

BEFORE THE
GOVERNING BOARD OF
THE ROSEMEAD SCHOOL DISTRICT

In the Matter of the Accusation Against:

**Certain Certificated Employees of the
Rosemead School District,**

Respondent.

OAH No. L2010010958

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 21, 2010, in Rosemead, California.

Guy A. Bryant, Attorney at Law, represented Rosemead School District (District).

Richard J. Schwab, Attorney at Law, represented Anne Agnant (Agnant), Albert Aguilar, Estela Gonzalez, Haelim Han, Jason Huett (Huett), Scott Levin, Respect Ly (Ly), Dana Martin, Evonne Medrano, Deborah Pettus, Bernadette Polich, Conner Ryan, Terri Totten, Elsa Tsan (Tsan), and Sonia Valencia (respondents), who were present at the hearing.

The evidence was received by stipulation, testimony and documents. The record was closed and the matter was submitted for decision on April 21, 2010.

FACTUAL FINDINGS

1. Amy Enomoto-Perez is the Superintendent of the District. Armida Carreon is the Senior Director of Human Resources and Operations for the District. Their actions were taken in their official capacity. Ms. Enomoto-Perez made and filed the Accusation.
2. Respondents in this proceeding are certificated employees of the District.
3. Between March 9, 2010 and March 12, 2010, the District provided written notice to respondents pursuant to Education Code¹ sections 44949 and 44955 that their services would not be required for the 2010-2011 school year. Each written notice set forth the reasons for the District's decision and noted that 15 full time equivalent (FTE) positions would be reduced or discontinued.

¹ All statutory citations are to the Education Code, unless indicated otherwise.

4. On March 30, 2010, the District filed and thereafter served the Accusation and related documents on respondents. Each respondent appearing in this matter filed a timely Notice of Defense requesting a hearing for a determination of whether cause exists for not reemploying them for the 2010-2011 school year. All prehearing jurisdictional requirements were met.

5. On March 4, 2010, the Board of Trustees (Board) of the District adopted Personnel Resolution No. 09-10 #2 (Resolution) reducing or discontinuing the following particular kinds of services (PKS) for the 2010-2011 school year:

<u>Services</u>	<u>FTE</u>
Elementary Instruction at Grades K-6	
Second grade Teacher	1.00
Fourth grade Teacher	1.00
Fifth grade Teachers	2.00
Sixth grade Teachers	3.00
Itinerant Teacher-Assigned to Remediation with Language Arts	1.00
English Language Development Teacher	1.00
Total Reduction of Elementary Instruction and Support Programs 9	
Middle School Instruction at Grades 7-8	
Social Science/U.S. History Teacher	1.00
CORE-Language Arts/Social Science Teacher	1.00
Itinerant Teachers-Assigned to Remediation with Language Arts/Math	2.00
Itinerant Teacher-Assigned to English Language Development/Remediation with Language Arts/Math	1.00
Counselor	1.00
Total Reduction of Middle School Instruction and Support Programs 6	

Total Reduction of District Programs and Services 15

6. The Resolution exempted from layoff the services of certificated employees, regardless of seniority, who possess credentials which authorize services as Special Education Teachers, Speech and Language Specialists, Math Teachers and Science Teachers.

7. The Resolution established tie-breaker criteria for determining the relative seniority of certified employees with the same date of first paid service. The criteria, which are set forth in Exhibit A to the Resolution, provide that the order of layoff shall be determined according to the following criteria:

1. Greatest number of years of teaching with a credential issued with in the United States.
2. Breadth of credential authorization.
3. Advanced degrees in assignment or credential-related subject areas.
4. Greatest number of post-BA accredited college unites on file with the District in assignment or credential-related subject areas.
5. Date and time employee signed first employment contract.

8. The services set forth in Factual Finding 5 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

9. The Board took action to reduce the services set forth in Factual Finding 5 because of uncertainty surrounding future State funding. The decision to reduce services was not related to the capabilities and dedication of the individuals whose services are proposed to be reduced or eliminated. 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.

10. Ms.Carreon was responsible for implementation of the technical aspects of Board's Resolution. She reviewed information in multiple personnel files as well as data from the California Commission on Teacher Credentialing to compile a tentative seniority list containing seniority dates, current assignments, and credential and certifications. She distributed the list to certificated employees within the District for them to verify, update or correct pertinent information.

11. At hearing, respondent Ly disputed her seniority date of September 4, 2007. She contended that she was entitled to a hire date of September 1, 2006 based on her assignment as a long-term substitute teacher for at least 75% of the school days during the 2006/2007 school year. Under section 44918, long-term substitute teachers are

entitled to “tack on” to their seniority if they worked at least 75% of the school days of the preceding school year. Ly established she worked 135 days during the 2006/2007 school year. The District stipulated that Ly is entitled to a seniority date of September 1, 2006, and that the seniority list would be revised accordingly.

12. There was no challenge to the order of relative seniority on the seniority list.

13. The District properly considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of layoff notices to be delivered to employees by March 15, 2010.

14. At the hearing, the District rescinded the layoff notices as to respondents Agnant, Huett and Tsan.

LEGAL CONCLUSIONS

1. Section 44949 provides in pertinent part as follows:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefore.

[¶] . . . [¶]

2. Section 44955 provides in pertinent part as follows:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year the average daily attendance in all of the schools district for the first six months in which school is in session shall have declined . . . , whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of

the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certified and competent to render.

[¶] . . . [¶]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis on needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish . . . a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group

(c) . . . [S]ervices of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. . . .

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrated a specific need for personnel to teach a specific course or course of study . . . and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

[¶] . . . [¶]

3. All notice and jurisdictional requirements set forth in sections 44949 and 44955 were met.

4. The services set forth in Factual Finding 5 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

5. A school 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 service' 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* 91976) 64 Cal.app.3d 167, 178-179.)

6. Cause exists pursuant to sections 44949 and 44945 to reduce the number of certificated employees of the District due to the reduction or discontinuation of the particular kinds of services set forth in Factual Finding 5. The District properly identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

7. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

ORDER

The District may give notice to respondents Albert Aguilar, Estela Gonzalez, Haelim Han, Scott Levin, Dana Martin, Evonne Medrano, Debra Pettus, Bernadette Polich, Conner Ryan, Terri Totten, and Sonia Valencia that their services will not be required for the 2010-2011 school year.

Dated: May 6, 2010

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings