

BEFORE THE GOVERNING BOARD OF THE
SANTA BARBARA SCHOOL DISTRICT

In the Matter of the Layoffs of:

MARIA AGUIRRE and other Certificated
Employees of the Santa Barbara School
Districts,

Respondents.

OAH No.: 2010031399

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Santa Barbara, California, on May 12, 2010

Michael C. Blacher, Attorney at Law, represented the Complainant.

Tareq M. Hishmeh and Alexis Ridenour, Attorneys at Law, represented all Respondents.

Oral and documentary evidence and evidence by way of stipulation and official notice was received.

The Administrative Law Judge now finds, concludes and orders as follows:

SUMMARY

The Governing Board (Board) of the Santa Barbara School Districts (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2010/2011 school year for budgetary reasons. The decision was not related to the competency and dedication of the teachers whose services were proposed to be reduced or eliminated. District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "skipping," and breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

Parties

1. Complainant J. Brian Sarvis filed the accusation¹ in this proceeding in his official capacity as Superintendent of the District.
2. The following persons, the Respondents herein, are certificated employees of the District:

RESPONDENTS

David Abel
Kelly Ary
John Bailey
Bethany Bodenhamer
Eliesa Bollinger
Anais Burke
P. J. Carmean
Clanci Chiu
Ashley Cornelius
Marcelo Cruz
Emily Cuttrel
Brian Eisen
Krista Finlay
David Gilberton
Ryan Gleason
Tami Gunton
Sarah Harbison
Helen Hernandez
Gretchen Hess
Nellie Hill
Phillip Hughes
Monica Huston
Heather Marshall
Christine McLain
Katherine McLean
Lauren Minadeo

¹ The term “accusation” refers to a pleading utilized under the Administrative Procedure Act, Government Code section 11503. Respondents are not “accused” in the every-day sense of that word, unless it can be said they are accused of not having enough seniority to retain their positions with the District in the face of a resolution to reduce positions.

Matt Moran
Luke Ohrn
Maynard Pilapil
Jessica Rapp
Kristen Ritter
Francisco Sanchez
Karina Sanchez
Laurie Sigloch
Joseph Zamora
Hene Colton
Audra Dabeny
Stacey Johnson
Jean McKnight
Jill Menegon
Karina Sanchez
Guadalupe Santos
Rosalyn Tomblin
Edna Truillo
Linda Wilson
Eric Eisenberg
Dana Liss
Monsera Capdevilla
Andrea Ferrero
Beverly Bostock
Maria Aguirre

Reduction of Services

3. The Governing Board of the District, upon recommendation by the Superintendent, adopted and issued timely resolutions to reduce or discontinue particular kinds of certificated services no later than the beginning of the 2010-2011 school year because of financial constraints resulting from revenue being insufficient to maintain the current levels of programs and necessary program changes resulting therefrom. The District anticipates a \$6,000,000 deficit for the 2010/2011 school year.

4. On March 2, 2010, the Governing Board of the District adopted Resolution number 09/10-35 reducing services for the 2010-2011 school year. Said Resolution specifies the Reduction or Elimination of Particular Certificated Services as follows:

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<u>TYPE OF PROGRAM</u>	<u>FTE (Full-Time Equivalent)</u>
Elementary Principal	1.0
Administrator, Safety, Welfare and Attendance	1.0
School Psychologists	3.0
Community Day School	3.0
Home School Santa Barbara Grades K-6	2.0
La Cuesta Dos Pueblos	1.4
Mathematics	10.0
Social Sciences	7.0
Science	6.0
Art	2.0
Spanish	2.0
Health	1.0
English/Theater	11.0
Physical Education	3.0
	<hr/> 53.4

Thereafter, on March 9, 2010, the Governing Board of the District adopted Resolution number 09/10-35, further reducing the services for the 2010-2011 school year as follows:

<u>TYPE OF PROGRAM</u>	<u>FTE</u>
Child Development	10.22
	<u>TOTAL FTE</u>
	63.62

The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.

5. With regard to services provided by the District, on February 12, 2010, the Board adopted Resolution No. 07/08-23 to determine the order of layoff for those certificated employees with the same date of first paid probationary service and to establish competency criteria due to the reduction of particular kinds of service.

6. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion given the budgetary constraints, other factors considered by the Board, and the manner in which the decision to reduce or discontinue services was reached.

7. The reduction and discontinuation of services is related to the welfare of the District and its pupils and students, and has become necessary to decrease the number of certificated employees as determined by the Board.

Notice and Process

8. Pursuant to Education Code sections 44949 and 44955, the Governing Board timely directed that notice be given to Respondents that their services will not be required for the ensuing school year, and stating the reasons therefore.

9. Within the deadline set forth in Education Code section 44949, the Respondents were provided written notice by personal service or registered mail of the recommendation that Respondents receive notice pursuant to Education Code sections 44949 and 44955 that their services will not be required for the ensuing school year, and stating the reasons therefore. All Respondent except those in Finding 10 timely requested a hearing. Thereafter, an accusation was served upon those Respondents and those Respondents filed notices of defense, which were timely.

10. Respondents Dana Liss, Andrea Ferrero, Maria Aguirre, Monserra Caddevila and Guadalupe Santos were allowed to participate as Respondents pursuant to the ruling of the Administrative Law Judge despite their failure to file timely and completely comply with all the notice requirements.

Findings Re: Certain Respondents

11. During the course of the hearing the District withdrew and rescinded the accusation as to Sarah Harbison.

12. David Gilbertson presently has a district office assignment as a school psychologist. He was first hired by the District on July 1, 2006 as a coordinator of special education, an administrative position and a district office assignment. He served two years in that position before undertaking his present position with a seniority date of July 1, 2008. Mr. Gilbertson has not taught in the District. He did not establish that any other certificated employee with less seniority is being retained to render a service which Mr. Gilbertson is certificated and competent to render.

13. Jill Menegon is a teacher at Harding School with certification and competence in pre-school music and child development. She did not establish that her seniority date is other than August 19, 2009. She did not establish that any other certificated employee with less seniority is being retained to render a service which Ms. Menegon is certificated and competent to render.

14. Nellie Hill's seniority date is August 22, 2005 and her seniority number is 6-082205. She has an academic major of geological science. She has NCLB² competencies in mathematics and science and she is competent and credentialed to teach mathematics and science. However, another teacher with a seniority number of 8-082205, and therefore junior to Ms. Hill, is being retained to perform a service – teaching science – which Ms. Hill is both competent and credentialed to render.

Seniority

15. The District maintains Seniority Lists (Elementary and Secondary) which contains employees' seniority dates (the first date of paid service) NCLB competencies, credentials, academic major, and experience in discipline prior to start date with the District. Clanci Chiu has nine years of said experience and not six years as indicated on the Secondary Seniority List. Otherwise the evidence established that the Seniority Lists utilized in the layoff process are accurate as to the information contained therein. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render other than is set forth in Finding 14.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met by the District. Therefore, jurisdiction was established for this proceeding as to all Respondents by reason of Findings 8, 9 and 10.

2. Cause exists to dismiss the accusation as to Respondent Sarah Harbison by reason of Finding 11.

3. Cause exists to correct the Secondary Seniority List consistent with Finding 15.

4. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services by reason of Findings 3, 4 and 5. The Board's decision to reduce or eliminate the identified services set forth in Finding 4 was neither arbitrary nor capricious in that the decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949, by reason of Findings 6 and 7.

5. Cause exists to dismiss the accusation as to Respondent Nellie Hill by reason of Finding 14.

² The No Child Left Behind Act of 2001 often abbreviated in print as NCLB: Federal legislation that purports to enact the theories of standards-based education reform.

6. Other than as set forth in Finding 14 no permanent or probationary employee with less seniority is being retained to render a service for which Respondents are certificated and competent by reason of Finding 15.

7. Cause exists to give notice to Respondents other than those set forth in Findings 11 and 14 that their services will not be required for the 2010/2011 school year by reason of the whole of the Findings herein.

ORDER

1. The Secondary Seniority List, Exhibit 7 page 25, shall now state 9 years with regard to Respondent Clanci Chiu's experience in discipline prior to start date with the District.

2. The accusations against Sarah Harbison and Nellie Hill are dismissed.

3. Notice may be given to all remaining Respondents that their services will not be required for the 2010/2011 school year.

Dated: _____

RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm