

BEFORE THE
GOVERNING BOARD
OF THE
SAN YSIDRO SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Layoff of Certificated
Employees of the San Ysidro School District,

Respondents.

OAH No. 2008030501

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Ysidro, California on April 28, 2008.

E. Luis Saenz, Esq. and James Meeker, Esq., Garcia Calderon Ruiz, LLP, represented Manuel H. Paul, Superintendent, San Ysidro School District.

There was no appearance by or on behalf of Respondents Ana Alvidrez, Maria Canale, Ann Cardoza or Catalina Jauregui.

Jon Y. Vanderpool, Esq., Tosdal Smith Steiner & Wax, represented Respondents listed in attached Exhibit "A."

The matter was submitted on April 29, 2008.¹

FACTUAL FINDINGS

1. Jennifer Brown de Valle (de Valle), also known as Jennifer Brown, made and filed Accusation, dated March 27, 2008, against Respondents, attached Exhibit "B," in her official capacity as Assistant Superintendent, Human Resources (Assistant Superintendent), San Ysidro School District (District).

2. Respondents are certificated employees of the District.

¹ At the conclusion of the hearing, the Superintendent requested additional time to file written closing argument. The Superintendent's Closing Argument was filed on April 29, 2008 and was marked Exhibit 12.

The record was closed, and the matter was submitted on April 29, 2008.

3. Manual H. Paul (Superintendent) notified the Governing Board of the San Ysidro School District (Board) and Respondents that he recommended that notice be given to Respondents that their services would not be required for the 2008-2009 school year.

On March 4, 2008, the Board adopted Resolution number 07/08-0006 that reduced or eliminated particular kinds of services for the ensuing school year and established skipping and tie-breaker criteria.

Respondents were served on or before March 15, 2008.

The written notice of termination stated that Respondents' services would not be required for the 2008-2009 school year and set forth the reasons for the recommendation. The recommendation that Respondents be terminated from employment was not related to competency. In addition, the notice advised Respondents of the right to hearing, that the request for hearing must be delivered to the Superintendent's office no later than March 24, 2008, not less than seven days after the date the notice of termination was served and that the failure to request a hearing would constitute waiver of the right to a hearing.

Some, but not all, Respondents filed a timely Request for Hearing and/or Notice of Defense.

An Accusation was served on Respondents in a timely manner.

4. All prehearing jurisdictional requirements were satisfied.

5. There was no appearance by or on behalf of Respondents Ana Alvidrez, Maria Canale, Ann Cardoza or Catalina Jauregui.

6. On March 4, 2008, the Board adopted Resolution number 07/08-0006 and took action to reduce or eliminate the following particular kinds of certificated services commencing in the 2008-2009 school year:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
K-6 classroom teaching	46.0
7-8 English	1.0
7-8 History	1.0
7-8 Computer	.7
7-8 ASB	.3

7-8 Opportunity Class	1.0
District Literacy Coordinator	1.0
District Resource Teacher	1.0
District Curriculum Specialist	1.0
District Program Specialist	1.0
District Behavior Specialist	1.0

The proposed reductions totaled 55.0 full-time equivalent (FTE) positions.

7. The Assistant Superintendent was responsible for implementing the technical aspects of the layoff. The District developed a Seniority List that contained, among other matters, the employee's name, seniority date, assignment, credential, authorization(s) and classification as permanent or probationary.

The seniority date was based on the employee's first date of paid service rendered in a probationary capacity.² A teacher hired as a probationary employee who worked as a substitute or temporary employee for at least 75 percent of the school days during the previous year and had performed the duties normally required of a certificated employee of the school district was deemed to have served a complete school year as a probationary employee if employed as a probationary employee the following school year. The teacher was entitled to have that earlier year counted as a year of probationary service. The prior year was "tacked" on for seniority purposes.³ Only one year could be tacked.

8. The Assistant Superintendent made a diligent effort to assure the accuracy of the seniority date and credentials on file for each member of the District's certificated staff. Among other things, she

- reviewed and researched all employee records, and
- provided each certificated staff member with written notice of any and all credentials that the District had on file for said employee and provided said employees an opportunity to update the information.

When the Assistant Superintendent received information that she determined to be valid, she changed the District's records for the certificated employee.

² Education Code section 44845.

³ Education Code section 44918.

9. Respondent Leonor Partida (Respondent Partida) disputed the credentials and seniority date reported in the seniority list.

In addition to her Multiple Subject Credential, Single Subject Credential in Spanish and CLAD, Respondent Partida holds an Administrative Credential that was not reflected on the seniority list. The Assistant Superintendent explained that the seniority list contained only the teaching credentials, not all credentials on file with the District or held by the certificated employee; further, the Assistant Superintendent was aware that Respondent Partida holds a current Administrative Credential and he believed that it was on file with the district.

Respondent Partida argued that her seniority date should be changed from August 21, 2002 to August 23, 2002. Respondent Partida's first date of paid service with the District was March 1, 2001 as a vice-principal. She served in this capacity for the next two school years. Respondent Partida became a classroom teacher on August 23, 2005.

Neither the recordation of her administrative credential on the seniority list nor the modification of her seniority date impacted whether Respondent Partida should have received a layoff notice, although that might be relevant to her rehire. Whether Respondent Partida's seniority date is proper is not an issue for determination in this proceeding.

10. Respondent Sally Del Rio (Respondent Del Rio) asserted that her seniority date should be August 25, 1997, her first date of paid service with the District, not August 22, 2006, the date reported by the District in its seniority list.

