

BEFORE THE
BOARD OF EDUCATION
OF THE
COACHELLA VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009030698

Respondents listed in Appendix A.

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Thermal, California on April 24, 2009.

Mark W. Thompson, Atkinson, Andelson, Loya, Ruud & Romo, Attorneys at Law, represented the Coachella Valley Unified School District.

Brenda E. Sutton-Wills, Staff Attorney, California Teachers Association, and Jon Y. Vanderpool, Tosdol, Smith, Steiner & Wax, represented the respondents listed in Appendix A, except for respondent Josue Izaguirre.

No appearance was made by or on behalf of respondent Josue Izaguirre.

The matter was submitted on April 24, 2009.

FACTUAL FINDINGS

1. Ann Reinhagen, Executive Director, Personnel Services, made and filed the accusation dated March 13, 2009, in her official capacity as the designee of Carey Carlson, Interim Superintendent.

2. Respondents¹ are certificated district employees.

¹ The District initially identified 243 certificated employees as respondents, 18 of whom, including Joey Acuna, Marcos Aleman, Yulil Alonso Garza, Carolina Andrade, Maria Araujo, Maria Briceno, Elias Castillo, Leticia De La Torre, Jane Maldonado, Patrick Marquez, Bonnie McGee, Wilson Quintana, and Errol Wilson, did not request and thus waived their right to a hearing. The District subsequently dismissed 125 other employees,

3. On March 12, 2009, in accordance with Education Code sections 44949 and 44955, the Interim Superintendent notified the Board of Education of the Coachella Valley Unified School District in writing of her recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The 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 March 12, 2009, the board adopted Resolution No. 2009-116, 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>
K-6 Elementary Classroom Teachers	130
Teachers on Special Assignment – Dist. Off.	15
Teachers on Special Assignment – School Site	45
Social Science Teachers	3
Biology Teachers	1
Student Facilitators	22
Secondary Language Arts/English	12

The proposed reductions totaled 228 FTE positions.

5. The board further determined in Resolution No. 2009-116 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, teachers on Special Assignment in the following assignments: (1) California Math/Science Grant; (2) English Language Acquisition Pilot Grant; (3) Technology State and Federal Projects; and (4) CVTA President.

6. The board directed the Interim Superintendent or her 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 her 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

including four of those, Eliazar Cambron, Kelly Reilly, Beatriz Ruiz, and Irene Zamora, who did not request a hearing. Accordingly, 105 respondents remain in this proceeding and are listed in Appendix A.

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.

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. The accusation, along with required accompanying documents, was timely served on respondents. Respondents timely filed a notice of defense. 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. 2009-116 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 board further determined in Resolution No. 2009-116 that “competency,” as described in Education Code section 44955, subdivision (b), for the purposes of bumping, “shall necessarily include . . . possession of a valid credential in the relevant subject matter area . . . [and] [f]or TOSA positions, prior experience within the District in the particular specialty or under the particular authorizing grant.”

12. 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.

Respondents challenged the budget data upon which the district made its decision to reduce PKS and initiate the present layoff proceedings and presented evidence in support of their challenge. In effect, the district and respondents disagreed about the extent and significance of the actual budget deficit that the district will face next year absent the proposed reduction of particular kinds of services. Respondents failed to establish that the district’s budget calculations, or its decision to reduce the designated particular kinds of services, was arbitrary or capricious. The district’s decision to reduce particular kinds of services constituted a proper exercise of its discretion.

13. The board considered attrition 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.

14. Except as found below, no certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

Bumping Issues

15. Alfonso Taboada, Jr. teaches AVID² at Desert Mirage High School. He has a preliminary single subject social science credential. His seniority date is August 31, 2006. Taboada contended that he is certificated and competent to bump Philip Bautista, who teaches social science at Coachella Valley High School, holds an intern single subject social science credential, and has a seniority date of November 3, 2006. The district failed to offer an explanation as to why Taboada should not bump Bautista. Based on the evidence presented, Taboada is certificated and competent to bump the more junior Bautista. Accordingly, the district's proposed layoff of Taboada is improper.³

16. Mark Reynolds, who is tenured, teaches social science at the middle school level. He has a clear single subject social science credential. His seniority date is August 17, 2006. He contended that he is certificated and competent to bump several junior teachers. Christian Paiz, who has the same seniority date as Reynolds but lower seniority pursuant to tiebreaker criteria, teaches social science at Desert Mirage High School and has a preliminary social science single subject credential. Matthew Harding, who has the same seniority date as Reynolds but is a probationary employee and thus has less seniority, teaches social science at Coachella Valley High School and has a preliminary social science single subject credential. Graciela Camacho, like Harding a probationary employee, teaches ASB-language arts and social studies. Philip Bautista, with a seniority date of November 3, 2006, teaches social science at Coachella Valley High School, and has an intern single subject social science credential. The district failed to offer an explanation as to why Reynolds should not bump these teachers. Based on the evidence presented, Reynolds is certificated and competent to bump the more junior Paiz, Harding, and Bautista. Accordingly, the district's proposed layoff of Reynolds is improper.⁴

17. Eva Tafoya teaches language arts/English at the middle school level. She has an intern single subject English credential. Her seniority date is August 15, 2007. Tafoya contended that she is certificated and competent to bump two junior teachers, Simon Moore and Kendra Crowder-Jones. Moore teaches English at Coachella Valley High School and holds an intern single subject English credential. Crowder-Jones teaches English at West Shores High School and likewise holds an intern single subject English credential. The

² AVID, which stands for Advancement Via Individual Determination, is a program designed to prepare certain students for college eligibility.

³ However, since Bautista was not issued a preliminary layoff notice, the district cannot lay him off.

⁴ However, since Paiz, Harding, and Bautista were not issued preliminary layoff notices, the district cannot lay off any of these employees.

district offered no evidence or explanation as to why Tafoya should not bump these two teachers. Accordingly, the district's proposed layoff of Tafoya is improper.⁵

18. Dioscelina Zavala teaches language arts at the middle school level. She has an intern single subject English credential. Her seniority date is August 20, 2007. Zavala contended that she is certificated and competent to bump the more junior Kendra Crowder-Jones. As noted, Crowder-Jones teaches English at West Shores High School and likewise holds an intern single subject English credential. The district offered no evidence or explanation as to why Zavala should not bump Crowder-Jones. Accordingly, the district's proposed layoff of Zavala is improper.⁶

Long Term Substitutes

19. Respondents Carla Alvarado, Nancy Alcocer, Stephanie Brown, Luis Martinez, Asalia Mendoza, Orlando Nava, Luis Pinedo, Landon Rue, Betsy Schwartz, Hilda Sepulveda, Alfonso Taboada, Jr., and Yurida Valenzuela⁷ testified that they believed their seniority dates should be earlier than those assigned to them by the district on the basis that they served as long-term substitutes for more than 75 percent of the school days in one or more years preceding the year in which the district gave them seniority. However, none of these respondents testified or otherwise established that they were classified as *probationary employees* during the year to which they wished to "tack" their long-term substitute year.

20. Asalia Mendoza testified that, like herself, Juan Gonzales attended a summer training institute in August 2006. Mendoza pointed out that, according to the district's seniority list, she and Gonzales are both classified as probationary 0 employees with a 30 day substitute credential. Accordingly, Mendoza believes she should be given a seniority date of August 17, 2006, i.e., the same date as that given to Gonzales. No district representative testified with regard to this issue. No evidence was offered that either Mendoza or Gonzales was or was not in a probationary position during the 2007-2008 school year.

As noted in Finding 18, Mendoza did not establish that she was classified as a probationary employee for the year to which she seeks to tack her long-term substitute

⁵ However, since neither Moore nor Crowder-Jones was issued a preliminary layoff notice, the district cannot lay off either of these employees.

The district argued that if Tafoya had been permitted to bump another English teacher, the two least senior teachers were Zavala and Crowder-Jones, that Tafoya herself would still have been laid off, and that the district's error (if any) was thus non-prejudicial. However, while Crowder-Jones was the most junior English teacher, the next most junior was not Zavala, but Charles Roney (seniority date August 30, 2007), who likewise was not issued a layoff notice. For these and other reasons, the district's position, as the administrative law judge understood it, was not persuasive.

⁶ However, since Crowder-Jones was not issued a preliminary layoff notice, the district cannot lay her off.

⁷ Maria Briceno provided similar testimony. However, by not filing a request for a hearing, Briceno waived her right to participate as a respondent in these proceedings.

(2006-2007) school year. Assuming Mendoza is correct that the district treated Gonzales inconsistently with its treatment of her, such an inconsistency still does not provide a legal basis to tack on an extra year to Mendoza's seniority in contravention of the relevant statutory provision, Education Code section 44918. Further, it may in fact be that, despite his credential, Gonzales was in fact a probationary employee during the 2006-2007 school year,⁸ in which case the district's assignment to him of a 2006 seniority date would have been proper. For these reasons, the fact that Gonzales has an August 2006 seniority date does not provide a basis for granting such a date to Mendoza.

21. Luz Chavez was given a seniority date of November 1, 2007, the date she signed a contract with the district. She testified that she believed her seniority date should be the beginning of the 2007-2008 school year. Though Chavez was in a long term substitute position during that initial period of the school year, she testified she had an understanding with her principal that she would be teaching full time for the entire year; the only reason she did not sign her contract at the outset of the school year was because the documentation from her undergraduate institution had not yet arrived at the district. Chavez did not assert that the district was in any sense at fault for her documentation not being received by the district earlier than it was or for Chavez not being able to sign a contract until November 1, 2007. Based on the testimony presented, the district properly determined Chavez's seniority date to be November 1, 2007; no authority was presented upon which the district could have granted her an earlier date.

22. Iselda Macias-Aguilera was given a seniority date of August 13, 2008. Macias-Aguilera testified that she worked as a full-time substitute for the entire 2007-2008 school year, and that she became and was paid as a probationary employee in August 2008, when she received a preliminary multiple subject credential. She conceded, however, that she has not yet signed a probationary contract. The district provided no evidence with regard to Macias-Aguilera. Based on her testimony, it appears that Macias-Aguilera has been treated by the district as a *de facto* probationary employee during the present school year. However, no authority was presented that such a situation is sufficient under the highly technical provisions of the layoff statute to constitute *actual* probationary status as the term is used in section 44918. Accordingly, Macias-Aguilera did not establish that she has been a probationary employee within the meaning of section 44918 during the present school year. She is thus not permitted to tack on her long-term substitute service from the 2007-2008 school year so as to acquire a seniority date of August 2007 (much less any earlier date).

Summer Training

23. In determining seniority dates, the district applied new teacher training and week-long summer intensive staff development program time, so that seniority would be based on the first day of such training. Pursuant to the parties' agreement, respondents Jayme Maguire, Jacqueline Browner, Alisha Daniels, Agustin Cervantes, Maricela

⁸ No evidence was offered as to whether a 30 day substitute credential may authorize an individual to teach as a probationary employee.

Hernandez, Karen Frank, Deborah Powell, Celsa Gomez Gonzelez, Theodore Turner, James Staples, Iselda Macias-Aguilera, Eliza Garcia, Christina Garcia, Carolina Andrade, Michele Graham, Susan Diaz Cueva, Anabel Vasquez, Veronica Duran, Irasema Angulo-Castro, Carla Alvarado, and Alicia Rojo were deemed to have testified that they received new teacher and/or summer institute training during the summer before their employment.⁹ These employees asserted that their seniority dates should be adjusted accordingly. The district presented no evidence with regard to any of these employees.

Based on the district's policy, and in the absence of any evidence or argument of the district to the contrary, it seems appropriate to grant each of the identified employees seniority based on the date of their training, as long as such employees were hired in a probationary position. None of the 21 employees indicated whether they were so hired. However, based on the district's seniority list, it is inferred that each of the 15 employees who were classified by the district as probationary 1 or probationary 2 were in fact probationary employees. In contrast, the six employees (i.e., Cervantes, Hernandez, Gomez Gonzalez, Vasquez, Alvarado, and Duran) listed as probationary 0 were not in fact probationary employees, i.e., for purposes of tenure.¹⁰ The evidence did not establish that the district's policy of taking new teacher training and summer intensive staff development program time into account for seniority purposes applied to non-probationary employees. Accordingly, the district properly determined the seniority dates of Cervantes, Hernandez, Gomez Gonzales, Vasquez, Alvarado, and Duran. The seniority dates of the other 15 respondents identified in this finding should be changed to reflect their pre-employment summer training.

24. Jose Gijon was given a seniority date of October 13, 2007. He testified that he attended one-week training and new teacher orientation prior to the 2007-2008 school year. He began that school year as a long-term substitute, but became an intern in October 2007. He did not testify or otherwise establish when and if he secured formal probationary status. As noted above, it was also not established that the district's policy of taking new teacher training and summer intensive staff development program time into account for seniority purposes applied to non-probationary employees. Accordingly, the district properly determined Gijon's seniority date to be October 13, 2007.

Tiebreaker Issues

25. The parties stipulated that Krysten Gonda has an emergency CLAD, which will be taken into account for purposes of rehire.

⁹ Maguire, Browner, Daniels, Cervantes, Hernandez, Frank, Powell, and Rojo all stated (via their deemed testimony) that their summer training started on August 20, 2008; Gomez Gonzelez, Staples, Eliza Garcia, Christina Garcia, Andrade, Diaz Cueva, Vasquez, and Duran all stated (via their deemed testimony) that their summer training started on August 18, 2008. Turner, Macias-Aguilera, and Angulo-Castro all stated (via their deemed testimony) that their summer training started on August 13, 2008. Graham stated (via her deemed testimony) that her summer training started on August 4, 2008. Alvarado testified that her summer training started on August 13, 2007.

¹⁰ District Executive Director Ann Reinhagen, Personnel Services, so testified.

26. Like 43 other certificated employees, James Staples has a seniority date of August 28, 2008. However, for reasons that were not clear to the administrative law judge, Staples did not appear in the tiebreak data and was not assigned a tiebreaker number in the bump analysis. It thus appears that he was not taken into account when the tiebreaker analysis was performed for employees with his seniority date. The district should do so, so that his proper place on the seniority list can be determined for purposes of rehire.

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 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.)

3. 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.) 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.)

4. Except with regard to respondents Alfonso Taboada, Jr, Mark Reynolds, Eva Tafoya, and Dioscelina Zavala, and except as to respondents whose layoffs are affected by any changes in seniority date pursuant to the Findings above, 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 be directed be reduced or discontinued. It is recommended that the board give respondents, except Alfonso Taboada, Jr, Mark Reynolds, Eva Tafoya, and Dioscelina Zavala, and except the respondents whose layoffs are affected by any changes in seniority date pursuant to the Findings above, notice before May 15, 2009, that their services are no longer required by the district.

5. A preponderance of the evidence did not sustain the charges set forth in the accusation as to respondents Alfonso Taboada, Jr, Mark Reynolds, Eva Tafoya, and

Dioscelina Zavala, and as to respondents whose layoffs are affected by any changes in seniority date pursuant to the Findings above. It is recommended that the board not give these respondents notice that their services will no longer be required by the district.

ADVISORY DETERMINATION

The following advisory determination is made:

1. The accusations served on all respondents except respondents Alfonso Taboada, Jr, Mark Reynolds, Eva Tafoya, and Dioscelina Zavala, and except respondents whose layoffs are affected by any changes in seniority date pursuant to the Findings above, 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.

2. The accusation served on respondents Alfonso Taboada, Jr, Mark Reynolds, Eva Tafoya, and Dioscelina Zavala, and on respondents whose layoffs are affected by any changes in seniority date pursuant to the Findings above, are not sustained and the accusations related to those respondents are dismissed.

DATED: _____

DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings

Appendix A

1. Maribel Aguilar
2. Nancy Alcocer
3. Carla Alvarado
4. Juan Amaya
5. Irasema Angulo-Castro
6. Alexis Arias
7. Rebecca Armendariz
8. Veronica Avila
9. Christopher Baltes
10. Heather Bjornberg
11. Stephanie Brown
12. Jacqueline Browner
13. Bobbi Sue Bustamante
14. Jose Cardenas
15. Linda Cardenas
16. Maribel Cardenas
17. Shaun Carlin
18. Agustin Cervantes
19. Esmeralda Chavez
20. Luz Chavez
21. Colleen Cousins
22. Yuri Covarrubias
23. Marjorie Dale
24. Alisha Daniels
25. Gloria Dell
26. Susan Diaz Cueva
27. Kristen Duffy
28. Veronica Duran
29. Christine Endres
30. Elena Estrada
31. Karen Frank
32. Gerardo Galvez
33. Adriana Garcia
34. Christina Garcia
35. Elizabeth Garcia
36. Julia Garcia
37. Jose Gijon
38. Laura Gil
39. Kathleen Godfrey
40. Celsa Gomez Gonzalez
41. Krysten Gonda
42. Megan Gonyeau
43. Jacqueline Gonzalez
44. Salvador Gonzalez
45. Michele Graham

46. Bryan Hawk
47. Alejandro Hernandez
48. Maricela Hernandez
49. Juan Higuera
50. Josue Izaguirre
51. Marcie Kobierowski
52. Jeffrey Kruger
53. Lelia Lienhard
54. Maria Lomeli
55. Jaime Lopez
56. Maria Lopez
57. Iselda Macias-Aguilera
58. Teresa Madera
59. Jayme Maguire
60. Maria Marquez-Michel
61. Alejandro Martinez
62. Luis Martinez
63. Gina McElroy
64. Michael McDonald
65. Kerri McManus
66. Ruth Medina
67. Asalia Mendoza
68. Greg Murakami
69. Orlando Nava
70. Andrea Nunez
71. Alejandra Palafox
72. Sherry Penaflor
73. Mario Pimentel
74. Luis Pinedo
75. Deborah Powell
76. Denise Powell
77. Marcia Preciado
78. Claudia Quinones
79. Lydia Reyna
80. Mark Reynolds
81. Judith Richards
82. Alicia Rojo
83. Landon Rue
84. Pedro Ruiz
85. Ruben Saldivar
86. Sarah Saucedo
87. Ales Scafuro
88. Betsy Schwartz
89. Curtis Schway
90. Veleata Scott
91. Hilda Sepulveda
92. Yesenia Spinks
93. James Staples

94. Alfonso Taboada, Jr.
95. Eva Tafoya-Tapp
96. Sherry Thibault
97. Theodore Turner
98. Naara Valdez Soto
99. Mario Valenzuela
100. Yurida Valenzuela
101. Anabel Vasquez
102. Leandra Vasquez
103. Landon Wahl
104. Teresa Weir
105. Dioscelina Zavala