

**BEFORE THE GOVERNING BOARD OF  
THE PASADENA UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH No. 2009020844

Certain Certificated Employees of the  
Pasadena Unified School District,

Respondents.

**PROPOSED DECISION**

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 20, 2009, in Pasadena.

Amy R. Levine, Esq., and Jonathan A. Pearl, Esq., represented the Pasadena Unified School District (District).

Glenn Rothner, Esq., represented the Respondent teachers (Respondents).

Respondent Eduardo Herrera represented himself.

The District served a Notice of Layoff and Accusation Packets on each Respondent. At the conclusion of the hearing, the District requested additional time to submit a closing brief. That brief was received and marked as Exhibit 14. The matter was submitted for decision on April 23, 2009.

**FACTUAL FINDINGS**

1. Shelly James, Chief Human Resources Officer of the District, acting in her official capacity, caused all pleadings, notices and other papers to be filed and served upon each Respondent pursuant to the provisions of Education Code sections 44949 and 44955. All pre-hearing jurisdictional requirements were met.

2. Respondents are employed by the District as permanent, probationary, intern, pre-intern, emergency permitted, waiver, and/or temporary certificated employees of the District.

3. On March 11, 2009, pursuant to Education Code sections 44949 and 44955, the Governing Board of the District (Board) issued Resolution number 2001 which approved the recommendation by the Superintendent that notice be given to Respondents that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

4. Prior to March 15, 2009, Respondents were given written notice of the recommendation that notice be given to Respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

5. The following Respondents did not file either a Request for Hearing or a Notice of Defense: Madelyn Gittens, Emily Keezer, Stephanie Kwan, Lauren Moses, Diana Nestico-Arnold, Jessica Perez, Aurora Sosa, Latayana West, Rema Reynolds (.40 FTE), and Minh Tran. These Respondents were found to be in default because they waived their right to a hearing.<sup>1</sup>

6. It was established that cause exists, within the meaning of Education Code sections 44949 and 44955, for not reemploying Respondents for the ensuing school year for all of the reasons set forth below.

7. The District decided the following:

The following particular kinds of services of the District will be reduced or eliminated no later than the beginning of the 2009-2010 school year:

<u>Particular Kinds of Services</u>	<u>Number of Full Time Equivalent Positions</u>
Secondary (7-12) Counselors	11.0 FTE
Coordinator to Special Projects	1.0 FTE
Opportunity Room Teachers	1.0 FTE
Classroom Teachers (K-6)	<u>35.0 FTE</u>
TOTAL	48.0 FTE

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<sup>1</sup> Madelyn Gittens' testimony that she returned her Notice of Defense to her union was unconvincing. The Notice of Defense form is clear that it was to be returned to the District via Shelly James.

8. The Board decided that it is necessary to decrease the number of certificated employees as a result of the reduction in services. These services are “particular kinds of services” that may 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 rather, constituted a proper exercise of discretion. The Board is faced with a budget shortfall.

9. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to decrease the number of certificated employees of the District as determined by the Board. This reduction is necessary because of budget reductions and because of declining enrollment.

10. The Board properly 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 prior to March 15, 2009. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, at p. 636).

#### *Skipping of Mary Bravo*

11. The District “skipped” Mary Bravo (Bravo), the BTSA Induction Support Provider (BISP). Karen Messler (Messler) contended that she too should be “skipped” as was Bravo. However, in order to be “skipped” a teacher must have “specialized training and experience in beginning teacher support and service in the District in that capacity for at least one of the past five years,” which Messler did not establish. Bravo did have the required experience to be skipped.

#### *Permanent and Probationary Teachers*

12. The District proposed to lay-off three permanent teachers who are less senior to similarly credentialed probationary teachers. The three permanent teachers at issue are Hillarie Dyson, Wendy Self, and Janice Vargas. The three probationary teachers, who also received a notice of layoff, are Karyn Messler, Emily Hawkins, and Sabrina Passanante.

13. Education Code section 44955, subdivision (b) states, in pertinent part:

Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section 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.

The District contended that the language “otherwise provided by statute,” and other authorities it cited, allowed the District to lay-off junior permanent teachers in favor of retaining more senior probationary employees. The ALJ concludes that a plain reading of the statute does not render such a result and, as such, the Accusation is dismissed as to Hillarie Dyson, Wendy Self, and Janice Vargas.

*Substitute Service*

14. The following teachers contended that the time during which they worked as a “long-term” substitute should alter their seniority date: Madelyn Gittens (her testimony on this issue was not considered because she was found to be in default), Gina Sorensen-Hernandez (Hernandez), Maria Stemwell, Ani Karapetyan, Veronica Yopez, Erin Musick, and Laura Williams.

15. Education Code section 44918, subdivision (a), states:

Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year.

16. Only Hernandez established that she worked more than 75 percent of the year prior to when she was hired as a probationary employee. Hernandez worked continually from September 4, 2007, through June 2008, as a long-term substitute. She then became a probationary employee in September 2008. Her seniority date should be adjusted to give her credit for the year before she became a probationary employee. All other Respondents failed to establish that they worked 75 percent, or more, of the year prior to when they were hired as a probationary employee.

*Michael McNeely*

17. Michael McNeely (McNeely) is an English teacher (#350, p. 57, Exhibit 10). He contended that he should take a more senior teacher’s place, Kenneth Miralles (#297, p. 48, Exhibit 10.) McNeely contended that Miralles told him that he (Miralles) does not presently hold a valid teaching credential. However, the District’s seniority list showed Miralles as holding an “intern credential.” The ALJ concludes that this is sufficient evidence to establish that Miralles is presently credentialed.

### *Tie Breaking Criteria*

18. The District did not apply the tie-breaking criteria in all cases there was a “tie.” Rather, the District only applied said criteria when it affected the order of layoff. Respondents did not establish that the District misapplied the tie-breaking criteria, or that failure to apply the tie-breaker criteria, as to all employees, violated Respondents’ due process rights.

### *Other Arguments*

19. All other arguments presented by Respondents were unconvincing and were not established by the evidence. Respondents’ did not establish that the District did not follow the required procedures or that the District acted in an arbitrary and capricious manner.

## **CONCLUSIONS OF LAW**

1. Jurisdiction for these proceedings exists pursuant to Education Code sections 44949 and 44955.

2. Each of the services set forth in Findings 5 and 6 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.

3. The District’s decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

4. Cause exists to reduce the District's teaching positions as described above and to give notice to the affected teachers pursuant to Education Code section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689) Based on the above Findings, including the preamble to this Proposed Decision, the names of the affected teachers, those as to whom final notices of layoff may be given, are as follows:

All Respondent teachers listed in Exhibit 9A and 9B, except that the names of Hillarie Dyson, Wendy Self, and Janice Vargas are to be redacted. The Accusation is dismissed as to those three teachers. The names of Karen Messler, Emily Hawkins, and Sabrina Passanante are to be added to those lists. The Accusation is dismissed as to any District employee whose name is not on Exhibit 9A or 9B.

## **ORDER**

Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion No. 4 that their services will not be required for the 2009-2010 school year.

Dated: May \_\_\_\_, 2009.

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CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings