

BEFORE THE
GOVERNING BOARD OF THE
GARVEY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Layoff Of:

CERTIFICATED EMPLOYEES OF THE
GARVEY SCHOOL DISTRICT,

Respondents.

OAH Case No. 2009030734

PROPOSED DECISION

Nancy Beezy Micon, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 3, 2009, in Rosemead, California.

James R. Lynch, Attorney at Law, represented Genaro Alarcon (Alarcon), Assistant Superintendent of the Garvey School District (District).

Emma Leheny, Attorney at Law, represented Sandra Luz Armenta, Debra T. Benavidez, Jose A. Cardenas, Suzana Carlos, Cecile Chavez, Kristen Cheng, Jenny Duque, Lucina Gaeta, Rene Herrera, Sandra Seonah Lee Hong, Jeanie Lin, Tran Ma, Tai Le Phan, Blanca Rios-Quiroz, Diana Rodriguez, Tonie Lam Tran, and Michelle M. Venegas (Respondents).

Respondents Michelle M. Mendoza and Claudia P. Barajas were present, and represented themselves.

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.

At the hearing, the District moved to dismiss the Accusation against Tai Le Phan, and Diana Rodriguez, which motion was granted. The parties stipulated that all notices were timely served, and all requests for hearing and notices of defense were timely made.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision on April 3, 2009.

FACTUAL FINDINGS

1. Assistant Superintendent Alarcon filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. On March 5, 2009, the Governing Board of the District (Governing Board) adopted Resolution number 08-09-17, reducing or discontinuing the following services for the 2009-2010 school year:

<u>Service</u>	<u>Full-Time-Equivalent Positions</u>
K-6 Classroom Teacher	12.00
Special Day Class Teacher	1.00
Resource Specialist Teacher	1.00
School Counselor	1.40
Visual & Performing Arts Teacher (Special State Grant)	1.00
Physical Education Teacher (Special State Grant)	<u>1.00</u>
Total	17.40

4. Superintendent Alarcon thereafter notified the Governing Board that he recommended that notice be provided to Respondents that their services will not be required for the 2009-2010 school year due to the reduction or discontinuance of particular kinds of services.

5. On March 9, 2009, the District provided notice to Respondents that their services will not be required for the 2009-2010 school year due to the reduction or discontinuance of particular kinds of services.

6. Respondents thereafter timely requested a hearing to determine if there is cause for not reemploying them for the 2009-2010 school year.

7. On March 19, 2009, the District issued the Accusation, and thereafter served it on Respondents.

8. Respondents thereafter timely filed notices of defense.

9. All pre-hearing jurisdictional requirements have been met.

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10. The services set forth in factual finding number 3 are particular kinds of services

which may be reduced or discontinued within the meaning of Education Code section 44955.¹

11. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of the uncertainty surrounding future funding. 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.

12. The reduction of services set forth in factual finding number 3 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.

13. The District retained employee Teresa S. Rodriguez (Rodriguez), whose seniority date of September 6, 2005 is junior to some of the Respondents, to render Language Arts teaching services at the middle school level. Rodriguez holds a multiple subject teaching credential, and has completed course units that enable her to teach the Language Arts course at the middle school level. The service provided by Rodriguez has not been reduced or discontinued, and there are no Respondents senior to Rodriguez who have completed the course requirements that would allow them to provide the Language Arts teaching services being provided by Rodriguez. Retention of Rodriguez is appropriate as the District demonstrated the specific need for the Language Arts teaching service, and Rodriguez has the requisite training and experience to provide the service.

14. Claudia P. Barajas established that, instead of a seniority date of November 29, 2004, her seniority date should be October 25, 2004. The District agreed to make this correction. The correction of the date, however, will not affect the order of layoff.

15. Michelle M. Mendoza (Mendoza) taught in the District, voluntarily resigned as a permanent employee at the end of the 2004-2005 school year, took a position with another school system, and then returned to work for the District on September 19, 2005. Mendoza's seniority date is September 19, 2005, the date she first rendered paid service after her reemployment with the District.

16. 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, by reason of factual finding numbers 1 through 9.

¹ All further references are to the Education Code.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 10.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 12.

4. 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, under section 44955, subdivision (d)(1). (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399, 405; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.)

5. Respondents with breaks in service are only entitled to a seniority date upon their reemployment, under section 44848.

Education Code section 44848 provides, in pertinent part:

Whenever any certificated employee shall have resigned or been dismissed for cause and shall thereafter have been reemployed by the board, his date of employment shall be deemed to be the date on which he . . . rendered paid service (if reemployed after June 30, 1947) after his reemployment.

Education Code section 44931 provides, in pertinent part:

Whenever any certificated employee of any school district who, at the time of his or her resignation, was classified as permanent, is reemployed within 39 months after his or her last day of paid service, the governing board of the district shall, disregarding the break in service, classify him or her as, and restore to him or her all of the rights, benefits and burdens of, a permanent employee, except as otherwise provided in this code.

Mendoza was rehired by on September 19, 2005, within 39 months of her resignation. Mendoza retained all of her rights, including reemployment as a permanent employee, except as to her seniority date. Her seniority date was the date of her re-hire. In *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, the court held, at page 641,

We hold that section 44931 provides that the break in service shall be "disregarded" as to individual rights, burdens and benefits, **but not as to seniority rights which affect other employees.** The "except as otherwise

provided in this code" provision in section 44931 must be read as deferring to section 44848. (Emphasis added.)

The correct seniority date for Michelle M. Mendoza is therefore September 19, 2005.

6. Cause exists to terminate the services of Respondents Sandra Luz Armenta, Claudia P. Barajas, Debra T. Benavidez, Jose A. Cardenas, Suzana Carlos, Cecile Chavez, Kristen Cheng, Jenny Duque, Lucina Gaeta, Rene Herrera, Sandra Seonah Lee Hong, Jeanie Lin, Tran Ma, Michelle M. Mendoza, Blanca Rios-Quiroz, Tonie Lam Tran, and Michelle M. Venegas, by reason of factual finding numbers 1 through 16, and legal conclusion numbers 1 through 5.

RECOMMENDATION

1. It is recommended that the District may notify Respondents Sandra Luz Armenta, Claudia P. Barajas, Debra T. Benavidez, Jose A. Cardenas, Suzana Carlos, Cecile Chavez, Kristen Cheng, Jenny Duque, Lucina Gaeta, Rene Herrera, Sandra Seonah Lee Hong, Jeanie Lin, Tran Ma, Michelle M. Mendoza, Blanca Rios-Quiroz, Tonie Lam Tran, and Michelle M. Venegas that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

2. It is recommended that the layoff notice be rescinded, and the Accusation be dismissed as to Respondents Tai Le Phan and Diana Rodriguez.

DATED: _____

Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings