

BEFORE THE
GOVERNING BOARD OF THE
WHITTIER CITY SCHOOL DISTRICT

In the Matter of the Accusations Re:

The Reduction in Force of 36.5 Full-Time
Equivalent Positions,

Respondents.

OAH Case No. 2009030101

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, on April 27, 2009, in Whittier, California.

Atkinson, Andelson, Loya, Ruud & Romo, by Aaron V. O'Donnell, represented the Whittier City School District (District).

Reich, Adell & Cvitan, by Carlos Perez, represented the following respondents, who were present at the hearing: Michelle Barbarotta, Leah Elmange, Janay Hamrick, Brian Hansen, Jennifer Hernandez, Claudia Herrera, Domani Kem, Bernadette Leeper, Elizabeth Martel-Garza, Jenon Mocilac, Myra Orozco, Sharon Quirarte, Inez Robles, Merced Rodriguez, Carolina Romero, Kristy Rosander, Chelsea Runco, Monica Russell, Megan Smothermon, Ginger Sparks, Lauren Stavros, John Toullos, and Alexandria Zirschky.

No appearance was made by or on behalf of the following respondents: Vanessa Apodaca, Mary Dishigrikyan, Gloria Jimenez, and Susan Mun.

The District has decided to reduce or discontinue certain educational services and has given respondents notice of its intent not to reemploy them for the 2009-2010 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Ron Carruth filed the Accusation in his official capacity as the Superintendent of the District.

2. Respondents are certificated employees of the District.

3. On February 24, 2009, the Governing Board of the District (Governing Board) adopted Resolution R-21 to reduce or discontinue particular kinds of certificated services no later than the beginning of the 2009-2010 school year, as follows:

<u>Service</u>	<u>FTE¹ Reduction</u>
Reading Coach Services	7.0
Elementary Physical Education (P.E.) Teaching Services	2.5
Elementary Teaching Services	32.0
Middle School 6th Grade Multiple Subject Classroom Teaching Services	4.0
Middle School Single Subject Music Teaching Services	1.0
Middle School Single Subject Computer Teaching Services	1.0
Middle School Single Subject P.E. Teaching Services	1.5
Middle School Single Subject Art Teaching Services	1.5
Middle School Single Subject English Teaching Services	2.0
Middle School Single Subject Social Studies Teaching Services	1.0
Middle School Counseling Services	3.0
Coordinators Services	2.0
BTSA Liaison Services	1.0
Science Coach Services	<u>0.5</u>
 Total FTE Reduction	 60.0

4. The Governing Board further resolved that, due to the reduction or discontinuance of services set forth above, it would be necessary to decrease the number of certificated employees at the close of the 2008-2009 school year by a corresponding number of full-time equivalent positions, and directed Superintendent Carruth or his designee to take all necessary and proper actions to implement the Governing Board's resolutions.

5. On March 2, 2009, pursuant to Resolution R-21, the Governing Board was given notice of the Superintendent's recommendation that 61 certificated employees of the District be given notice that their services would not be required for the 2009-2010 school year. Seventeen of the 61 employees are temporary certificated employees. Seven of those temporary employees are serving in categorically funded positions. Pursuant to Resolution R-16, adopted by the Governing Board on February 10, 2009, all 17 temporary employees

¹ Full-time equivalent position.

were not reelected for employment for the 2009-2010 school year, and the District notified them that their employment officially terminates on the last day of the current school year.

6. Before March 15, 2009, the District served each permanent or probationary employee with written notice that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955² that their services would not be required for the 2009-2010 school year. Each written notice set forth the reasons for the recommendation. Notice was served by personal service, first class mail, and/or certified mail. In addition, the District served layoff notices, as a precaution, on the seven temporary employees serving in categorically funded positions identified in Factual Finding 5. Although the District contends those seven employees are not entitled to hearing rights in the context of a certificated layoff, the District provided them with "precautionary" layoff notices to allow them the opportunity to assert any hearing rights or seniority rights they might claim to possess.

7. Certain employees thereafter timely requested a hearing to determine if there is cause for not reemploying them for the 2009-2010 school year. None of the temporary employees who received a precautionary notice requested a hearing.

8. On March 26, 2009, the Governing Board adopted Resolution R-32 rescinding certain of the reductions and discontinuances of services previously approved in Resolution R-21. Pursuant to Resolution R-32, the Governing Board rescinded 22.0 FTE of the 32.0 FTE reduction in Elementary Teaching Services, and rescinded the 1.0 FTE reduction in Middle School Single Subject Music Teaching Services and the 0.5 FTE reduction in Science Coach Services. All other aspects of Resolution R-21 remain in full force and effect.

9. Thus, through Resolutions R-21 and R-32, Elementary Teaching Services are to be reduced by a total of 10.0 FTE, and there will be no reductions in Middle School Single Subject Music Teaching Services and Science Coach Services. The particular kinds of services being reduced pursuant to Resolutions R-21 and R-32 is a net total of 36.5 FTE (i.e., 60 FTE less 23.5 FTE).

10. As a result of Resolution R-32, the District rescinded 24 of the March 15 layoff notices, and so notified those employees.

11. On April 14, 2009, the District issued the Accusation and thereafter served it on the remaining employees whose layoff notices had not been rescinded and who timely requested a hearing pursuant to section 44949, subdivision (b).

² All further references are to the Education Code.

12. Certain of the employees who were served with the Accusation thereafter timely filed Notices of Defense. Those employees are hereafter, and were previously in Factual Finding 2, collectively referred to as "Respondents." Although Respondent Claudia Herrera did not file a Notice of Defense, the District did not object to her participation in this hearing.

13. All prehearing jurisdictional requirements have been met.

14. The services set forth in Factual Findings 3, 8 and 9 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

15. The Governing Board took action to reduce or discontinue the services set forth in Factual Findings 3, 8, and 9 primarily because of the State's financial decline. The District had a revenue shortfall of approximately \$1.5 million in the current school year, and estimates the same for the 2009-2010 school year. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

16. The reduction of services set forth in Factual Findings 3, 8, and 9 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

17. 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 prior to March 15, 2009. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 636.)

18. The District properly created its seniority list by determining the first date of paid service of each certificated employee and properly utilized reasonable "tie-breaker" criteria when necessary. For each employee identified for layoff, the District examined the seniority list to determine whether any junior employee was performing a service that a senior employee was certificated and competent to render and, if so, allowed the senior employee to "bump" into the junior employee's position.

19. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955.

2. The services set forth in Factual Findings 3, 8, and 9 are particular kinds of services within the meaning of section 44955, by reason of Factual Findings 3, 8, 9 and 14.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in Factual Findings 3, 8, and 9, which cause relates solely to the welfare of the District's schools and pupils, by reason of Factual Findings 1 through 19.

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 Governing 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.

6. Cause exists for the District to give notice to Respondents that their services will not be required for the 2009-2010 school year, by reason of Factual Findings 1 through 19 and Legal Conclusions 1 through 5.

ORDER

The Accusation is sustained and the District may notify the following Respondents that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services:

- | | |
|----------------------------|-------------------------|
| 1. Vanessa Apodaca | 15. Myra Orozco |
| 2. Michelle Barbarotta | 16. Sharon Quirarte |
| 3. Mary Dishigrikyan | 17. Inez Robles |
| 4. Leah Elmange | 18. Merced Rodriguez |
| 5. Janay Hamrick | 19. Carolina Romero |
| 6. Brian Hansen | 20. Kristy Rosander |
| 7. Jennifer Hernandez | 21. Chelsea Runco |
| 8. Claudia Herrera | 22. Monica Russell |
| 9. Gloria Jimenez | 23. Megan Smothermon |
| 10. Domani Kem | 24. Ginger Sparks |
| 11. Bernadette Leeper | 25. Lauren Stavros |
| 12. Elizabeth Martel-Garza | 26. John Toullos |
| 13. Jenon Mocilac | 27. Alexandria Zirschky |
| 14. Susan Mun | |

DATED: May ___, 2009

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings