

BEFORE THE
GOVERNING BOARD
RIVERBANK UNIFIED SCHOOL DISTRICT
COUNTY OF STANISLAUS
STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of:

DAWN ALLEN, KAREN BAKER,
CHARLOTTE BOWDEN,
REBECCA CAMARENA,
ANGELA ESCAMILLA,
JON GIANELLI, JILL HODGE,
ISMAEL MERCADO,
CHRISTINE PEREZ, KIM THEIS,
ZACHARY WILKINS, and ISELA
WESLEY,

OAH No. 2010031643

Respondents.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, Office of Administrative Hearings, State of California, on April 23, 2010, in Riverbank, California.

Thomas E. Gauthier, Attorney at Law,¹ represented complainant, Ken Geisick, Ed.D., Superintendent, Riverbank Unified School District.

Ernest H. Tuttle, IV, Attorney at Law,² represented respondents who are identified in Appendix A.

The matter was submitted on April 23, 2010.

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FACTUAL FINDINGS

General Findings Concerning Statutory Requirements

1. Respondents are certificated district employees.
2. On March 9, 2010, the governing board of the district resolved to reduce or discontinue particular kinds of services. To that end, the board adopted Resolution 09-10-17 (Layoff Resolution). Within the meaning of Education Code section 44955,³ the services are “particular kinds of services” that can be reduced or discontinued. The decision to reduce or discontinue these services was not arbitrary or capricious, but constituted a proper exercise of discretion.
3. Not later than March 15, 2009, the superintendent of the district caused the governing board of the district and respondents to be notified in writing of his recommendation that preliminary notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that the district would not require their services for the 2010-2011 school year. The notice stated the reasons for the recommendation. In recommending reductions in certificated staff, the superintendent considered the qualified condition of the district’s budget. The recommendation was not related to respondents’ performance as certificated employees.
4. Superintendent Ken Geisick, Ed.D., testified that his recommendation to the board was based on a \$1.5 million budget shortfall for the 2010-2011 school year. The deficit was caused by a projected loss in state and federal funds. The shortfall would have been greater but for the board’s reduction of non-teaching staff, which saved approximately \$800,000.
5. A Preliminary Notice of Layoff was delivered to each respondent by personal delivery. Dr. Geisick hand delivered the preliminary notice of layoff package to each teacher at his or her place of employment.
6. The notice advised each respondent of the following: He/she had a right to a hearing. In order to obtain a hearing, he/she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by a specified date, which was a date that was not less than seven days after the notice of termination was served.⁴ And the failure to request a hearing would constitute a waiver of the right to a hearing.

³ All references to the Code are to the Education Code unless otherwise specified.

⁴ Employees must be given at least seven days in which to file a request for a hearing. Education Code section 44949, subdivision (b), provides that the final date for filing a request for a hearing “shall not be less than seven days after the date on which the notice is served upon the employee.”

7. Respondents timely filed written requests for a hearing to determine whether there was cause for not reemploying them for the ensuing year. An accusation was timely served on respondents. Respondents were given notice that, if they were going to request a hearing, they were required to file a Notice of Defense within five days after being served with the accusation.⁵ Respondents filed timely notices of defense. All prehearing jurisdictional requirements were met.

Positively Assured Attrition

8. The Board must allow for positively assured attrition such as voluntary resignations and retirements, which occur during the “computation period.” (*Santa Clara Federation of Teachers v. Governing Board of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831, 847.) The district must “consider evidence of positively assured attrition, involuntary retirements for the [upcoming] school year which were known to the board when it made its preliminary determination on 15 March ... and when it made its final determination on 15 May.” (*Lewin v. Bd. of Trustees of Pasadena Unified School Dist.* (1976) 62 Cal.App.3d 977, 983.)

9. The governing board considered all positively assured attrition which has occurred to date, that is, all deaths, resignations, retirements, and additional attrition which may occur before the start of the 2010/2011 school year in reducing these services and, but for the attrition already assured and the attrition anticipated, would have found it necessary to reduce additional kinds of service.

10. The district received notice of two teacher retirements prior to the start of the layoff computation period. Bruce Edwards taught biology, science, chemistry, and math at Riverbank High School. He retired in December 2009. Suzie DeWitz taught journalism and English at Riverbank High School. She retired on January 12, 2010. This attrition was included as part of the \$800,000 staff reduction.

