

BEFORE THE GOVERNING BOARD OF THE  
PASADENA UNIFIED SCHOOL DISTRICT

In The Matter Of The Accusations Against:

OAH No. L2008031064

Joy Garratt; Helen Ichwan; Marion Lo;  
Christine McLaughlin; Monica Salas;  
Jennifer Sandoval; and Maria Stemwell,

Respondents.

**PROPOSED DECISION**

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 2, 2008, at the Pasadena Unified School District Offices in Pasadena, California.

Jeff C. Marderosian, Attorney at Law, represented the Pasadena Unified School District. Emma Leheny of Rothner, Segall & Greenstone represented all Respondents.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on May 2, 2008.

**FACTUAL FINDINGS**

1. Complainant, Edwin Diaz, filed the Accusation while acting in his official capacity as the Superintendent of the Pasadena Unified School District (District).

2. Respondents are certificated employees of the District.

3. On March 11, 2005, the Governing Board (Board) of the District adopted a resolution to reduce and discontinue the following particular kinds of services provided by the District no later than the beginning of the 2008-2009 school year: literacy coaches by 16 full time equivalent [FTE] positions.

4. The Board further determined that the reduction in services necessitated a decrease in the number of certificated employees at the close of the present school year (2007-2008) by a corresponding number of FTE positions, and directed the Superintendent to notify the appropriate employees to implement the Board's determination.

5. On or before March 15, 2008, the District gave notice to each Respondent of the potential elimination of his/her position for the 2008-2009 school year. On March 27, 2008, the District served the Accusation on each Respondent.

6. Respondents timely filed Notices of Defense and requests for a hearing to determine if there was cause for not reemploying them for the 2008-2009 school year.

7. The services set forth in Factual Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue the identified particular kinds of services was neither arbitrary nor capricious, and constituted a proper exercise of discretion.

8. The reduction or discontinuation of particular kinds of services was related solely to the needs and welfare of the District and its pupils.

9. The Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

10. No certificated employee junior to any Respondent was retained to perform any services which any Respondent was certificated and competent to render. (See discussion in Factual Findings 11 through 15, below.)

11. The District maintains a Seniority List which contains employees' seniority dates, current assignments, permanency description and credential and certificate information.

12. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the services being reduced. The District determined that nobody less senior than Respondents was being retained to render services Respondents are certificated and competent to render.

13. In making this determination, the District retained several certificated employees who were less senior than Respondents as follows and for the following reasons:

(a) Lesley Ellen Mayne was retained to continue her current assignment as a speech and language pathologist. None of the Respondents are credentialed or competent to perform this service.

(b) Ruth McLaughlin was retained to continue her current assignment as a biology teacher at Rose City High School. She holds a single-subject intern permit to teach biology. None of the Respondents are credentialed or competent to perform this service. Additionally, Ruth McLaughlin is serving in an 80 percent FTE. The District maintains that this affects layoff order because if the District allows a more senior, 100 percent FTE teacher to bump a teacher in a less than 100 percent FTE position, the senior teacher would not have the option of returning to a 100 percent FTE position once the District begins to rehire laid off teachers in order of seniority. Therefore, in order to preserve the right of teacher to be

rehired at a 100 percent FTE position, the District maintains that senior teachers should be laid off rather than bumping into an 80 percent FTE position.

(c) Paul Marsh was skipped for layoff and allowed to continue his current assignment as an English teacher at Elliott Middle School. However, he is not being retained for reasons separate and apart from these layoff proceedings.

(d) Denise Carrera was retained to continue her current assignment as a speech and language pathologist. None of the Respondents are credentialed or competent to perform this service.

(e) Brooke Autry was retained to continue her current assignment as a seventh and eighth grade mathematics teacher in one of the District's middle schools. She holds an intern permit to teach mathematics. The District determined that none of the Respondents are credentialed or competent to perform this service. The District maintained that, in order to teach mathematics, an intern permit, single subject credential or professional clear credential in mathematics is required. The District noted that a teacher with a multiple subject credential could teach mathematics at the middle school level only if the teacher had a "core assignment." This would consist of teaching two or more subjects for two or more periods with the same group of students.

(f) Gary Irwin was retained to continue his current assignment as a mathematics teacher at Marshall Secondary School. The District determined that none of the Respondents are credentialed or competent to perform this service.

(g) Kevin Wood was retained to continue his assignment as a chemistry teacher at Pasadena High School. He holds a single subject intern permit to teach chemistry. None of the Respondents are credentialed or competent to perform this service.

(h) Scott Simon was retained to continued his assignment as a mathematics teacher at Marshall Secondary School. The District determined that none of the Respondents are credentialed or competent to perform this service.

(i) Karume Askari Jumal was retained to continue his current assignment as a mathematics teacher at Marshall Secondary School. He holds a limited assignment permit to teach mathematics. The District determined that none of the Respondents are credentialed or competent to perform this service.

(j) Marie Crosby was retained to continue her current assignment as a physical education (PE) teacher at Webster Elementary School. She holds a single subject credential in PE. None of the Respondents are credentialed or competent to perform this service.

(k) Raul Yanez was retained to continue his current assignment as a Spanish teacher at Blair High School. None of the Respondents are credentialed or competent to perform this service.

(l) John Ray Ramos was retained to continue his current assignment as a PE teacher at Washington Middle School. He holds a temporary contract for an 80 percent FTE position that expires at the end of this school year (2007-2008). None of the Respondents are credentialed or competent to perform this service.

(m) Israel Martin was retained to continue his current position as an English teacher at Muir High School. He holds a single subject English credential. The District determined that none of the Respondents are credentialed or competent to perform this service.

(n) Darrell Tozier was retained to continue his current position as an English teacher at Muir High School. He holds a single subject temporary county certificate to teach English. The District determined that none of the Respondents are credentialed or competent to perform this service.

(o) All others on the seniority list are more senior than Respondents.

14. Respondent Maria Catherine Stemwell (Respondent Stemwell) currently teaches kindergarten at Webster Elementary school. She is the most senior employee receiving a layoff notice. She holds a multiple subject credential that entitles her to teach grades kindergarten through eight. She asserts that she is competent to teach two core classes (either a math/science core class or an English/social studies core class) at a middle school level to the same group of students, rotating mid-day. She believes that she should "bump" Brooke Autry, the middle school mathematics teacher by reason of seniority. This argument is not persuasive. Respondent Stemwell admitted that she does not have a single subject credential and, therefore, could not teach an exclusively mathematics class at the middle school level. Since Respondent Stemwell is not credentialed or competent to perform the services that Brooke Autry currently performs, Respondent Stemwell is not entitled to "bump" Brooke Autry.

15. Respondent Christine McLaughlin (Respondent McLaughlin) holds a multiple subject credential and an authorization to teach introductory English, which is English at the ninth grade level or below. She asserts that she is competent to fill one of the high school English teaching positions held by either Darrell Tozier or Israel Martin. She believes she should "bump" either of them by reason of her seniority. This argument is not persuasive. Darrell Tozier teaches English 2 and English 3, which are at the tenth grade level or above. He does not teach English at the ninth grade level. Respondent McLaughlin is not credentialed and competent to perform the services that Darrell Tozier currently performs. Additionally, Israel Martin teaches two periods of English 1 and two periods of English 2. English 2 is at the tenth grade level or above. Respondent McLaughlin not credentialed and

competent to teach Israel Martin's entire assignment. Therefore, Respondent McLaughlin is not entitled to bump Darrell Tozier or Israel Martin.

## LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1 through 6.)

2. The services listed in Factual Finding 5 are each determined to be particular kinds of services within the meaning of Education Code section 44955. (Factual Findings 3 and 7.)

3. Cause exists to reduce the number of certificated employees in the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code sections 44955. (Factual Finding 8.)

4. Education Code section 44955, subdivision (b), provides, in pertinent part:

[t]he services of no permanent employee may be terminated . . . while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

5. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or 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.) As set forth in Factual Findings 10 through 15, no Respondent is entitled to "bump" any junior employee in this case.

6(a). Respondents argued that the credentials of the teachers, not the assignments of the retained teachers, should control the layoff order. They argued that current assignments may not be the same next year, and that the District has discretion when making assignments. Therefore, Respondent Stemwell argued that she should bump Brooke Autry because her assignment could change, and Respondent McLaughlin argued that she should bump Darrell Tozier and Israel Martin because Darrell Tozier and Israel Martin could be reassigned to teach entirely ninth grade level English.

6(b). The District maintained that it is not required to speculate regarding what assignments may be made in the future. Since people resign and retire and the needs of the schools and the students change, the District must work with the information it has at this time.

6(c). The District's argument is more persuasive.

7. No employee with less seniority is being retained to render a service which any more senior employee is certificated and competent to render.

8. Cause exists within the meaning of Education Code section 44955 for terminating or reducing Respondents' employment for the 2008-2009 school year, as set forth in Factual Findings 1 through 15.

## ORDERS

The Accusations served on Respondents Joy Garratt, Helen Ichwan, Marion Lo, Christine McLaughlin, Monica Salas, Jennifer Sandoval, and Maria Stemwell are sustained. Notice may be given to those Respondents before May 15, 2008, that their services will be reduced or terminated for the 2008-2009 school year because of the reduction or discontinuation of particular kinds of services as indicated.

Dated: May 6, 2008

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JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings