

BEFORE THE  
BOARD OF EDUCATION OF THE  
PARAMOUNT UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusations Against:  
  
Certain Certificated Employees of the  
Paramount Unified School District,  
  
Respondents.

OAH No. 2010030306

**PROPOSED DECISION**

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 30, 2010, at the Paramount Unified School District in Paramount, California.

Atkinson, Andelson, Loya, Ruud & Romo, by Barbara J. Ginsberg, Attorney at Law, represented the School District.

Reich, Adell & Cvitan, by Carlos R. Perez, Attorney at Law, represented certificated employees Enrique Andrade, Barbara Bowman, Heather Calvert, Karl Hemmerla, Carlos Juaregui, Jissell Juarez, Marcie Maldonado, Tyler Nguyen, Julie Ortiz, and Kimberly Valentin (collectively, Respondents). All Respondents were present at the hearing.

Prior to the start of the hearing, the School District rescinded the layoff notices of Cecile Kim, Elaine G. Lopez, Amy Naples, Yessenia Orozco, Kirsan Veith, Denise Besler, and Bonnie Slater

Evidence was received by stipulation, documents, and testimony. The matter was submitted on April 30, 2010.

**FACTUAL FINDINGS**

1. David J. Verdugo is the Superintendent of the Paramount Unified School District (District). Myrna Morales, Assistant Superintendent of Human Resources, and her staff were responsible for implementation of the technical aspects of the layoff.

2. Respondents in this proceeding are probationary or permanent certificated employees of the District.

3. On March 9, 2010, in Resolution 09-27, the Board of Education of the District (Board) took action to reduce or discontinue the following particular kinds of certificated services for the 2010-2011 school year:

<u>Service</u>	<u>FTE<sup>1</sup> Reduction</u>
K-5 Elementary Classroom Instruction	14.0
K-5 TOSA Instructional Coach/Intervention Teacher	<u>2.0</u>
TOTAL	16.0

Further, in Resolution 09-27, the Board took action to reduce or discontinue the following particular kinds of categorically funded certificated services presently performed by temporary employees, for the 2010-2011 school year:

<u>Service</u>	<u>FTE Reduction</u>
6-8 Math Instructional Coach/Intervention Teacher	1.0
K-5 Itinerant Music Instruction - Special Funded	1.0
JROTC Instruction	2.0
6-8 Language Arts Instruction - Title I Funded	1.0
High School Counselor Title I Funded	1.0
K-5 Instructional Coach/Intervention Teacher	
Limited English Proficient Funded	<u>1.0</u>
TOTAL	7.0

4. Resolution 09-27 established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District and its students in accordance with the type and subject matter of credentials and authorizations, salary step, and college degrees, majors, and credits.

5. The Board was given notice of the Superintendent's recommendation that 18 employees, including all Respondents, be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.

6. On March 9, 2010, in Resolution 09-28, the Board took action to release all temporary certificated employees from their temporary assignments at the conclusion of the 2009-2010 school year. Resolution 09-28 notes that, although temporary certificated employees are not generally entitled to due process rights under Education Code sections 44949 and 44955, the Superintendent recommended that, out of an abundance of caution,

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<sup>1</sup> FTE stands for full-time equivalent.

seven categorically funded temporary certificated employees potentially affected by the reduction in services identified in Resolution 09-27 be noticed and afforded an opportunity to request a hearing.

7. On or before March 15, 2010, the District personally served on 18 certificated employees, including all Respondents, a written notice that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board determined to reduce or discontinue particular kinds of services.

8. On or before March 15, 2010, the District personally served a written notice, as a precaution, on seven temporary certificated employees corresponding to the reduction in categorically funded certificated services identified in Resolution 09-27. The District has released all temporary employees from employment at the end of the current school year.

9. Fifteen employees, including all Respondents, timely requested in writing a hearing to determine if there is cause for not reemploying them for the 2010-2011 school year. Three employees who did not request a hearing -- Denise Besler, Bonnie Slater, and Larissa Tittle -- waived their right to a hearing and cannot contest the recommendation of their non-reemployment by the District.<sup>2</sup> (Ed. Code, § 44949, subd. (b).) None of the seven temporary employees who were sent a precautionary notice filed a request for hearing. Consequently, they waived their right, if any, to request a hearing or participate in this proceeding.

10. The Superintendent made and filed Accusations against the 15 employees who requested a hearing, including all Respondents. The Accusations with required accompanying documents and blank Notices of Defense were timely served on the 15 employees, including all Respondents. Notices of Defense were timely filed by the 15 employees, including all Respondents.

11. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments and locations, credentials and authorizations, and employment classification. Prior to March 15, the District requested its employees to verify and update their information on file, including seniority date, credentials, and college degrees, which the employees did.

12. The District used the seniority list to develop a proposed layoff and "bumping" list of 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 and were entitled to "bump" other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by

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<sup>2</sup> As discussed in Factual Finding 15, the District has rescinded the layoff notices of Denise Besler and Bonnie Slater.

the known vacancies, 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.

13. The District used information from the seniority list to apply the tie-breaker criteria of Resolution 09-27.

14. The District properly considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered to its employees and in rescinding some of the notices.

15. After the preliminary layoff notices were delivered, the District determined that the seniority dates of certain employees needed to be adjusted, which would change the order of some employees on the seniority list. On or about April 5, 2010, the District prepared a revised seniority list and notified the affected employees. Based on the revised seniority list, the District performed another "bumping" and tiebreaker analysis and determined that the layoff notices to employees Cecile Kim, Elaine G. Lopez, Amy Naples, Yessenia Orozco, Kirsan Veith, Denise Besler, and Bonnie Slater, should be rescinded. Respondents are the remaining employees whose status in this proceeding was not affected by the adjusted seniority list.

16. As a result of rescinding the layoff notices described in Factual Finding 15, the District may implement only a 10.5 FTE reduction of services in K-5 Elementary Classroom Instruction. (Exhibit 8.) The Board had authorized, in Resolution 09-27, a reduction of 14.0 FTE of this service.

### LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The services identified in Resolution 09-27 are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and students within the meaning of Education Code section 44949.

3. A school 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, thereafter, 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.)

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

5. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, except as set forth below.

6. 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.) Under Education Code section 44955, subdivision (d)(1), 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. (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

#### ORDER

1. Notice may be given to employees occupying 10.5 full-time equivalent certificated positions in K-5 Elementary Classroom Instruction, and 2.0 full-time equivalent certificated positions in K-5 TOSA Instructional Coach/Intervention Teacher, that their services will not be required for the 2010-2011 school year because of the reduction and discontinuance of particular kinds of services.

2. Notice may be given to employees occupying 7.0 full-time equivalent certificated positions in categorically funded certificated services currently performed by temporary employees, that their services will not be required for the 2010-2011 school year because of the reduction and discontinuance of particular kinds of services.

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

Dated: May \_\_\_, 2010

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ERLINDA G. SHRENGER  
Administrative Law Judge  
Office of Administrative Hearings