

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

In the Matter of the Accusation Against:

OAH No. 2009030501

Respondents listed in Appendix A.

**PROPOSED DECISION**

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Etiwanda, California on April 7, 2009.

Mark W. Thompson, Atkinson, Andelson, Loya, Ruud & Romo, APLC, represented the Rialto Unified School District.

Glenn Rothner, Rothner, Segall, Greenstone & Leheny, Attorneys, represented the respondents listed in Appendix A, with the exception of the respondents named immediately below.

Respondents Tina Klock, Sarah Logan, Melanie Manson-Tonkinson, Mary Navas, Joanne Stephens, and Correan Worthy did not appear and were not represented at the hearing.

The matter was submitted on April 7, 2009.

**FACTUAL FINDINGS**

1. Anna Maria Rodriguez, Assistant Superintendent, Personnel Services of the Rialto Unified School District, made and filed the accusation dated March 25, 2009 in her official capacity as the designee of Dr. Harold Cebrun Sr., Interim Superintendent.<sup>1</sup>

2. Respondents<sup>2</sup> are certificated District employees.

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<sup>1</sup> On about March 5, 2009, Dr. Cebrun was appointed to the position of Superintendent.

3. On February 25, 2009, in accordance with Education Code sections 44949 and 44955, the Interim Superintendent notified the Board of Education of the Rialto Unified School District in writing of his recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The Interim Superintendent stated the reasons for the recommendation. The recommendation that respondents be terminated from employment was not related to their competency as teachers.

4. On February 25, 2009, the Board adopted Resolution No. 08-09-40, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The Board determined that the particular kinds of services that must be reduced for the 2009-2010 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
AB 1802 Counselors	8
BTSA Support Providers	1
Counselor-Special Education	1
Elementary Literacy Coaches	17
Elementary Multi-Handicapped Teacher	1
Elementary Music Teachers	4
Elementary Special Day Class Teacher	1
Elementary Teachers	70
Elementary VAPA Teacher	1
High Priority Schools Grant Teacher	1
High Priority Schools Grant Coaches	2
High School Medical Careers Teacher	1
High School Physical Education Teachers	2
High School Social Science Teachers	3
Math Intervention Teachers	2
Middle School 6th Grade Teachers	10
Middle School Librarians	2
Middle School Multi-Handicapped Teacher	1
Middle School Physical Education Teachers	2
Middle School Resource Specialists	2
Middle School Social Science Teachers	5
Preschool Teachers	3
ROTC Marine Instructor	1
Teachers on Special Assignment – HPSG	1

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<sup>2</sup> The District initially identified 131 certificated employees as respondents. The District subsequently dismissed 48 of these employees due to attrition, and 18 others did not request and thus waived their right to a hearing. Accordingly, 65 respondents remain in this proceeding and are listed in Appendix A.

The proposed reductions totaled 142 FTE positions.

5. The Board further determined in Resolution No. 08-09-40 that it would be necessary to retain certificated employees who possess special training and competency that other certificated employees with more seniority might not possess, to wit: possession of a valid English Learner (EL) authorization and being No Child Left Behind (NCLB) Compliant in the subject area.

6. The Board directed the Interim Superintendent or his designee to determine which employees' services would not be required for the 2009-2010 school year as a result of the reduction of the foregoing particular kinds of services. The Board further directed the Interim Superintendent or his designee to send appropriate notices to all certificated employees of the District who would be laid off as a result of the reduction of these particular kinds of services.

7. On or before March 15, 2009, the District timely served on respondents a written notice that the Interim Superintendent had recommended that their services would not be required for the upcoming school year. The notice set forth the reasons for the recommendation. The notice advised respondents of their right to a hearing, that each respondent had to deliver a request for a hearing in writing to the person sending the notice by the date specified in the notice, a date which in each case was more than seven days after the notice was served, and that the failure to request a hearing would constitute a waiver of the right to a hearing. Along with the written notice, the District timely served on respondents the accusation and required accompanying documents.

The recommendation that respondents be terminated from employment was not related to their competency as teachers.

8. Respondents timely filed written requests for hearing to determine if there was cause for not reemploying them for the upcoming school year. Respondents timely filed written notices of defense and requests for hearing. All pre-hearing jurisdictional requirements were met.

9. Respondents are probationary or permanent certificated employees of the District.

10. The services the Board addressed in Resolution No. 08-09-40 were "particular kinds of services" that could 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 and constituted a proper exercise of discretion.

11. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

12. The Board considered attrition, including resignations, retirements and requests for transfer, in determining the actual number of necessary layoff notices to be delivered to its employees. No evidence was presented that any known positively assured attrition was not considered.

13. Respondent Shellie Dansby-Hall is an AB 1802 counselor<sup>3</sup> at the District's Eisenhower High School. The District assigned her a seniority date of August 20, 2007. Ms. Dansby-Hall testified that her seniority date is actually August 6, 2007, because all counselors hired at Eisenhower for the 2007-2008 school year reported for work and were compensated as of August 6, 2007.<sup>4</sup> Ms. Dansby-Hall did not present any documentation in support of her testimony.

Rhonda Kramer, the District's Coordinator of Personnel Services, testified that the first day of the 2007-2008 school year was August 20, 2007.<sup>5</sup> She added that August 20, 2007, was the seniority date for all AB 1802 counselors who commenced their employment with the District that year. In early 2009, Ms. Kramer sent to each certificated employee, including respondent, a form document which set forth the individual's seniority date, credentials and related information. Employees were asked to confirm whether or not the information contained in the form was true. On March 25, 2009, Ms. Dansby-Hall returned her form to the District, without indicating any correction to the August 20, 2007 seniority date. Ms. Kramer was not aware until the date of the hearing that Ms. Dansby-Hall was contesting the District's seniority date.

Based on the evidence presented at the hearing, it is found that Ms. Dansby-Hall's seniority date was August 20, 2007. Absent any documentation in support of Ms. Dansby-Hall's position, it is inferred from the evidence that her recollection of the events of August 2007 was in error.

14. Respondent Sandria JoAnn Byrd teaches sixth-grade English, general science, and social studies at the District's Frisbie Middle School. Ms. Byrd is NCLB compliant in history, civics and government, economics, and geography by virtue of her Bachelor's degree in social science earned in 1997. Ms. Byrd has CLAD<sup>6</sup> certification and a multiple subject credential.

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<sup>3</sup> AB 1802 counselors are those whose funding was provided through Assembly Bill 1802. The purpose of the bill was to provide additional counselors at secondary schools to give students assistance for the California High School Exit Exam (CHSEE). The scope of counseling services provided by AB 1802 counselors is not actually limited to CHSEE assistance. Instead, these counselors, like others, provide the full range of academic, personal, career and social development counseling to district secondary students.

<sup>4</sup> Ms. Dansby-Hall described her compensation for the ten additional days represented by the August 6 start date as including per diem pay for five days and comp time credit for five days.

<sup>5</sup> Official notice is taken that August 20, 2007, was a Monday.

<sup>6</sup> "CLAD" (Crosscultural, Language, and Academic Development) certificates authorize instruction to English Learners.

Ms. Byrd applied for a supplemental authorization on a date after March 15, 2009, when she received the notice described above in Finding 7. It is inferred from her testimony that she believed she should have been able to bump more junior employees based on that supplemental authorization. However, because Ms. Byrd neither applied for the supplemental authorization nor notified the District in this regard until after March 15, 2009, the District was not required to consider the supplemental authorization for purposes of its lay-off determinations. (*Degener v. Governing Board of Wiseburn School District* (1977) 67 Cal.App.3d 689, 698-699.)

15. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. 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.)

3. A preponderance of the evidence sustained the charges set forth in the accusation. Cause exists under Education Code sections 44949 and 44955 for the District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. 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. It is recommended that the Board give respondents notice before May 15, 2009, that their services are no longer required by the District.

ORDER

The accusations served on respondents are sustained. Notice shall be given to such respondents before May 15, 2009, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: \_\_\_\_\_

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DONALD P. COLE  
Administrative Law Judge  
Office of Administrative Hearings

## Appendix A

1. Brody, Wendy
2. Bryant, Vanessa
3. Buitron, Ofelia
4. Burchmore, Thomas
5. Byrd, Sandria
6. Cabrera, Deanna
7. Calloway, Miesha
8. Centty, Rosario
9. Chan, Juanita
10. Cortez, Moneka
11. Dalton, Gregory
12. Dansby-Hall, Shellie
13. De La Cruz, Jeremiah
14. De La Torre, Evelia
15. DeAnda, Adriana
16. Garcia, Sharon
17. Garcia, Sheri
18. Garnica, Esmeralda
19. Hogan, Kathleen
20. Holguin, Sheri
21. Infante, Sergio
22. Jordon, Laura

23. Kaeo, Dana
24. Kelly, Francina
25. Klock, Tina
26. Lang, DeShawna
27. Larratt, Rebecca
28. Lawrence-Hennessy, Erin
29. Lawrence-McIntyre, Tabreshia
30. Lewis, Abina
31. Lim, Jennifer
32. Logan, Sarah
33. Manson-Tonkinson, Melanie
34. McMullen, Laura
35. Miceli, Rebecca
36. Miller, Shannon
37. Mims-Williams, Lydia
38. Montry, Mindy
39. Navas, Mary
40. Nelson, Carol
41. Nessi, Lori
42. Noden, Barry
43. Olmos, Alejandro
44. Ramirez, Rosa
45. Reynado, Maritess

46. Rios, Sarah
47. Robinson, Teresa
48. Robles, Maribel
49. Rodriguez, Lilibeth
50. Romo, Alejandro
51. Samuel, Eddie
52. Santibanez, Davonne
53. Sciarra, Anne Marie
54. Sepulveda, Ana Maria
55. Stephens, Joanne
56. Straka, Serena
57. Streff, Kristy
58. Taylor, Laurel
59. Tut, Raquel
60. Wales, Jessica
61. Weekley, John
62. Worthy, Correan
63. Yanez-Ward, Sylvia
64. Yoshimitsu, Shari
65. Zavala, Annalisa