During the last nine years, Respondent Del Rio has been employed by the District, she has had breaks in service for medical reasons. There was no evidence that, at any time, she had been terminated for cause, lack of enrollment, discontinuance of service or otherwise interrupted in a manner declared by law not to constitute a break in service.

Most recently, after exhaustion of her sick leave, when Respondent Del Rio did not return to work, albeit for medical reasons, the District treated her separation as a resignation. When she was re-employed within 39 months, Respondent Del Rio was entitled to all rights, benefits and burdens of a permanent employee, except as otherwise provided in the Education Code.⁴ Because the Education Code section 44848⁵ governs the determination of the seniority date of a certificated employee who leaves the District and is re-employed, Respondent Del Rio's original seniority date cannot be deemed to be a right or benefit under Education Code section 44931.

⁴ Education Code section 44931.

⁵ Education Code section 44848 provides, in pertinent part:

"When any certificated employee shall have resigned or been dismissed for cause and shall thereafter have been reemployed by the board, his date of employment shall be deemed to be the date on which he first accepted reemployment (if reemployed before July 1, 1947) or rendered paid service (if reemployed after June 30, 1947) after his reemployment . . ."

Given the foregoing, the District properly determined Respondent Del Rio's seniority date to be August 26, 2006, the date that she was reemployed.⁶

11. In compliance with Education Code section 44955, subdivision (d)(1), by adoption of Resolution No. 07/08-006, dated March 4, 2008, the Board elected to skip and retain all teachers who satisfied the skipping criteria set forth in attached Exhibit "C."

12. Between the employees who first rendered paid service to the District on the same date, the Board determined their order of termination solely on the basis of the needs of the District and its students. The order of termination is based on the needs of the District and its students.

13. The services that the District proposed to reduce were "particular kinds of services" that can be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious but constituted a proper exercise of discretion.

14. The District's reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

15. No certificated employee junior to any Respondent was retained to perform any services which any Respondent was certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections are satisfied.

2. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists under Education Code sections 44949 and 44955 for the San Ysidro School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

⁶ *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 641.

4. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he/she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal. 3d 469.)

5. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.)

6. No employee with less seniority than any Respondent is being retained to render a service which any Respondent is certificated and competent to render.

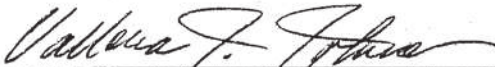
ORDER

1. The Accusations served on Respondents listed in attached Exhibit "B" are sustained. Notice shall be given to Respondents before May 15, 2008 that their services will not be required for the 2008-2009 school year because of the reduction or discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

DATED: _____

May 2, 2008



VALLERA J. JOHNSON

Administrative Law Judge

Office of Administrative Hearings

EXHIBIT "A"
RESPONDENTS
REPRESENTED BY JON Y. VANDERPOOL, ESQ.

1. Barron, Cindy	12. Mosqueda, Cynthia
2. Carey, Amy	13. Murray, Mea-Ling Teresa
3. Chaisongkram, Eric	14. Nunez, Juanita
4. Del Rio, Sally	15. Nunez, Thomas
5. Garvey, Angela	16. Padilla, Daniel
6. Gomez, Elizabeth	17. Partida, Leonor
7. Gonzalez Monreal, Cynthia	18. Ramos, Luis
8. Guerrero, Lorena	19. Redondo, Dolores
9. Luna, Carmen	20. Valarezo, Erika
10. Martinez-Rivera, Carmen	21. Vazquez, Marta
11. Mercado, Cesar Alejandro	22. Vega, Ted

EXHIBIT "B"
RESPONDENTS

1. Alvidrez, Ana	14. Martinez-Rivera, Carmen
2. Barron, Cindy	15. Mercado, Cesar Alejandro
3. Canale, Maria	16. Mosqueda, Cynthia
4. Cardoza, Ann	17. Murray, Mea-Ling Teresa
5. Carey, Amy	18. Nunez, Juanita
6. Chaisongkram, Eric	19. Nunez, Thomas
7. Del Rio, Sally	20. Padilla, Daniel
8. Garvey, Angela	21. Partida, Leonor
9. Gomez, Elizabeth	22. Ramos, Luis
10. Gonzalez Monreal, Cynthia	23. Redondo, Dolores
11. Guerrero, Lorena	24. Valarezo, Erika
12. Jauregui, Catalina	25. Vazquez, Marta
13. Luna, Carmen	26. Vega, Ted

EXHIBIT "C"
"SKIPPING CRITERIA"

The District shall retain certificated employees, regardless of their seniority (unless the employee is bumped by a more senior and competent employee), to the extent one or more of their assignments meet any of the following criteria:

1. Employees who possess an active special education credential, are expected to teach one or more special education classes in the 2008-2009 school year and are deemed "highly qualified" per the federal No Child Left Behind Act .
2. Employees who possess an active Pupil Personnel Services Credential, are working in a school counselor position and are expected to work as a school counselor in the 2008-2009 school year.
3. Employees who possess an active Pupil Personnel Services Credential, are working in a school psychologist position and are expected to work as a school psychologist in the 2008-2009 school year.

Employees who meet any of the foregoing criteria for some but not all of their assignment(s) shall be retained only as to that portion of their assignment(s) in 2008-2009 that meets the foregoing criteria.

The Superintendent or his/her designee is authorized to determine which employees qualify to be "skipped" from the Reduction in Force and to determine the manner in which the foregoing criteria shall be applied to each employee.