

BEFORE THE GOVERNING BOARD
OF THE
EAST SIDE UNION HIGH SCHOOL DISTRICT

In the Matter of the Layoff of:

CERTIFICATED EMPLOYEES OF THE
EAST SIDE UNION HIGH SCHOOL
DISTRICT

OAH No. 2010030281

Respondents.

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in San Jose, California, on April 30, 2010.

Patricia R. McKernan, Rehon & Roberts, represented Dan Moser, Interim Superintendent, East Side Union High School District.

Christopher Schumb, Attorney at Law, represented the respondents, who are listed in Attachment A.

The matter was submitted on April 30, 2010.

FACTUAL FINDINGS

1. Dan Moser, Interim Superintendent, East Side Union High School District (District), issued the accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. The parties stipulated that all of the jurisdictional requirements of Education Code sections 44949 and 44955 have been met in this proceeding.
4. On March 6, 2010, the Governing Board of the District (Board) adopted Resolution No. 2009/2010-37, entitled "Reduction of a Particular Kind of Service" (the PKS resolution), in which it determined that it shall be necessary to reduce the following particular kinds of service no later than the beginning of the 2010 – 2011 school year.

<u>Kind of Service</u>	<u>FTE¹ Positions</u>
Activity Director	6.6
Counselor	36.0
Psychologist	10.0
MST Coordinator	0.2
Subject Area Coordinator – Art	0.2
Subject Area Coordinator – Business	0.2
Subject Area Coordinator – Counseling	0.2
Subject Area Coordinator – Health/Physical Education	0.2
Subject Area Coordinator – Library Services	0.2
Subject Area Coordinator – Science	0.2
Subject Area Coordinator – Social Studies	0.2
Social Worker	4.0
Math Teacher	2.2
Biology Teacher	2.4
Social Science Teacher	1.4
English Teacher	3.2
Total FTEs	73.2

The Board further determined that it will be necessary to terminate at the end of the 2009 – 2010 school year the employment of certificated employees of the District in a quantity and kind equal to the FTEs specified above.

The Board further adopted tie-breaking criteria to distinguish among certificated employees who first rendered paid probationary service to the District on the same date. The tie-breaking criteria provided points for possession of credentials as follows:

- 4 points for each professional clear credential
- 3 points for each preliminary credential
- 2 points for intern credential
- 1 point for provisional internship permit or short-term staff permit
- 1 point for Bilingual Cross-Cultural Language and Development certificate or equivalent

5. The services set forth in the PKS resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44945. None of the reductions is of a mandated service.

¹ Full-Time Equivalent.

6. Each respondent was given written notice of his/her employment status, seniority date and credentials by posting and circulating the District certificated seniority list. Each respondent was asked to verify his/her credentials and hire date.

7. The District created a list of employees proposed to be laid off, “bumped,” or reassigned, taking into account the tie-breaking criteria, positively-assured attrition (including resignations, retirements, and deaths), leaves of absence and extensions of leaves of absence, and non-reelections of temporary employees.

8. The District has withdrawn the accusations served on the following respondents:

Sandra Albini
Laureen Andona
Leslie Bannerman
Robert Bernard
Joshua Berry
Jeffrey Bettencourt
Thomas Bingham (0.4 FTE)
John Braun
Norman Brown
Maximo T. Bustos
Imani Butler
Barbara Castleton
Jinsue Choi
Kimberly Conroy-Tuohy
Michael Cross
John Daniels
Pamela Darin
Adam DeLaRosa
Gwendolyn Dixon
Kira Dixon
Benjamin Ellison (0.2 FTE)
John Estrela
Epifanie Fenton
Michael Ghali
Dominic Giorgi
Jeremy Goebel
Michael Gomez
Julie Gonzalez
Heather Haas
Linda Han
Krystal Hart
Van Huang
Jonathan Hubbs

Raymond Iniguez
Diana Jarmann
Eun Kim
Theodora Koumoustsakis
Peggy Lee
Griselda Lopez
Lori Martinson
Jason Mcham
Michelle Melby
Osvaldo Mendoza Gonzalez
Bobbie Miller
Paul Miller
Virginia Monge
Winnie Nguyen
Thanh-Lam Nguyen
Maria Orban
Ana Parra
Irene Perez
Lauran Pratt
Nieves Quiroga
Stephanie Rabelo
Ian Rowe
Mirra Shernock
Hortencia Simbron
Christopher Smith
John Sphar
James Staten
Dennis Tacci
Lesley Tatum
Joe Te
Janice Traje
Lynda Tran
Tsfamicael Ueldegiorghis
Ryan Vera
Jose Victorino
Paulette Waters
Lawrence Yee
Edward Youngblood
Allana Zacaria
Ting Zhu

9. The District acknowledged and has corrected its records to reflect that Myla Perkins has a first date of paid service of June 18, 2008.

10. No permanent or probationary certificated employee with less seniority than a respondent is being retained to provide a service for which a respondent is credentialed and competent to render.

11. The reduction or discontinuation of services is related to the welfare of the district and of its pupils.

LEGAL CONCLUSIONS

Because of the reduction or elimination of particular kinds of services set forth in Factual Finding 4, cause exists pursuant to Education Code section 44955 to give notice to the remaining respondents, i.e. those whose accusations have not been rescinded, that their services will not be required for the 2010 – 2011 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given to the remaining respondents that their services will not be required for the 2010 – 2011 school year.

DATED: May 5, 2010

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A: LIST OF RESPONDENTS

Juan Aguila - MST
Sandra Albini - English
Kira Allen - English
Laureen Andona - Physical Education
Joyce Armstrong - Counselor
Maria Baeza - Spanish
Thomas Bingham - Social Science
Troy Brown - Counselor
Rosemary Bulaich - Counselor
Rachel Bull - Social Worker
Marie-Chris Busque - Social Worker
Tamra Chavez - MST
Amy Choy - Counselor
Leah Cohen - MST
Miguel Cortez - Physical Education
Pamela Darin - Counselor
Jeanine Davis-Guarente - MST
Gwendolyn Dixon - English
Victoria Duran - Activity Director
Benjamin Ellison - Biological Science
Martha Espinoza - Biological Science
Martha Esquivel - Counselor
Angela Estrella - Social Science
Ashlee Girardin - Biological Science
Cristelda Guillen - Spanish
Juliet Hamak - Biological Science
Jennifer Higareda - English
Diana Jarmann - Biological Science
Jennifer Klassen - Social Worker
Jason Kubo - Counselor
Kathy Lair - English
Sue Ann Lee - Counselor
Binh Lieu - Counselor
Yesenia Marquez - Counselor
Lori Martinson - Counselor
Michelle Melby - Biological Science
Virginia Monge - Spanish
Angie Nguyen - Biological Science
Winnie Nguyen - Vietnamese
Myla Perkins - Advisor
Nieves Quiroga - Spanish
Sylvia Rabago - Counselor
Luz Griselda Ramirez - Spanish
Ana Reid - Spanish
Ashley Riley - Counselor
Natalie Rodriguez - Counselor
Joel Romo-Gonzalez - Counselor
Ian Rowe - Spanish
Mary Servin - Counselor
Mirra Shernock - English
Jill Shoopman - Counselor
Hortencia Simbron - Spanish
Laura Solof - Counselor
Tesfamicael Ueldeghiorghis - Spanish
William Uken - Biological Science
Jose Victorino - Spanish
Charity Wooden - Physical Education

