

BEFORE THE
GOVERNING BOARD OF THE
DUARTE UNIFIED SCHOOL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2013040095

DAVID J. BARRILE

Respondent.

PROPOSED DECISION

This matter was heard by Glynda B. Gomez, Administrative Law Judge of the Office of Administrative Hearings, State of California, on April 22, 2013, in Duarte, California.

Salvador O. Holguin, Jr. and Kimberly C. Ludwin, Attorneys at Law, represented the Duarte Unified School District (District). Miriam De La Flor-Fox, District Assistant Superintendent of Human Resources was also present.

Jackie Clark, Regional Univserv Staff member and Cheryl Taylor, President Duarte Unified Education Association, represented Respondent David J. Barrile (Respondent). Respondent did not appear at the hearing.

FACTUAL FINDINGS

1. District Superintendent Dr. Terry Nichols filed the Accusation in his official capacity.
2. Respondent is a certificated employee of the District.
3. On February 7, 2013, the Superintendent recommended to the Governing Board of the District (Board) that it reduce or discontinue particular kinds of services for the 2013-2014 school year and, for that reason, it gave notice to certain certificated employees that their services would not be required for the 2013-2014 school year. On February 13, 2013, the Board adopted Resolution No. 7-12-13 to reduce or discontinue the following services:

///

PARTICULAR KINDS OF SERVICES	NO. OF FULL-TIME EQUIVALENT (FTE) POSITIONS
High School Computer Instructional Services	1.0
High School Educational Support Specialist Services	1.00
<u>Total FTE Reduction</u>	2.00

4. On March 14, 2013, the District served a preliminary layoff notice, via United States Mail and Certified Mail, to Respondent at his address of record with the District: 1909 Kenoak Drive, West Covina, CA 91790-1145. The preliminary layoff notice provided that the District's Superintendent had recommended to the Governing Board that the District give notice to Respondent that his services would not be required in the 2013-2014 school year.

5. The Preliminary Layoff packet included a Request for Hearing form that, if returned to the District by March 20, 2013, would constitute a request for hearing. On March 20, 2013, Respondent's request for hearing form dated March 15, 2013 was received by the District.

6. Pursuant to this resolution, on March 21, 2013, Superintendent Terry Nichols gave notice to the Board of his recommendation not to reemploy Respondent for the 2013-2014 school year.

7. On April 4, 2012, District served by United States Mail, an Accusation packet including the Accusation, Resolution for Reduction or Discontinuance of Particular Kinds of Services, Notice of Defense Form, Notice of Hearing and copies of Government Code section 11506, 11507.5, 11507.6, 11507.7, and 11520. On or before April 10, 2013, Respondent served his Notice of Defense dated April 9, 2013 pursuant to Government Code section 11506. The Notice of Defense provided that Respondent's address remained: 1909 West Kenoak Drive, West Covina, California 91790.

8. All prehearing jurisdictional requirements have been met. Service of the Notice of Hearing conformed to the requirements of Government Code sections 11505 and 11509.

9. Respondent did not appear at the April 22, 2013 hearing. At District's request, the matter proceeded as a default, pursuant to Government Code section 11520.

10. Respondent has not established that District proposes to retain any permanent or probationary certificated employee with less seniority than Respondent to perform a service which 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 9.

2. Government Code section 11520, subdivision (a) provides that if the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and where the burden of proof is on the respondent to establish the respondent is entitled to the agency action sought, the agency may act without taking evidence.

3. The cause for not reemploying Respondent relates solely to the welfare of the schools and pupils of the District within the meaning of Education Code sections 44949 and 44955.

4. District has not retained any permanent or probationary certificated employee with less seniority than Respondent to perform a service which Respondent is certificated and competent to render.

ORDER

The Accusation is sustained and the District may notify David J. Barrile that his services will not be needed during the 2013-2014 school year due to the reduction of particular kinds of services.

Dated: April 24, 2013

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings