

BEFORE THE
GOVERNING BOARD OF THE
AZUZA UNIFIED SCHOOL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

In the Matter of the Layoffs of:

CINDY AGUILAR, et al.,

Respondents.

OAH No. 2010030326

PROPOSED DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, State of California, on April 14, 2010, in Azusa, California.

Sharon J. Ormond and Jabari A. Willis, Attorneys at Law, represented the Azusa Unified School District (District). Lawrence B. Trygstad, Attorney at Law, represented Cindy Aguilar, Lesley Allizadeh, Maria Arias, Maria Beaton, Meredith Beyer, Lorenia Cabello, Laura Camarena, Rena Esther Campos-Ball, Angela Cory, Stacy Cuberly, Francisco Diaz, Patricia Jimenez, Andrew Meyers, Maria Michel, Wendy Moutray, Erika Olsen, Maria Sims, Rebecca Smith, Laura Solorzano, and Tracy Spencer (collectively, Respondents).¹

The District decided to reduce or discontinue certain educational services and gave Respondents and other certificated District employees notice of its intent not to reemploy them for the 2010-2011 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

Oral and documentary evidence was received. The matter was submitted for decision on April 14, 2010.

FACTUAL FINDINGS

1. The District operates 18 schools for 11,000 students. Cynthia Cervantes McGuire is the Superintendent of the District. She filed the Accusation in her official capacity. Corey James, Assistant Superintendent, Human Resources, and his staff were responsible for implementation of the technical aspects of the layoff.

2. Respondents are certificated employees of the District.

¹ All Respondents except Tracy Spencer were present at the hearing.

3. On March 9, 2009, the Superintendent recommended to the Governing Board of the District (Governing Board) that it reduce or discontinue particular kinds of services for the 2010-2011 school year and, for that reason, that it give notice to certain certificated employees that their services will not be required for the 2010-2011 school year. On the same date, the Governing Board adopted Resolution No. 09-10:50 to reduce or discontinue the following services:

PARTICULAR KINDS OF SERVICES	NO. OF FULL-TIME EQUIVALENT (FTE) POSITIONS
K-5 Classroom Teaching Services	29
High School English Teaching Services	1
High School Math Teaching Services	2
High School Science Teaching Services	1
High School Social Science Teaching Services	1
High School Business Teaching Services	1
High School Art Teaching Services	1
High School Home Economics Teaching Services	1
At-Risk/1802 Counseling Services	3
Literacy Coach Teaching Services	2
K-5 Intervention Teaching Services	7.8
Elementary Principal Services	1
Adult Education Vice Principal Services	1
<u>Total FTE Reduction</u>	<hr/> 51.8

4. Pursuant to this resolution, on or before March 15, 2010, the District served preliminary layoff notices, via personal service, to 22 certificated employees currently serving as K-12 teachers or management, including Respondents, that the District's Superintendent had recommended to the Governing Board that the District give notice to these employees that their services will not be required in the 2010-2011 school year. Anticipating that most of those receiving the notices would request a hearing, the District also served upon each of the specified employees an Accusation and related materials, including the Governing Board's resolution adopting the Superintendent's recommendation.

5. The Preliminary Layoff Notice/Accusation packets included a Request for Hearing/Notice of Defense form that, if returned to the District by March 29, 2010, would constitute a request for hearing. On or before March 29, 2010, twenty individuals returned this form. Counsel for Respondents also timely submitted a Request for Hearing and Notice of Defense pursuant to Government Code section 11506.

6. All prehearing jurisdictional requirements have been met.

7. 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 (the Code) section 44955.²

8. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of the State's proposed reduction of funding for education. 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.

9. The reduction or discontinuance of services set forth in factual finding number 3 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.

10. On February 2, 2010, the Governing Board adopted Resolution 09-10:40 which includes criteria for determining the order of seniority of those employees with the same first date of paid service (tie-breaking criteria). These tie-breaking criteria included: credentialing; authorization to teach English Language Learners; experience within the District; and number of higher education credits/degrees. The District applied these criteria to determine the order of seniority among employees who had the same seniority date.

11. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments, and credentials. The District used the seniority list to develop a proposed lay-off list of the least senior employees currently assigned to the various services being reduced. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by

² All further statutory references are to the Education Code.

the known vacancies and determined the impact on incumbent staff in inverse order of seniority. The District then determined whether these employees held credentials in another area and were entitled to “bump” other, more junior employees.

12a. Respondent Rena Esther Campos-Ball (Campos-Ball) holds a clear multiple subject credential³ and a supplementary/subject matter subject and authorization⁴ to teach introductory social science. She is teaching sixth grade core classes, in which .4 is devoted to language arts, .4 is devoted to social science, and .2 is devoted to a study skills class. Victoria Velasquez (Velasquez) is currently employed by the District as a literacy coach. Her position will be discontinued at the end of this school year. The District determined that Velasquez, who is more senior to Campos-Ball, may bump into Campos-Ball’s position because Velasquez holds a clear multiple subject credential and has taught in a District K-5 classroom setting for one complete year out of the past 10 years. Campos-Ball maintains, in turn, that she has the credentials and competence to “bump” less senior employees who are being retained by the District to teach middle school history classes under single subject social science credentials.

12b. The District has assigned August 28, 2003, as Campos-Ball’s first date of paid service in a probationary position. Campos-Ball began teaching for the District in October 2001. She served as a long-term substitute or contract teacher during the 2001-2002 school year. In addition to her other teaching duties, between February 4 and June 21, 2002, she was assigned to teach one unit of social science. In the 2002-2003 school year, she was employed as a substitute teacher by the District. Since 2005, Campos-Ball has taught core subjects to fifth and sixth graders.

12c. The Governing Board’s Resolution No. 09-10:50 provides that, in order for Campos-Ball to be eligible for reassignment to a position held by an employee with less seniority, she must be both credentialed and competent to render the services currently being performed by the junior employee. “For purposes of implementing this Resolution, a more senior employee is defined as competent for reassignment into a position currently held by a more junior employee, if he or she: (a) currently possesses a clear or preliminary credential which authorizes instruction in each subject(s) or grade level to which the employee will be assigned at the beginning of the 2010-2011 school year; (b) has previously taught the subject(s) taught by the junior employee, under the credential(s) required for that assignment, in the District for one complete school year within the last 10 school years; . . . In no event

³ A clear multiple subject credential authorizes the holder, among other things, to teach core classes consisting of two or more subjects to the same group of students in grades five through eight, and to teach any of the core subjects she is teaching to a single group of students in the same grade level as the core for less than fifty percent of her work day.

⁴ This credential authorizes the holder to teach only the subject matter content typically included for the introductory subject or subjects listed, in curriculum guidelines and textbooks approved for study in grades 9 and below, to students in preschool, kindergarten, grades 1-12, or in classes organized primarily for adults.

may a more senior employee displace a more junior employee unless the more senior employee is both competent and credentialed for the entire assignment of the more junior employee.” (Exhibit 1.)

12d. Campos-Ball did not teach in a District departmentalized history classroom for one complete school year within the last 10 school years, which is necessary under the District’s competency criteria to enable her right to bump any middle school history teachers with less seniority. Although Campos-Ball has been teaching .4 social science in a core sixth grade curriculum since 2005, she has used her multiple subject credential to authorize her to perform this assignment, not her supplementary authorization to teach introductory social science. Campos-Ball does not meet the District’s competency criterion requiring her to have teaching experience under her supplementary authorization for one complete school year within the last 10 school years, and thus, she is not “competent” to bump into a middle school history assignment requiring such credential. In contrast, Velasquez taught in a K-5 classroom setting using her multiple subject credential, which is the credential required to teach a core sixth grade classroom. Campos-Ball failed to establish that teaching a core sixth grade classroom is substantially different from teaching a K-5 self-contained classroom. Velasquez, therefore, has the teaching experience within her credential that is required for reassignment, and thus, she is competent to “bump” into Campos-Ball’s position.

13. The District did not retain any certificated employee junior to Respondents Cindy Aguilar, Lesley Allizadeh, Maria Arias, Maria Beaton, Meredith Beyer, Lorenia Cabello, Laura Camarena, Rena Esther Campos-Ball, Angela Cory, Stacy Cuberly, Francisco Diaz, Patricia Jimenez, Andrew Meyers, Maria Michel, Wendy Moutray, Erika Olsen, Maria Sims, Rebecca Smith, Laura Solorzano, and Tracy Spencer, to render a service which these Respondents are 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 6.
2. The services listed in factual finding number 3 are particular kinds of services that could be reduced or discontinued under section 44955.
3. Cause exists for the District to reduce or discontinue the particular kinds of services listed in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils within the meaning of section 44949, as set forth in factual finding numbers 1 through 9.
4. Cause exists to terminate the services of Respondents Cindy Aguilar, Lesley Allizadeh, Maria Arias, Maria Beaton, Meredith Beyer, Lorenia Cabello, Laura Camarena, Rena Esther Campos-Ball, Angela Cory, Stacy Cuberly, Francisco Diaz, Patricia Jimenez, Andrew Meyers, Maria Michel, Wendy Moutray, Erika Olsen, Maria Sims, Rebecca Smith,

Laura Solorzano, and Tracy Spencer for the 2010-2011 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 11 and 13, and legal conclusion numbers 1 through 3.

ORDER

The Accusation is sustained and the District may notify Respondents, Cindy Aguilar, Lesley Allizadeh, Maria Arias, Maria Beaton, Meredith Beyer, Lorenia Cabello, Laura Camarena, Rena Esther Campos-Ball, Angela Cory, Stacy Cuberly, Francisco Diaz, Patricia Jimenez, Andrew Meyers, Maria Michel, Wendy Moutray, Erika Olsen, Maria Sims, Rebecca Smith, Laura Solorzano, and Tracy Spencer that their services will not be needed during the 2010-2011 school year due to the reduction of particular kinds of services.

Dated: May ____, 2010

MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings