

BEFORE THE
GOVERNING BOARD
OF THE
POWAY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

Cora Bagley,
Mindy Bailey,
Jeffrey Blankman,
Christina Cambra-Adamson,
Rebecca Carter,
Edith Corbell,
Kelly Correa,
Michelle Derksen,
Cynthia Gavin,
Keith Jain,
Robert Medina,
Jerilyn Padua,
Amy Peck,
Danielle Schelhorse,
Heidi Uyloan,
Ella Whitehead,
Colin Young,

Respondents.

Norma Lucey,
Katherine Serrano,

Precautionary Respondents.

OAH No. 2008030382

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, Office of Administrative Hearings, State of California, heard this matter in San Diego, California on April 24 and 25, 2008.

Clifford D. Weiler, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented William R. Chiment, Associate Superintendent, Poway Unified School District.

Michael P. Baranic, Esq., Gattey Baranic LLP, represented Respondents Mindy Bailey, Jeffrey Blankman, Edith Corbell, Kelly Correa, Cynthia Gavin, Amy Peck, Danielle Schelhorse Heidi Uyloan and Ella Whitehead.

Ken Bagley represented Respondent Cora Bagley.

Respondent Jerilyn Padua represented herself.

Respondent Norma Lucey represented herself.

Respondent Katherine Serrano represented herself.

There was no appearance by or on behalf of Respondents Christina Cambra-Adamson, Rebecca Carter, Michelle Derksen, Patricia George, Keith Jain, Robert Medina and/or Colin Young.

The matter was submitted on April 25, 2008.

FACTUAL FINDINGS

1. William R. Chiment (Chiment) made and filed Accusation, dated March 28, 2008, against Respondents Cora Bagley, Mindy Bailey, Jeffrey Blankman, Christina Cambra-Adamson, Rebecca Carter, Edith Corbell, Kelly Correa, Michelle Derksen, Cynthia Gavin, Keith Jain, Robert Medina, Jerilyn Padua, Amy Peck, Danielle Schelhorse, Heidi Uyloan, Ella Whitehead and Colin Young, and Precautionary Respondents Norma Lucey and Katherine Serrano. Chiment filed the Accusation in his official capacity as Associate Superintendent, Personnel Support Services (Associate Superintendent), Poway Unified School District (District) and designee of Donald A. Phillips, Superintendent (Superintendent) of the District.

2. Respondents are certificated employees of the District.

3. The Superintendent notified the Board of Education of the Poway Unified 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 10, 2008, the Board adopted Resolution Number 48-2008 that reduced or eliminated particular kinds of services for the 2008-2009 school year and set forth the criteria for skipping certain employees and the tie-breaker criteria to be used for employees with the same seniority date.

Respondents were served with a written notice of termination on March 14, 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 Associate 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 Christina Cambra-Adamson, Rebecca Carter, Michelle Derksen, Keith Jain, Robert Medina and/or Colin Young.

6. Respondents Christina Cambria-Adamson, Michelle Derksen, Keith Jain, Robert Medina and Colin Young filed a Request for Hearing but failed to file a Notice of Defense, waiving the right to a hearing.

7. Respondent Patricia George did not file a Request for Hearing but filed a late Notice of Defense. Respondent Patricia George waived her right to hearing.

8. Respondents Mindy Bailey, Kelly Correa and Danielle Schelhorse did not file a Notice of Defense in a timely manner. The District requested a ruling that the foregoing Respondents had waived their right to a hearing. Having considered the arguments of counsel, it is determined that Respondents Mindy Bailey, Kelly Correa and Danielle Schelhorse waived their right to hearing.

9. Respondent Amy Peck withdrew her Notice of Defense.

10. On March 10, 2008, the Board adopted Resolution Number 48-2008 and took action to reduce or eliminate the particular kinds of certificated services, listed on attached Exhibit "A", commencing in the 2008-2009 school year. The proposed reductions total 185.24 full time equivalent (FTE) positions.

11. The Associate Superintendent was responsible for implementation of the technical aspects of the layoff. The District developed a seniority list that contained, among other matters, each employee's name, seniority date, current assignment, credential (s) and authorization(s).

The seniority date was based on the first date of paid service rendered.¹ 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 for 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,² but only one year could be tacked.

12. Respondents Jeffrey Blankman, Edith Corbell, Cynthia Gavin, Heidi Uyloan and Cora Bagley each sought modification of the seniority date on file with the District based on a prior temporary contract or contracts that each had with the District. There was no evidence that a modification of the seniority date of any Respondent named in this Factual Finding impacted whether the employee should have received a layoff notice even though it may have had an impact for the purpose of re-employment. This proceeding was not the forum to determine the proper seniority date for re-hire.

13. Respondent Jerilyn Padua (Respondent Padua) challenged the seniority date that the District has on file for her.

Respondent Padua holds a Pupil Personnel Services (PPS) Credential. During 2007 – 2008 school year, she served as a counselor with the District. The District reported her seniority date as September 5, 2006. Two of her colleagues, George Pantano (Pantano) and Carol Ochoa (Ochoa), had the same seniority date, same credential and provided counselor services during the 2007 – 2008 school year.

According to Resolution Number 48-2008, the District was required to reduce counselors' services by 8.50 FTEs. Respondent Padua, Pantano and Ochoa were considered for the final 2.50 counselors' services FTEs. Because these certificated employees had the same seniority date, the District was required to apply the tie-breaker criteria adopted by the Board, attached as Exhibit "B." According to the evidence, after application of the District's tie-breaker criteria, Pantano was ranked number one because, in addition to his PPS Credential, he held a Single Subject Credential with a Special Education Authorization; Neither Respondent Padua nor Ochoa held or have any other credential, supplemental authorization or authorization on file with the District. After application of the District's tie-breaker criteria, Respondent Padua and Ochoa were ranked equally; therefore it was necessary to break the tie by lot; for purposes of layoff, Respondent Padua was ranked number two and Ochoa number three. Pantano was retained for the .5 FTE counseling position, and he will serve .5 FTE in a special education assignment; Respondent Padua and Ochoa received a layoff notice. Irrespective of ranking, Ochoa and Padua would receive a layoff notice. For purposes of re-employment, Ochoa has been ranked number one and Respondent Padua number two. Respondent Padua asserted that ranking should be the same

¹ Education Code section 44845.

² Education Code section 44918.

on both the seniority and re-employment lists. As the ranking at issue is for the purpose of re-employment, not layoff, this is not the appropriate forum to determine these Respondents' ranking for purposes of re-employment.

14. The District used the Seniority List to develop a proposed layoff and "bumping" list to determine the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area that would entitle him or her to "bump" other junior employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees.

15. In compliance with Education Code section 44955, subdivision (d)(1), by adoption of Resolution No. 48-2008, dated March 11, 2008³, the Board elected to skip and retain all teachers who served in the District's dual language immersion program during the 2007-2008 school year. Any and all teachers currently serving in the dual language immersion classes should be skipped and retained for 2008-2009 school year and should not receive a layoff notice.

16. Respondent Cora Bagley (Respondent Bagley) challenged her release from her position as an administrator with the District's Partners in Education program. She offered no evidence regarding her seniority date and/or the credentials that she holds. However, she acknowledged that she held the administrative position using her administrative credential. Education Code section 44951 describes the procedure that the District must follow in order to release an administrator from a position that requires an administrative credential; the statute does not entitle the administrator to a hearing. An administrator attains no tenure and serves at the pleasure of the appointing power. (*Hentschke v. Sink* (1973) 34 Cal.App.3d 19, 22.)

Given the foregoing, Respondent Bagley had no right to a hearing regarding termination of her position as a District administrator in accordance with Board Resolution No. 48-2008.

Respondent Bagley asserted that she holds a credential that authorizes her to provide teaching services. However, she acknowledged that, based on her seniority date and

³ Resolution No. 48-2008 provides, in pertinent part:

"Deviations from the order of seniority in terminating a certificated employee of this district may be made and are directed to be made in accordance with Education Code section 44955, subdivision (d)(1):

(A) Teachers of dual language immersion classes constitute a special and specific need in the District and shall be considered for this purpose as personnel teaching a specific course of study and employees currently serving in dual language immersion classes shall be considered as having special training and experience necessary to teach dual language immersion classes for purposes of Education Code section 44955(d)(1); such teachers shall not be "bumped" or displaced by more senior employees unless such more senior employee has previously served in such classes in this district; . . ."

credential, she had no bumping rights. Nevertheless, Respondent Bagley argued that the statutory scheme that governs this layoff proceeding violated her due process rights in that she had inadequate time to retain an attorney to assist in the retention of her position, i.e., her livelihood. The District questioned whether Respondent Bagley's argument was reasonable in that the statutory scheme related to this proceeding has been in place for many years, and numerous teachers have defended their rights under these laws. Both Respondent Bagley and the District acknowledge that the Administrative Law Judge has no authority to rule on her constitutional objection.

17. 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 needs of the District and the students. The Board adopted specific criteria and provided clear instructions for implementation of the criteria. The order of termination was based on the needs of the District and its students. The tie-breaker criteria were fairly applied to rank those employees hired on the same date.

18. The services that the District proposes 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.

19. The reduction or discontinuation of particular kinds of services relates 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.

20. 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 Poway Unified 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.

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 was retained to render a service which any Respondent is certificated and competent to render.

ORDER

1. The Accusation served on any Respondent serving in the dual language immersion program during 2007 – 2008 school year shall be dismissed. These Respondents shall be retained for the 2008 – 2009 school year.

2. Except as provided in Paragraph one of this Order, the Accusations served on Respondents are sustained. Except as provided in Paragraph one of this Order, 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.

3. 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"

IDENTIFICATION OF PARTICULAR KINDS OF SERVICES (PKSs) AND FULL TIME EQUIVALENCIES (FTEs) TO BE DISCONTINUED AND REDUCED NO LATER THAN THE BEGINNING OF THE ENSUING SCHOOL YEAR (2008-2009)

Particular Kind of Service	Discontinuance or Reduction	Full time Equivalents
LSS POSA	Discontinuance	1.00
Assistant Director, Special Education	Discontinuance	1.00
Learning Support Services (LSS) Teachers on Special Assignments ("TOSAs") - Language Arts teaching services	Discontinuance	1.00
Literacy Specialist services	Discontinuance	4.00
Poway Professional Assistance Program ("PPAP") Consultants (Teachers on Special Assignments)	Reduction	5.00
Certificated Specialist services (Partners in Education)	Discontinuance	1.00
Director, Partners in Education	Discontinuance	1.00
Counselors' services	Reduction	8.50
Special Education Program Specialist services	Reduction	3.00
Psychologist services	Reduction	3.00
Kindergarten through Fifth Grade classroom teaching services (per elimination of option 1 kindergarten class size reduction and adoption of option 2 kindergarten class size reduction)	Reduction	38.00
Kindergarten through Fifth Grade classroom teaching services (beyond those referenced immediately above)	Reduction	11.00
Middle school Language Arts/Social Science teaching services	Reduction	13.40
Middle school Math teaching services	Reduction	8.50
Middle school Physical Science teaching services	Reduction	2.50
Middle school Life Science teaching services	Reduction	1.70
Middle school Physical Education teaching services	Reduction	6.70
Middle school Earth Science teaching services	Reduction	1.50
Middle school AVID teaching services	Reduction	0.50
Middle school English Language Development teaching services	Reduction	1.50
Middle school Wheel elective teaching services	Reduction	1.80
Middle school Band/Orchestra teaching services	Reduction	1.20
Middle school Choir teaching services	Reduction	0.20
Middle school Spanish teaching services	Reduction	0.60
Middle school Drama teaching services	Reduction	0.20

Particular Kind of Service	Discontinuance or Reduction	Full time Equivalents
Middle school Art teaching services	Reduction	0.40
Middle school Journalism teaching services	Reduction	0.20
Middle school ASB teaching services	Reduction	0.30
Middle school Learning Lab teaching services	Reduction	0.80
Middle school "Raider Time" (Guided study hall) teaching services	Reduction	0.50
High school English teaching services	Reduction	6.10
High school English Language Learners (ELL) teaching services	Reduction	1.40
High school Math teaching services	Reduction	2.90
High school Foundational Math teaching services	Reduction	3.40
High school Social Science teaching services	Reduction	5.90
High school Spanish teaching services	Reduction	4.50
High school French teaching services	Reduction	1.20
High school German teaching services	Reduction	1.20
High school Filipino teaching services	Reduction	0.20
High school Business teaching services	Reduction	1.80
High school Life Science teaching services	Reduction	2.70
High school Physical Science teaching services	Reduction	3.50
High school Physical Education/Health (ENS) teaching services	Reduction	0.20
High school Physical Education teaching services	Reduction	2.60
High school Health teaching services	Reduction	0.20
High school Choir teaching services	Reduction	0.60
High school Drama/Theatre teaching services	Reduction	0.90
High school Band/Orchestra teaching services	Reduction	1.30
High school Art teaching services	Reduction	4.20
High school/ROP Art teaching services	Reduction	1.54
High school Art History teaching services	Reduction	0.20
High school AVID teaching services	Reduction	0.60
High school ASB teaching services	Reduction	1.00
High school Industrial Technology teaching services	Reduction	0.60
High school/ROP Industrial Arts ("IA") teaching services	Reduction	0.40
High school Consumer Family/Home Economics teaching services	Reduction	2.40
High school/ROP Foods teaching services	Reduction	0.20
High school Agriculture teaching services	Reduction	0.20
High school/ROP Agriculture teaching services	Reduction	0.20
High school Yearbook teaching services	Reduction	0.20
High school Miscellaneous teaching services	Reduction	1.80

Particular Kind of Service	Discontinuance or Reduction	Full time Equivalents
High school ROTC teaching services	Discontinuance	2.00
"Middle College" Program teaching services	Discontinuance	1.00
Nursing services	Reduction	1.20
Assistant Director, Child Welfare and Attendance	Discontinuance	1.00
Home to School Liaison Counselor services	Discontinuance	1.00
Learning Support Services ("LSS") Director	Reduction	2.00
Categorically funded hourly impact teacher services	Discontinuance	All (25.00)
Student Services TOSAs (Alcohol Grant RAAP)	Discontinuance	2.40
Special Education TOSA Trainer (Pro Act)	Reduction	0.50
TOTAL FTEs		185.24

EXHIBIT "B"

CRITERIA FOR BREAKING SENIORITY TIES

[Note: These criteria are currently being discussed with the Poway Federation of Teachers. Amended criteria may be brought forward for Board action.]

Subject to requirements (if any) within the Educational Employment Relations Act, this Governing Board determines, based solely on the needs of this District and the students of this District, that seniority ties within the meaning of Education Code sections 44955, subdivision (b) (third paragraph) and section 44846, shall be resolved by applying the following criteria, to be applied in the following order, one step at a time. Such criteria shall be applied to rank the order of individuals for purposes of layoff and reemployment, subject to exceptions allowed by law. The criteria are as follows:

1. Individuals with preliminary or clear credentials or certificates authorizing services in classes for limited or non-English proficient students such as bilingual cross-cultural language and academic development (BCLAD) or cross-cultural language and academic development (CLAD) or the equivalent.
2. Highly qualified status within the meaning of the No Child Left Behind Act.
3. Current experience (this current school year) as an individual paid for extra/co-curricular service within PUSD Board Policy 4.212 and 4.213.
4. Scope of clear or preliminary credentials as can be applied within the school district's current curriculum and as to which are on file as required by law.
5. First date of paid service as a temporary certificated employee in this school district.
6. Salary Schedule Column placement (Column E – greatest preference/Column B – least preference).
7. Placement on TLC Prime Column.
8. If a tie still exists, the tie would be broken by lot. Numbers would be drawn with the lowest number winning the tie and continuing similarly until all remaining tied individuals are ranked.