11. In February 2010 the board determined to trim the district’s budget by reassigning site administrators to the classroom. Administrators who are reassigned to the classroom do not retain their original seniority date, but receive three years teaching seniority. Assistant Superintendent Ron Costa holds multiple subject and mathematics credentials. He was reassigned to teach secondary mathematics. Mr. Costa’s teaching seniority date was adjusted to February 2007. Mary Lopez was also moved to the classroom. She holds a multiple subject credential, single subject credentials in Spanish and Introduction to English, and an ELS authorization. Her seniority date will be adjusted to reflect three years teaching seniority.

⁵ Pursuant to Government Code section 11506, a party on whom an accusation is served must file a Notice of Defense in order to obtain a hearing. Education Code section 44949, subdivision (c)(1), provides that, in teacher termination cases, the Notice of Defense must be filed within five days after service of the accusation.

12. In March 2010, the board approved an incentive program to help veteran teachers considering retirement. The board offered a \$25,000 cash incentive paid over five years to any teacher who had been in the district for twenty years or more and agreed to retire. Eligible teachers were given five weeks to respond; the deadline to accept was April 14, 2010.

13. Mr. Costa resigned in April 2010. Ismael Mercado has a seniority date of October 2, 2007. He holds a single subject credential in physical education, an English Learner (EL) authorization, and a limited assignment mathematics credential. As a result of Ms. Costa's resignation, the district rescinded Mr. Mercado's layoff notice.

14. After the layoff computation period began, the district received three notices of retirement.

- a. Keith Rogers had a seniority date of September 1, 1976, and taught at Cardozo Middle School. He holds standard secondary and industrial arts credentials and a CLAD authorization. As a result of Mr. Rogers' retirement, the district rescinded the layoff notice to Jon Gianelli. Mr. Gianelli has a seniority date of August 16, 2006. He holds a single subject Social Science credential and teaches Social Science, World History, and Yearbook at Cardozo Middle School.
- b. Terry Scott was hired in 1975 and since the mid-1990's worked exclusively as the district's technology coordinator. The district will hire an "IT manager" to fill this position with a savings to the district. The position is posted but not filled.
- c. Sandra Mattos has a seniority date of August 28, 1986. She holds a multiple subject credential and a CLAD authorization. She teaches at California Avenue Elementary School. Dr. Geisick stated that the district intends to fill her position from those teachers who have received layoff notices.
- d. In addition to Mr. Mercado and Mr. Gianelli, the district stipulated at hearing that it will rescind layoff notices to Christine Perez and Kevin Bizzini.
 - 1) Ms. Perez has a seniority date of August 18, 2003. She holds a single subject English credential and teaches at Riverbank High School.
 - 2) Mr. Bizzini has a seniority date of August 12, 2004. He holds a multiple subject credential and EL authorization. He teaches at Rio Altura Elementary. Mr. Bizzini's layoff is being rescinded by right of promotion. In April 2010, the board appointed him to an administrative position. He completed his administrative course work in February 2010. He is in the process of filing for an administrative credential, which he could not apply for until he had a job offer.

Services the District Intends to Reduce or Discontinue

15. The governing board of the district determined, in the Layoff Resolution, that because particular kinds of services were to be reduced or eliminated, it was necessary to decrease the number of permanent employees in the district by 13.30 full-time equivalents (FTE). The particular kinds of services the governing board of the district resolved to reduce or discontinue are:

<u>Services</u>	<u>FTE Positions</u>
Elementary Teacher Positions	9.9 FTE
English Teacher Positions	1.0 FTE
Math Teacher Positions	2.0 FTE
Science Teacher Positions	1.0 FTE
Social Science Teacher Positions	1.0 FTE
Total FTE Positions	14.9 FTE

Skipping/Bumping/Seniority

16. Skipping describes the process by which the district may deviate from the order of seniority when there is an identified need for a particular type of service, there is a junior employee who is uniquely qualified to provide that service or teach a subject, and there is no senior employee who is certificated and competent to provide the service. (Ed. Code, § 44955, subd. (d)(1).)

Per the Layoff Resolution, the district “determined that some employees do possess training and experience needed that may require their retention in employment, specifically special education experience and experience in alternative educational settings, including but not limited to continuation schools.” The district employed skipping to achieve a proper list of employees to receive layoff notices.

17. Bumping describes the process by which the district identifies those employees who are more senior and who are competent to perform a particular kind of service or teach a particular subject. The district employed bumping to achieve a proper list of employees to receive layoff notices.

18. Seniority is the relationship between the teachers within a school district. Among the teachers credentialed to provide a given service, greater seniority in the district gives a greater legal entitlement to a position. Seniority is defined as the date upon which an employee first rendered paid services in a probationary position. (Ed. Code, § 44845.)

Education Code section 44955, subdivision (b) provides that no senior employee may be terminated while any less senior employee is retained to render a service which the more senior permanent employee is “certificated and competent” to render. “It [is] the district’s obligation under section 44955, subdivision (b), to determine whether any permanent

employee whose employment is to be terminated in an economic layoff possess[es] the seniority and qualifications which would entitle him/her to be assigned to another position.” (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 137.)

19. Dr. Geisick testified that the district maintains a seniority list of all certificated employees. The seniority list is posted at each school site and employees are advised to review and update the list. The seniority list is verified and maintained by the Human Resources Department. All updates were noted on the seniority list prior to its use in identifying the proper recipients for layoff notices. According to Dr. Geisick, no teacher with less seniority was retained in lieu of a more senior teacher who was competent and credentialed to provide a particular kind of service. Tie-breaking criteria were not needed in determining order of layoff for the 2010-2011 school year.

Layoff/Skipping/Bumping at the Elementary Level

20. At the elementary school level, the governing board determined it was necessary to reduce 9.9 FTE teaching positions. (Factual Finding 15.) The district implemented the reduction by first looking at the seniority chart and identifying which employees held relevant credentials.

21. To reduce 9.9 FTE K-5 Classroom instruction, the district identified the teachers in this assignment with the least seniority as Dawn Allen (0.4 FTE), Cristina Calderon, Karen Baker, Zachary Wilkins, Holly Kroutil (0.5 FTE), Rebecca Camarena, Kevin Bizzini, Charlotte Bowden, Isela Wesley, Jill Hodge, and Angela Escamilla. Kevin Bizzini was promoted to an administrative position and his notice was rescinded. These employees were the proper recipients of layoff notices.

Layoff/Skipping/Bumping at the Secondary Level

22. At the secondary school level, the governing board determined it was necessary to reduce 1.0 FTE English position, 2.0 FTE Mathematics positions, 1.0 FTE Science position, and 1.0 FTE Social Science position. (Factual Finding 15.) The district implemented the reduction by first looking at the seniority chart and identifying which employees held relevant credentials.

23. To reduce 1.0 FTE English position, the district identified the teacher in this assignment with the least seniority as Christine Perez. She has a seniority date of August 18, 2003, and holds a single subject credential in English, and a CLAD authorization. Due to positively assured attrition, her layoff notice will be rescinded. (Factual Finding 14.)

24. To reduce 2.0 FTE Mathematics positions, the district identified the teachers in this assignment with the least seniority as Kevin Hejnal and Ismael Mercado. Mr. Hejnal has a seniority date of August 7, 2008, and holds a single subject credentials in Mathematics and Physical Education (PE), and a CLAD authorization. Mr. Mercado has a seniority date of October 2, 2007. He holds a single subject credential in PE and a limited assignment

credential in mathematics. These employees were the proper recipients of layoff notices. Due to positively assured attrition, Mr. Mercado's layoff notice will be rescinded as he is the more senior qualified teacher. (Factual Finding 13.)

25. To reduce 1.0 FTE Science position, the district identified the employee in this assignment with the least seniority as Kimberlie Theis. She has a seniority date of August 10, 2005. She holds single subject credentials in Science, Geography, and Computer Concepts. She teaches at Riverbank High School. Ms. Theis was the proper recipient of a layoff notice.

26. To reduce 1.0 FTE Social Science position, the district identified the employee in this assignment with the least seniority as Jon Gianelli. Due to positively assured attrition, Mr. Gianelli's layoff notice will be rescinded. (Factual Finding 14.)

Layoff/Skipping/Bumping of Continuation High School Positions

27. The governing board determined it was necessary to skip teachers assigned to the continuation high school. Three teachers currently serving in that assignment were retained in lieu of more senior teachers who hold relevant credentials. The Layoff Resolution allowed for the district to retain teachers with special training, experience, and/or credentials in alternative education positions. As such, John Tivald, Elizabeth Medeiros, and Carl Hughes were retained over more senior teachers, to teach at Adelante High School.

28. Adelante High School is a continuation high school. It has been open for three years, has approximately 60 students, and three teachers. Many students at Adelante have disciplinary issues; some are teen parents, have jobs, or are otherwise unable to do homework. According to Dr. Geisick, teachers are often reluctant to take on this group dynamic. Most Adelante students are behind in their credits and have not mastered the core proficiencies. As such, their academic needs are significantly greater than those found in a comprehensive school. Instruction is divided into six week modules where each student works at their own instructional level. Students graduate with 200 credits as opposed to the standard 230 high school credits. Dr. Geisick stated that Mr. Hughes, Mr. Tivald, and Ms. Medeiros have continuing experience in their positions at Adelante and are "highly qualified" to teach in their subject matter area.⁶

29. Carl Hughes has a seniority date of August 18, 2008. He holds a standard secondary history and political science credential and is finishing his second year at Adelante. John Tivald has a seniority date of August 10, 2006. He holds single subject credentials in social science and foundational mathematics. He teaches mathematics at Adelante where he is finishing his third year. Elizabeth Medeiros has a seniority date of

⁶ Riverbank Unified School District is in Program Improvement Status/Year Three. As such, they are audited by the State of California and must meet annual improvement goals. As part of the corrective action plan, the district must develop and retain "highly qualified" teachers showing subject matter competency in every program assignment.

January 14, 2004. She holds a single subject credential in English. She teaches English at Adelante where she is finishing her third year. No other teachers in the district, who are credentialed to teach at the secondary level, have prior experience teaching at a continuation school.

30. The three teachers being retained to fulfill the district's identified need for alternative education at Adelante are highly qualified and possess the necessary skills, training, and experience. The district appropriately skipped these teachers in their layoff implementation.

Further, Jon Gianelli and Christine Perez are the only two teachers with seniority and credentials to bump into a teaching assignment at Adelante and their notices have been rescinded. (Factual Finding 14.)

31. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists pursuant to Education Code sections 44949 and 44955. All notices and jurisdictional prerequisites required by those sections were satisfied.

2. The services the district seeks to eliminate in this matter, as set forth in the Layoff Resolution, are the particular kinds of service that may be reduced or discontinued within the meaning of Education Code section 44955. The board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of the board's discretion. Pursuant to Education Code sections 44949 and 44955, legal cause exists for the district to reduce or discontinue the particular kinds of services set forth in the layoff resolution. The reduction or discontinuance of these identified particular kinds of services relates solely to the welfare of the district and its pupils.

3. No certificated employee with less seniority than any respondent is being retained to render a service that any respondent is certificated and competent to render. Legal cause exists pursuant to Education Code sections 44949 and 44955 to give respondents final notice that their services will not be required for 2010-2011 school year.

RECOMMENDATION

1. The Riverbank Unified School District's action to reduce or eliminate the particular kinds of services identified in Layoff Resolution 09-10-17, for the 2010-2011 school year is **AFFIRMED**.

2. The Accusation against respondents is SUSTAINED. The Riverbank Unified School District may give final notices to respondents that their services will not be required for the 2010-2011 school year, except that the preliminary layoff notices issued to Jon Gianelli, Ismael Mercado, and Christine Perez, shall be rescinded. Notices shall be given in inverse order of seniority.

DATED: April 28, 2010

DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

APPENDIX A

2010 Riverbank Unified School District – List of Respondents

	Last Name	First Name	Status
1	Allen	Dawn	
2	Baker	Karen	
3	Bowden	Charlotte	
4	Camarena	Rebecca	
5	Escamilla	Angela	
6	Gianelli	Jon	Notice Rescinded
7	Hodge	Jill	
8	Mercado	Ismael	Notice Rescinded
9	Perez	Christine	Notice Rescinded
10	Theis	Kim	
11	Wilkins	Zachary	
12	Welsey	Isela	