

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

In the Matter of the Layoff of:

Claudia Barajas and other
certificated employees of the
Garvey School District,

Respondents.

OAH Case No. 2012030878

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 24, 2012, in Rosemead, California.

Erika D. Anderson, Attorney at Law, represented Genaro Alarcon (Alarcon), Assistant Superintendent of Human Resources, Garvey School District (District).

Joshua Adams, Attorney at Law, represented Respondents Claudia Barajas, Thi Bui, Andrea M. Calderon, Jose Cardenas, Suzana Carlos, Kristen Cheng, Hsiu-Chuan R. Chien, Tamera R. Dominguez, Jenny Duque, Lucina Gaeta, Sandra Seonah Lee Hong, Jeannie Lin, Tran Ma, Ruth S. Mak, Brian Martinez, Romelia V. Morales, Tai Le Phan, Grace Prudencio, Cecile Quezada, Robert R. Richardson, Clarice Riggio-Ocampo, Blanca Rios-Quiroz, Teresa S. Rodriguez, Irma E. Salcedo, Lindsay M. Sotero, Laura Suarez, May Yuen Tam, Tonie Lam Tran-Wang, Monica A. Upathumpa, Tina (Cuan) Ward, Bonnie Cheung Yamate, May M. Yan, and Shazia A. Zaidi, who are collectively referred to as Respondents.

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 2012-2013 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2012-2013 school year.

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

FACTUAL FINDINGS

1. Assistant Superintendent Alarcon filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. On March 8, 2012, the Governing Board of the District (Governing Board) accepted the recommendation of Superintendent Sandra D. Johnson, Ed.D. (Johnson), and adopted Resolution Number 11-12-12, reducing or discontinuing the following services for the 2012-2013 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
K-6 Classroom Teacher	18.0
K-6 English Language Development Teacher	5.5
7-8 English Language Development Teacher	1.0
7-8 Language Arts Teacher	4.6
K-8 Nurse	1.0
7-8 Physical Education Teacher	1.0
7-8 Social Studies Teacher	<u>1.0</u>
Total	32.1

4. On March 9, 2012, Superintendent Johnson provided notice to the Governing Board and to Respondents that Respondents' services will not be required for the 2012-2013 school year due to the reduction of particular kinds of services. Respondents thereafter filed timely requests for hearing.

5. On or about March 26, 2012, the District issued the Accusation, and served it and other required documents on Respondents on or about April 13, 2012. Respondents thereafter filed timely notices of defense.

6. The parties stipulated, and the evidence establishes, that all prehearing jurisdictional requirements have been met.

7. a. 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 Code section 44955.²

¹ Full-time equivalent position.

² All further references are to the Education Code.

b. The District is eliminating the English Language Development (ELD) Teacher services in Grades Kindergarten to Eighth, which services are also known as the English Language Learner (ELL) interventionist teachers. The program was started during the 2011-2012 school year. Certificated employees who applied for the available positions were competitively chosen to fill them. Students having difficulty with the English language and requiring remediation in subject matter areas were taken from their regular classrooms to spend time with the intervention teachers. The ELD teachers were encouraged to use creative and innovative methods within the prescribed curriculum. The District plans to evaluate the program at the end of the year and offer a modified version during the 2012-2013 school year. It plans to staff the new positions through a similar selection process, incorporating any changes in the positions or its qualifications in the new position posting.

c. The ELD Teacher services are funded, at least in part, from categorical funds. The District plans to continue to use all available funds, including categorical funds, to provide language intervention services during the 2012-2013 school year.

8. The District seeks to reduce or discontinue the services set forth in factual finding number 3 due to uncertainty about future funding, its existing deficit, and the need for prudent fiscal management. During the existing school year, the District experienced a deficit and had to draw from its reserves. Projecting future revenues and expenses over a three-year period, the Governing Board saw the need to reduce services to ensure continued solvency. While Respondents are correct that the District's reserves are presently at a higher level than required, it cannot be concluded that the financial course the Governing Board has chosen is unreasonable. Accordingly, the Governing Board's decision to reduce or discontinue the services is not arbitrary or capricious but is rather a proper exercise of the District's discretion.

9. The reduction or discontinuation of services set forth in factual finding number 3, in the context of potential revenue declines and the need to continue providing services to students if such losses materialize, 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.

10. In Exhibit "A" to Resolution 11-12-12, the Governing Board set forth its tie-breaking criteria for employees with the same seniority date. Points were awarded for each of the following criteria: possession of credentials authorizing service for the District on March 15, 2012, with three points credited for each professional clear or life credential, two for each preliminary credential, and one for each of any other credential or permit; subject matter authorizations held on March 15, 2012, including supplemental authorizations, on credentials authorizing service for the District (one point); and column placement on the salary schedule (one point per applicable column). The criteria are reasonable as they relate to the skills and qualifications of certificated employees. Respondents did not challenge the District's application of the criteria.

11. Several Respondents testified about their significant, and in some cases extensive, training and experience, particularly in the area of providing instruction to students not proficient in the English Language. However, they did not point to any junior employee retained to perform a service which any of them were certificated and competent to render.

12. The District did not retain any certificated employee junior to any Respondent 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 6.

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 7.

3. Cause exists under sections 44949 and 44955 for the reduction of 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 9.

4. Respondents argue that the District may not lay off those employees holding the ELD Teacher positions because it plans to offer the services in the same manner for the 2012-2013 school year. The District counters that although it will offer some form of English language intervention services, it does not know what form those services will take until it evaluates this year's program.

A district may eliminate a particular kind of service even though it continues to perform the service in a different manner. (*Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 812 (*Campbell*)). In one of the cases relied upon by the *Campbell* court, *Davis v. Berkeley School Dist.* (1934) 2.Cal.2d 770, the school district was permitted to eliminate the services of travelling art teachers where art instruction would continue to be provided, but by regular departmental teachers. In *Campbell*, the district was permitted to reduce library and nursing services where it contemplated a change in the manner in which it would deliver the services. In *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App. 3d 831, 843-844, the court upheld the elimination of nursing services where the district planned to provide the service by individuals other than nurses.

In the existing circumstances, the District has established that the ELD Teacher program will cease to exist in its present form at the end of the school year and that it will provide English language intervention services in a different, yet undetermined, manner in the next school year.

5. Cause exists to terminate the services provided by Respondents Claudia Barajas, Thi Bui, Andrea M. Calderon, Jose Cardenas, Suzana Carlos, Kristen Cheng, Hsiu-Chuan R. Chien, Tamera R. Dominguez, Jenny Duque, Lucina Gaeta, Sandra Seonah Lee Hong, Jeannie Lin, Tran Ma, Ruth S. Mak, Brian Martinez, Romelia V. Morales, Tai Le Phan, Grace Prudencio, Cecile Quezada, Robert R. Richardson, Clarice Riggio-Ocampo, Blanca Rios-Quiroz, Teresa S. Rodriguez, Irma E. Salcedo, Lindsay M. Sotero, Laura Suarez, May Yuen Tam, Tonie Lam Tran-Wang, Monica A. Upathumpa, Tina (Cuan) Ward, Bonnie Cheung Yamate, May M. Yan, and Shazia A. Zaidi for the 2012-2013 school year, by reason of factual finding numbers 1 through 12 and legal conclusion numbers 1 through 4.

ORDER

The Accusation is sustained and the District may notify Respondents Claudia Barajas, Thi Bui, Andrea M. Calderon, Jose Cardenas, Suzana Carlos, Kristen Cheng, Hsiu-Chuan R. Chien, Tamera R. Dominguez, Jenny Duque, Lucina Gaeta, Sandra Seonah Lee Hong, Jeannie Lin, Tran Ma, Ruth S. Mak, Brian Martinez, Romelia V. Morales, Tai Le Phan, Grace Prudencio, Cecile Quezada, Robert R. Richardson, Clarice Riggio-Ocampo, Blanca Rios-Quiroz, Teresa S. Rodriguez, Irma E. Salcedo, Lindsay M. Sotero, Laura Suarez, May Yuen Tam, Tonie Lam Tran-Wang, Monica A. Upathumpa, Tina (Cuan) Ward, Bonnie Cheung Yamate, May M. Yan, and Shazia A. Zaidi that their services will not be needed during the 2012-2013 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings