

BEFORE THE
GOVERNING BOARD OF THE
WHITTIER UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

SAMIYA HAI-WAHEED,
DIANA SALAZAR,
SARAH R. JENSEN, and
LINNEA HENDERSHOT,

Respondents.

OAH No. 2010020884

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 27, 2010, at the Whittier Union High School District in Whittier, California

The Law Offices Eric Bathen, by Eric Bathen, Attorney at Law, represented the School District.

Reich, Adell & Cvitan, by Kent Morizawa, Attorney at Law, represented certificated employees Samiya Hai-Waheed, Diana Salazar, Sarah R. Jensen, and Linnea Hendershot (collectively, Respondents). All Respondents were present at the hearing except for Sarah R. Jensen.

Prior to the hearing, the School District rescinded the layoff notices of certificated employees Angela Castellanos, Damaris Flores, Veronica Medina, and John Yessian.

Evidence was received by stipulation, documents, and testimony. The matter was submitted on April 27, 2010.

FACTUAL FINDINGS

1. Sandra Thorstenson is the Superintendent of the Whittier Union High School District (District). Martin J. Plourde, Assistant Superintendent, Personnel Services, and his staff were responsible for implementation of the technical aspects of the layoff.

2. Respondents in this proceeding are certificated employees of the District.
3. On or before March 15, 2010, the District served on each Respondent a written notice that it had been recommended that notice be given to Respondents pursuant to Education Code 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 recommendation.
4. Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.
5. The Superintendent made and filed Accusations against each of the Respondents. The Accusations with required accompanying documents were timely served on Respondents. Neither party contested that all prehearing jurisdictional requirements have been met.
6. On March 9, 2010, the Governing Board of the District adopted a Resolution that proposed a layoff of 9.0 full-time equivalent (FTE) certificated employees. Specifically, the Board Resolution provided for the reduction or elimination of the following particular kinds of services:

<u>Service</u>	<u>FTE Reduction</u>
Home Economics	1.0
Business Education	1.0
Counseling	2.0
Spanish	2.0
Math	1.0
Physical Education	1.0
English	<u>1.0</u>
 TOTAL	 9.0

7. On March 9, 2010, the Governing Board approved tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The criteria provide that the order of termination shall be based on the needs of the District and its students in accordance with credentials and authorizations, assignments, years working as a contracted teacher in the District, and advanced college degrees.
8. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments and locations, and credentials and authorizations. Certificated employees, including Respondents, were given the opportunity to verify their seniority date and credential information, which Respondents did.
9. The District used the seniority list to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced.

The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees.

10. The District used the information from the District's seniority list and personnel records to apply the tie-breaker criteria adopted in the Resolution.

11. The District properly considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered to its employees and in rescinding some of the notices.

12. Respondent Sarah R. Jensen and Victor Gomez (not noticed for layoff) are math teachers who both have a seniority date of August 28, 2009. The relative seniority between these two employees was determined by tie-breaker criterion number 1, which is "Fully Credentialed (Preliminary or Clear Credential) in the subject area of the class being taught by March 1, 2010." Respondent Jensen holds an internship single subject credential in foundational math. Gomez holds a preliminary clear credential in foundational math.¹ The District properly identified Respondent Jensen as the employee to receive the layoff notice corresponding to the 1.0 FTE reduction in math.

13. Respondent Linnea Hendershot and Carla Coyle (not noticed for layoff) are home economics teachers who both have a seniority date of August 31, 2005. The District applied the tie-breaker criteria to determine the relative seniority between these two employees. Both employees remained tied until criterion number 6, which is "Possession of multiple high school credentials or supplemental authorizations." Respondent Hendershot has a clear single subject credential. Coyle has a clear single subject credential and a supplemental authorization in biological science. In addition, under criterion number 7, which is "Possession of a Master's Degree or Doctorate," Coyle has a Ph.D. The District properly identified Respondent Hendershot as the employee to receive the layoff notice corresponding to the 1.0 FTE reduction in home economics.

14. (A) Respondent Diana Salazar is a counselor with a seniority date of August 18, 2008. She holds a Ryan Clear Pupil Personnel Services credential in school counseling and child welfare & attendance. In general, the duties of a counselor include assisting students with matters pertaining to class schedules, academic difficulties, graduation requirements, and parent-teacher conferences.

(B) Respondent Salazar contends that her layoff notice should be rescinded. A counselor position will be open in the next school year due to the recently announced

¹ Since Gomez received his preliminary clear credential in January 2010, it is not shown on the seniority list (Exhibit 4), which was approved by the Board in December 2009.

retirement of Michael Poizner, a counselor, at the end of the current school year. Salazar is credentialed to perform the duties of that position. The District, however, has assigned another counselor, Edgar Ulloa (not noticed for layoff), to Poizner's position. Ulloa has a seniority date of August 27, 2004. He holds a Ryan Clear Pupil Personnel Services credential in school counseling and child welfare & attendance, a clear single subject credential in social science, a certificate of eligibility in administrative services, and a BCLAD in spanish.

(C) Currently, Ulloa is a counselor assigned to the position of dean at Pioneer High School. In the District, each school site has a set number of counselors. A school has the option to assign the counselor handling student discipline to the position of dean. Ulloa has been a dean/counselor for the District since 2008. Ulloa's transfer to the counselor position will result in an opening of a dean position in the District for the next school year. Respondent Salazar is not credentialed to perform the duties of a dean because, starting in the next school year, the District is requiring that a counselor serving as a dean must also have an administrative services credential. Salazar currently does not hold an administrative services credential.

15. Samiya Hai-Waheed is a business teacher with a seniority date of August 30, 2006, which she does not dispute. She holds a clear single subject credential in business. She is the last hired business teacher in the District. She is properly identified as the employee subject to layoff corresponding to the 1.0 FTE reduction in business education.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The services identified in the Resolution are particular kinds of services that could be reduced or discontinued under Education Code 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 Education Code section 44949.

3. 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 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.)

4. 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 directed

be reduced or discontinued.

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

6. 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.) Under Education Code section 44955, subdivision (d)(1), 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.)

7. The District properly identified Respondent Salazar as an employee subject to layoff. A school district generally has wide discretion to make assignments and reassignments. (*Thompson v. Modesto City High School District* (1977) 19 Cal.3d 620, 623.) Under Education Code section 44955, subdivision (c), a school district is required to "make assignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render." In this case, Respondent Salazar and employee Edgar Ulloa are authorized by their credentials to render services as a counselor for the District. Ulloa, however, has four more years of seniority with the District than Respondent Salazar. As such, and relative to Respondent Salazar, Ulloa has the seniority and qualifications entitling him to the counselor position that will be open in the next school year due to retirement.

ORDER

Notice may be given to Respondents Samiya Hai-Waheed, Diana Salazar, Sarah R. Jensen, and Linnea Hendershot, that their services will not be required for the 2010-2011 school year because of the reduction and discontinuance of particular kinds of services.

Dated: May ____, 2010

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings