

BEFORE THE
GOVERNING BOARD
PASO ROBLES JOINT UNIFIED SCHOOL DISTRICT
COUNTY OF SAN LUIS OBISPO
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Dolores Alexander and Other
Certificated Employees of the
Paso Robles Joint Unified School District,

Respondents.

Case No. L2009031367

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 29, 2009, in Paso Robles, California.

Roman J. Muñoz, Attorney at Law, represented Greig Welch (Welch), Assistant Superintendent, Personnel, Paso Robles Unified School District (District).

John F. Sachs, Attorney at Law, represented Respondents Dolores Alexander, Audra Carr, Jennifer Clayton, Terry Del Giorgio, Cheryl Elisarraraz, Monica Pafumi, Rose Patch, Kevin Pisor, Allison Root, John Semenick, Carrie Spiegel, and Sharon Wookey (Respondents).

Emma Marziello represented herself, and is included in general references to "Respondents."

The District has decided to reduce or discontinue certain educational services and has given Respondents and other certificated employees of the District 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 2008-2009 school year.

At the hearing, the District withdrew the Accusation with respect to Respondent Jennifer Clayton.

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

FACTUAL FINDINGS

1. Welch filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. a. On March 3, 2009, the Governing Board of the District (Governing Board) adopted Resolution number 09-19, reducing or discontinuing the following services for the 2009-2010 school year:

<u>Service</u>	<u>FTE¹ Equivalent Positions</u>
Elementary K-5	26.20
Secondary 6-12	<u>15.57</u>
Total	41.77

b. On April 28, 2009, the Governing Board adopted Resolution number 09-25, further describing services reduced or discontinued for the 2009-2010 school year in Resolution number 09-19, as follows:

<u>Service</u>	<u>FTE Equivalent Positions</u>
Grades K-5 Teaching Services	26.20
Psychology Services	1.0
Grades K-8 Music Services	1.0
Grades 6-8 Library Services	1.0
Grades 6-12 Teacher Center Services	2.5
Grades 6-12 Student Resource Center	2.0
Grades 9-10 Learning Academy Services	1.0
Grades 6-12 AB 1802 Counseling Services	2.5
Grades 6-12 Math Teaching Services	2.0
Grades 6-12 English Teaching Services	2.0
Director of Adult Education – Counseling Services	1.0
Grades 6-12 Independent Study Counseling Services	0.25
Grades 6-12 Continuation Counseling Services	0.25
Grades 6-12 Community Day School Counseling Services	<u>0.25</u>
Total	42.95

4. Before March 15, 2009, the District provided notice to Respondents that their services will not be required for the 2009-2010 school year due to the reduction of particular kinds of services.

¹ Full-time equivalent position.

5. Welch notified the Governing Board that he had recommended that notice be provided to Respondents that their services will not be required for the 2009-2010 school year due to the reduction of particular kinds of services.

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

7. On or about March 27, 2009, the District issued the Accusation, and served it on Respondents.

8. Respondents thereafter filed timely notices of defense.

9. All prehearing jurisdictional requirements have been met.

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 44955.²

11. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of anticipated declines in State funding. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

12. The reduction or discontinuance of services set forth in factual finding number 3, in the context of the significant anticipated decline in revenue, 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. On March 3, 2009, the Governing Board adopted Resolution No. A-0809-14, setting forth the criteria to determine seniority among employees who first rendered paid service in a probationary position on the same date (tie-breaking criteria). The criteria are reasonable as they relate to the skills and qualifications of certificated employees. The District applied the criteria to determine the order of termination, and Respondents did not challenge the application of the criteria.

14. Resolution 09-19 contained the following pertinent language: “[B]E IT FURTHER RESOLVED that it will be necessary to retain the services of certificated employees, regardless of seniority, who possess qualifications and competencies needed in projected educational programs for the 2009-2010 school year which are not possessed by more senior employees thereby subject to layoff”

² All further references are to the Education Code.

15. The District has a significant number of students who are not proficient in the English language, and who require instruction that takes into accounts their needs. The District retained several employees who possess certificates that allow them to teach these English learners. Respondent Allison Root, who has a seniority date of August 25, 2004, and who holds a professional clear multiple subject credential and a Crosscultural, Language, and Academic Development (CLAD) certificate, is senior to a retained employee, Edwin Martinez (August 19, 2005). Respondent Sharon Wookey, with a seniority date of August 19, 2005, is four days more senior than Maria Cedillo. However, unlike the two Respondents, the retained employees are currently teaching English learners and, in addition to this experience, have special training as evidenced by their respective credentials, a Bilingual Crosscultural, Language, and Academic Development (BCLAD) certificate, and an English Language Learner authorization, that enable them to meet the District's special need for bilingual education instruction.

16. Respondent Emma Marziello contests her October 8, 2007 seniority date. She has worked for the District since 1996, and continuously since 2000. However, the only employment contract that describes her as a probationary employee was signed October 31, 2008, and the District has given her the allowed credit as a probationary employee for working as a temporary for the preceding year. Therefore, the District has correctly calculated her seniority date.

17. No certificated employee junior to any Respondent was retained to render a service which any of Respondents 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.

2. The services listed in factual finding number 3 are 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 17.

4. Cause exists to terminate the services of Respondents Dolores Alexander, Audra Carr, Terry Del Giorgio, Cheryl Elisarraraz, Emma Marziello, Monica Pafumi, Rose Patch, Kevin Pisor, Allison Root, John Semenick, Carrie Spiegel, and Sharon Wookey, by reason of factual finding numbers 1 through 17 and legal conclusion numbers 1 through 3.

ORDER

The Accusation is sustained and the District may notify Respondents Dolores Alexander, Audra Carr, Terry Del Giorgio, Cheryl Elisarraraz, Emma Marziello, Monica Pafumi, Rose Patch, Kevin Pisor, Allison Root, John Semenick, Carrie Spiegel, and Sharon Wookey that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings