution also set forth "skipping" criteria by which the District would retain

certificated employees, regardless of seniority, to provide special education, math, science, physical education, and dual language immersion services.

5. With the exception of respondent Kathy Marie Williams, the parties have resolved the issues. Factual Findings 6 through 11 reflect their resolution of the issues.

6. A reduction of 56 FTE (53 FTE in the PKS resolution, plus 3 FTE discussed at hearing) is at issue this matter.

7. District Exhibit 15 reflects the attrition of certificated employees representing 22 FTE. District will offset the 56 FTE in this matter with the 22 FTE attrition. Thus, 34 FTE are still at issue (56 FTE – 22 FTE = 34 FTE).

8. The District has established its authority to reduce or eliminate 34 FTE, but plans to layoff certificated employees representing only 21 FTE. The following respondents are subject to layoff (numbers indicate position on seniority list):

735 Abigale Amarido
692 Erin Amchan
730 Lori Gioco
732 Jennifer Greenbaum
703 Stacey Harrison
717 Meaghan Quinn
712 Jonathan Natividad
715 Melissa Pasa

9. Also subject to layoff are the following employees who did not request a hearing:

633 Thomas Andrews
657 Joanna Mosiejewska
634 Brooke Bockelman
646 Christine Highet
664 Jennifer Pew
666 Scott Richards
668 Christine Seyfert
670 Jason Siegel
680 Gwendolyn Watson
704 Barbara Ann Heally
699 Esther. Fensel
733 Sarah Cooper
734 Geetha Manjunath

10. The District has rescinded the accusations of:

728 Robert Paganelli, Jr.
726 Katelin Williams
724 Kasey Walker
720 Kelly Shafsky
714 Kelly O'Halloran
694 Michael Bell
688 Patricia Keele
685 Jeffrey Downing
684 Maria Manzanedo
677 Kaitlyn Williams
655 Alexandra Magiera
649 Michelle Koo
648 Dong Woo Kang
645 Sarah Foster
638 Felix Chichilla (elsewhere spelled Chinchilla)

This list reflects middle school and competency skips.

11. The District has also rescinded the accusations of:

Bertha Galvan
Loretta Tanner
Lien Do
Damon Lemmons
Evelyn Loughran
Minh-Giang Nguyen
Vivianne Nguyen
Lauren Nishida
Maria Ortega
Kristin Smith
Hushi Vang
Lindsay White
Savannah Whitney
Joanna Yuen

12. No permanent or probationary certificated employee with less seniority than a respondent is being retained to provide a service for which a respondent is credentialed and competent to render.

13. The reduction or discontinuation of services is related to the welfare of the district and of its pupils.

KATHY MARIE WILLIAMS

14. Respondent Kathy Marie Williams appears as number 715 on the District's seniority list.

15. On March 11, 2011, the District sent "March 15 notices" to numerous certificated employees, including Williams, informing them that the District's administration had recommended to the governing board that they be given notice that their services would not be required for the 2011 – 2012 school year. The notices (and associated materials) were the same for each respondent. The District took the envelopes to the post office, deposited them with certified mail postage paid in the amount of \$5.71, and addressed to the last known address of the employees. The notices sent to the other employees were properly delivered by the United States Postal Service (USPS) (with the exception of a notice sent to an address that had not been updated by the employee and one that was unclaimed by the addressee). The Williams notice was sent to her correct address of record and bore certified mail receipt 7009 2250 0002 8595 5795 and a "03/11/2011" postmark. The USPS, however, later returned the notice to the District for \$.44 postage due.

16. On March 14, 2011, the District sent a second layoff notice to Williams. The envelope bore certified mail receipt 7009 2250 0002 8595 5023 and a "03/14/2011" postmark, and was later returned by the USPS for \$.44 postage due. District personnel sent the second notice to Williams after they checked the USPS website and found "no record" of the notice mailed on March 11 (certified mail receipt 7009 2250 0002 8595 5795).

17. At some point, Williams called the District office to say she had not received the layoff notice. On or about March 25, 2011, Williams went to the office and picked up and signed for the notice mailed on March 14, 2011. Williams had actual notice and the ability to participate in the proceedings.

18. It is unclear why the USPS twice returned the notices mailed to Williams for postage due when the notices sent to other certificated employees were properly delivered. Information submitted by respondents from the USPS website suggests that the size, weight or thickness of the envelopes containing the March 15 notices may have been such that a postal employee could have concluded that an additional amount of postage was required.

LEGAL CONCLUSIONS

1. Education Code section 44949 provides for the "March 15 notice." Subdivision (a) states, in pertinent part:

No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her

designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

Subdivision (d) provides:

Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

The parties agree that under pertinent statutes, certified mail may be used where registered mail is specified. On March 11, 2011, the District sent March 15 notices to numerous certificated employees, including Kathy Marie Williams. The envelopes, their contents, and the amount of certified mail postage paid for each notice was the same. It is unclear why the USPS twice returned the notices sent to Williams, while properly delivering the others. It is possible that a zealous postal employee concluded that additional postage was required for the notices addressed to Williams. Whatever may have happened to the Williams notices, the District sent the same notice to her as it did to many other certificated employees. That the vast majority of notices, with the same content and same postage, were delivered by the USPS supports the contention that the District paid the correct amount of postage. The parties, moreover, have already stipulated that the jurisdictional requirements for the other respondents in this matter have been met. Having handled the notices for these employees, including Williams, in the same way, it cannot be concluded that the District met the jurisdictional requirements for all employees except Williams. The District complied with section 44949. Additionally, there is not a lack of actual notice or prejudice to Williams; she called the District to say she had not received the March 15 notice, and she had the same opportunity to participate in these proceedings as the other respondents. Williams is subject to layoff on the same terms as the other remaining respondents.

2. The parties resolved all other issues by agreement, as is set forth in Factual Findings 6 through 11. They agree that the following respondents are subject to layoff (Factual Finding 8):

735 Abigale Amarido
692 Erin Amchan
730 Lori Gioco
732 Jennifer Greenbaum
703 Stacey Harrison
717 Meaghan Quinn
712 Jonathan Natividad
715 Melissa Pasa

3. Because of the reduction or elimination of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to the respondents listed in Legal Conclusion 2, and to respondent Kathy Marie Williams, that their services will not be required for the 2011 – 2012 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given to the respondents referenced in Legal Conclusion 3 that their services will not be required for the 2011 – 2012 school year. No permanent or probationary certificated employee with less seniority than a respondent may be retained to provide a service for which a respondent is credentialed and competent to render.

DATED: _____

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A: LIST OF RESPONDENTS

1. Abigale Almerido
2. Erin Amchan
3. Manuel Bell
4. Felix Chinchilla (elsewhere spelled Chichilla)
5. Lien Do
6. Jeffrey Downing
7. Sarah Foster
8. Bertha Galvan
9. Lori Gioco
10. Jennifer Greenbaum
11. Stacy Harrison
12. Don F. Woo Kang
13. Patricia Keele
14. Michelle Koo
15. Damon Edward Lemmons
16. Evelyn H. Loughran
17. Alexandra Magiera
18. Maria T. Manzanedo
19. Jonathan Natividad
20. Minh-Giang Nguyen
21. Vivianne Nguyen
22. Lauren Nishida
23. Kelly O'Halloran
24. Maria Ortega
25. Bob Paganelli
26. Melissa Pasa
27. Meaghan Quinn
28. Kelly Shafsky
29. Kristin Smith
30. Loretta Tanner
31. Hushi Vang
32. Kasey Walker
33. Lindsay White
34. Savannah Whitney
35. Kaitlyn Williams
36. Katelin Williams
37. Kathy Marie Williams
38. Joanna Yuen