

**BEFORE THE  
GOVERNING BOARD OF THE  
LA HABRA CITY SCHOOL DISTRICT**

In the Matter of the Accusations Against:

**Certificated Employees of the La Habra  
City School District Listed in Attachment  
1,**

Respondents.

OAH No. 2009030899

**PROPOSED DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 29, 2009, in La Habra, California. The record was closed and the matter was submitted for decision at the end of the hearing.

Spencer E. Covert, Esq., and Joyce E. Paul, Esq., Parker & Covert LLP, represented the La Habra City School District (District).

Jeff C. Marderosian, Esq., Law Offices of Jeff C. Marderosian, represented Respondent Katherine Frazier, Ed.D.

Carlos R. Perez, Esq., Reich, Adell & Cvitan, represented the other Respondents listed in Attachment 1, except for Kristen Rich, who represented herself. All of the Respondents were present.

**FACTUAL FINDINGS**

*Parties and Jurisdiction*

1. Susan Belenardo, Ed.D., the District's Superintendent, made and filed the Accusation in her official capacity.
2. At all times relevant Respondents were certificated District employees.
3. On February 12, 2009, the Governing Board of the District (Board) adopted Resolution No. 04-2009, which recommended a reduction or discontinuation of certain full-time equivalent (FTE) positions for the 2009/2010 school year.
4. On March 12, 2009, the Board adopted Resolution No. 15-2009, which recommended the reduction or discontinuation of additional FTE positions for the 2009/2010 school year.

5. On or before March 15, 2009, the District served Respondents with written notice, pursuant to Education Code sections 44949 and 44955, that Respondents' services will not be required for the following school year.

6. The Respondents were thereafter timely served with an Accusation and other required materials, and each timely submitted a written request for the hearing that ensued.

*The Board's Layoff Decisions*

7. Resolution No. 04-2009 specifically provides for the reduction or elimination of the following particular kinds of services:

<u>Full-Time Equivalent (FTE) Positions</u>	<u>Particular Kinds of Service</u>
1) Discontinue:	
a. 1.0 FTE	Assistant Superintendent
b. 1.0 FTE	Child Welfare and Attendance Officer
=====	
SUB TOTAL	2 FTE

8. Resolution No. 15-2009 specifically provides for the reduction or elimination of the following particular kinds of services:

<u>FTE Positions</u>	<u>Particular Kinds of Service</u>
1) Reduce:	
a. 23.0 FTE	K-2 Classroom Teachers
b. 3.0 FTE	3-5 Classroom Teachers
c. 1.0 FTE	Science (Biological)
d. 2.0 FTE	Social Science
2) Discontinue:	
a. 3.0 FTE	3-5 School Site Resource Teacher
b. 2.0 FTE	K-2 School Site Staff Support Teacher
c. 1.0 FTE	Middle School Staff Specialist
d. 1.17 FTE	6-8 Title I Teacher
e. .5 FTE	6-8 PBIS/IB Coordinator
f. .33 FTE	6-8 Nutrition Network
=====	
SUB TOTAL	37 FTE
GRAND TOTAL	39 FTE

9. The services identified in those two Resolutions are particular kinds of services within the meaning of Education Code section 44955. (See Legal Conclusion 4.)

10. After adoption of the two Resolutions, the District has continued to consider all known positively assured attrition.

11. The reduction or elimination of the 39 FTE positions will not reduce services below mandated levels.

12. The decision to reduce the above-described particular kinds of services was based on a fiscal solvency problem created by the current state budget crisis, as well as financial problems caused by declining enrollment in some of the District's schools.

13. In determining who would be subject to layoff, the District counted the number of reductions not covered by positively assured attrition or known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then determined whether the least senior employees held other credentials or were otherwise competent to render services being rendered by junior employees. The District determined that none of the certificated employees subject to layoff through the above-described process were able to "bump" any junior employees.

14. The Board did not determine to deviate from the usual order of terminating certificated employees on the basis of seniority due to special training, experience, or credentials that junior certificated employees possess, known as "skipping."

15. On March 26, 2009, the Board adopted Resolution No.25-2009, which established tie-breaking criteria to determine the relative seniority of certificated employees who first rendered paid service on the same date. The validity or application of the tie-breaking process is not at issue in this matter or subject to dispute.

#### *Situations of Individual Respondents*

16. Vanessa Gomez. Respondent Gomez was given a precautionary layoff notice, because she is teaching pursuant to a temporary contract and the District has not deemed her to be a probationary employee. Respondent Gomez signed a temporary contract to teach for the entire 2008/2009 school year at the Imperial Middle School. She was classified as a temporary teacher because she was hired to replace another teacher at the Imperial Middle School who has been on leave this school year. The District properly classified Respondent Gomez as a temporary teacher.<sup>1</sup> Because she is not a permanent or probationary employee, Respondent Gomez is not subject to this layoff proceeding (Ed. Code, § 44955, subd. (a)) and the Accusation against her should be dismissed.

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<sup>1</sup> Respondent Gomez provided no evidence and cited no legal authority indicating that her classification as a temporary teacher was erroneous.

17. Katherine Frazier. Respondent Frazier is the District's Assistant Superintendent. She fills a position that is subject to Resolution No.04-2009. The District and Respondent Frazier entered into a written employment contract on April 24, 2008. The contract was approved by the Board at its meeting of April 24, 2008. Pursuant to that contract, the District agreed to employ Respondent Frazier as the Assistant Superintendent for the term of two years, from July 1, 2008, through June 30, 2010. From July 1, 2008, to the present time, Respondent Frazier has only filled the position of Assistant Superintendent. She has never worked as a teacher for the District. She holds a Life Administrative Services Credential, Multiple Subjects Credential and a Specialist Instruction Credential in Special Education. Respondent Frazier holds neither status nor a number on the District's seniority list of certificated teachers. According to Respondent Frazier's contract, the District's Assistant Superintendent "is a duly certificated teacher and administrator as required by applicable laws and regulations of the State of California."

### *Overall Findings*

18. The Board's decisions to reduce or discontinue the above-described particular kinds of services were neither arbitrary nor capricious, and were a proper exercise of its discretion.

19. The cause for reducing and/or eliminating the above-described particular kinds of services relates solely to the welfare of the schools in the District and its pupils.

20. No certificated employee with less seniority will be retained to render a service that Respondents are certificated and competent to render.

### LEGAL CONCLUSIONS

1. All jurisdictional requirements of Education Code sections 44949 and 44955 were met. (Factual Findings 1-6.)

2. Respondent Gomez is a temporary teacher and therefore is not subject to this proceeding. The Accusation against her shall be dismissed. (Factual Findings 1-16.)

3. (A) The services identified in Resolution Nos. No.04-2009 and No.15-2009 are particular kinds of services that can be reduced or discontinued pursuant to Education Code section 44955. The Board's decisions to reduce or discontinue the identified services were neither arbitrary nor capricious, and were a proper exercise of its discretion. Services will not be reduced below mandated levels. Cause for the reduction or discontinuation of those particular services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949. (Factual Findings 1-19.)

(B) The District's Assistant Superintendent position is a particular kind of service within the meaning of Education Code section 44955. In authorizing the reduction or elimination of a district's certificated staff, section 44955 makes no distinction between administrators and teachers, and nothing in the statutory language suggests that the Legislature intended that those who have administrative positions as well as a teaching certificate are not to be counted as part of the staff subject to layoff. (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831, 843.) Based on this reasoning, appellate courts have readily subjected administrators to the layoff process of the Education Code. (See, e.g., *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648; and *Santa Clara Federation of Teachers v. Governing Board, supra*, 116 Cal.App.3d 831, 843.) Respondent cited no statute or decision to the contrary. In this case, Respondent Frazier holds both a teaching credential and an administrative credential; both are required to perform the position of the District's Assistant Superintendent. The fact that Respondent Frazier is required to, and holds, a teaching certificate to perform her job is evidence that her position is a particular kind of service that is subject to being reduced or discontinued for purposes of Education Code section 44955. (Factual Findings 1-17.)

4. (A) Respondent Frazier contends that she is not subject to being laid off because she has a contract with the District for her services through June of 2010. The District contends that Respondent Frazier is subject to being laid off because she is a certificated employee of the District. Neither contention is correct.

(B) Generally, an administrator attains no tenure in her administrative position and serves at the pleasure of the governing board. An administrator therefore has no right to a hearing regarding their reassignment from such an administrative position. (*Hentschke v. Sink* (1973) 34 Cal.App.3d 19, 22.) Specifically, when an administrator has been employed in a position for which she does not earn or possess permanent or probationary status, she is not entitled to the rights afforded by Education Code sections 44949 and 44955. (*Neumarkel v. Allard* (1985) 163 Cal.App.3d 457, 466.) In *Neumarkel*, the administrators in question were employees of a county office of education, for which different provisions of the Education Code applied for purposes of calculating their seniority. In that case, because the administrators accrued no seniority, and therefore were neither permanent nor probationary certificated employees within the meaning of Education Code sections 44949 and 44955, they were not entitled to the protections of those statutes.

(C) In this case, Respondent Frazier, although certificated, has never taught in the District and was never a site administrator. Pursuant to Education Code section 44956.5, she accrued no seniority with the District and therefore she cannot be classified as either a permanent or probationary certificated employee of the District. Respondent Frazier is therefore not entitled to the protections afforded by Education Code sections 44949 and 44955. The Board is free to remove her from her position at its pleasure without providing her with a hearing. The fact that she has a contract of employment through June of 2010 is not relevant for purposes of whether she is subject to the layoff process set forth in Education Code sections 44949 and 44955. She is in the same position as Respondent Gomez. The Accusation against her should be dismissed. (Factual Findings 1-17.)

5. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. (Factual Findings 1-19.)

6. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-20.)

### ORDER

1. The Accusations against Respondents Vanessa Gomez and Katherine Frazier are dismissed.

2. The Accusations are sustained against the remaining Respondents listed in Attachment 1. Notice shall be given to those Respondents that their services will not be required for the 2009/2010 school year, and such notice shall be given in inverse order of seniority.

Dated: May 5, 2009

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ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings

**ATTACHMENT 1: List of Respondents**  
**LA HABRA CITY SCHOOL DISTRICT**

<b>Employee Name</b>	
Allen, Cheryl	
Arnold, Michele	
Birakos, Oralia	
Borsari, Julie	
Castano, Traci	
Cazares, Guadalupe	
Frazier, Kathy	
Gasparella, Lynn	
Gieldon, Deborah	
Gomez, Vanessa	
Gould, Ross	
Guerrero, Rachel	
Hoyt, Patricia	
Jett, Devon	
Koehler, Jessica	
Koppany, Csilla	
Lyon, Rochelle	
McCully, Jennifer	
Rashford, Julie	
Renius, Tanya	
Rich, Kristin	
Shaw, Carole	
Yoo, Sung Hae	