

BEFORE THE
GOVERNING BOARD OF THE
WILLIAM S. HART UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Layoff of:

Karla Arriaran-Rodriguez and other
certificated employees of the William
S. Hart Union High School District,

Respondents.

OAH Case No. 2011030578

PROPOSED DECISION

Nancy Beezy Micon, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 27, 2011, in Santa Clarita, California.

Littler, Mendelson, by Adam J. Fiss, Attorney at Law, represented Robert Challinor (Challinor), the Superintendent for the William S. Hart Union High School District (District). Attorney Fiss was assisted by attorney Lauren Robinson.

Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez, by Robert A. Bartosh, Attorney at Law, represented Karla Arriaran-Rodriguez, Shannon Ford, Araksia Kaladjian, Iyashema Redd, and Justine Saunders. Respondents Karla Arriaran-Rodriguez, Shannon Ford, Iyashema Redd, and Justine Saunders were present at the hearing. Respondent Araksia Kaladjian was not present at the hearing. Respondent Denise Parsons was not represented, and did not appear at the hearing.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2011-2012 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

The hearing in this matter was initially scheduled for April 14, 2011. On April 6, 2011, Presiding Administrative Law Judge Michael A. Scarlett granted a continuance, thereby extending by 13 days the deadlines set forth in Education Code¹ sections 44949, subdivision (c), and 44955, subdivision (c). (§ 44949, subd. (e).)

Evidence was received by way of stipulation, testimony and exhibits. The record was closed, and the matter submitted for decision at the conclusion of the hearing on April 26, 2011.

¹ All further statutory references are to the Education Code.

FACTUAL FINDINGS

1. Superintendent Challinor filed the Accusation while acting in his official capacity as the Superintendent of the District.

2. Respondents are certificated employees of the District.

3. On March 2, 2011, the Governing Board of the District (Governing Board) adopted Resolution Number 10/11-26, reducing or discontinuing the following services for the 2011-2012 school year:

<u>Service</u>	<u>FTE² Reduction</u>
Counselors	3.2
Psychologists	2.0

4. Superintendent Challinor thereafter provided written notice to the Governing Board and to Respondents that he recommended the termination of Respondents' services for the 2011-2012 school year due to the reduction of particular kinds of services.

5. On or about March 11, 2011, the District provided notice to Respondents that their services will not be required for the 2011-2012 school year due to the reduction of particular kinds of services. Each written notice set forth the reasons for the recommendation. Each notice also notified the employee of his or her right to request a hearing to determine if there is cause for not reemploying him or her for the ensuing school year, and that a written request for a hearing was due by March 21, 2011.

6. Respondents filed timely requests for hearing.

7. One certificated employee, Bridgett Martinez (0.2 FTE), did not request a hearing. She thereby waived her right to a hearing and cannot contest the recommendation of her non-reemployment by the District. (§ 44949, subd. (b).)

8. On or about March 23, 2011, the District filed and served the Accusation and other required documents on Respondents. Respondents thereafter filed timely notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

² Full-time equivalent position.

9. All prehearing jurisdictional requirements have been met.

10. 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 section 44955.

11. The District seeks to reduce projected spending due to the uncertainty associated with State funding and potential reductions in such funds. The Governing Board's decision to reduce or discontinue the services set forth in factual finding number 3 is not arbitrary or capricious but is rather a proper exercise of the District's discretion in light of such potential loss of revenue.

12. The reduction of services set forth in factual finding number 3, in the context of potential revenue losses and the need to provide services if such losses materialize, 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. The decision to reduce services was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

13. The Governing Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

14. On March 2, 2011, the Governing Board adopted Resolution 10/11-27, setting forth its tie-breaking criteria for employees with the same seniority date. The Resolution provides that the order of termination will be based solely on the basis of the needs of the District and its students. A priority system was established for various credentials, certificates, experience, training and coursework. Among employees who shared a date of first paid service, the higher the priority achieved, the higher the seniority. The criteria are reasonable as they relate to the skills and qualifications of certificated employees.

15. a. Respondent Justine Paige Saunders (Saunders), who was known as Justine P. Girellini when she was first hired by the District, is a counselor at Valencia High School (1.0 FTE). She disputes her seniority date of August 13, 2007. Saunders interviewed for the counselor position with the District in March 2007. At the time, Saunders worked as a counselor at a private high school, which did not require that its counselors be credentialed. Saunders informed the District that she planned to obtain her credential before the start of the 2007-2008 school year. The District hired Saunders, contingent upon her obtaining the required credential. Saunders took the California Basic Education Skills Test (CBEST examination), required for the credential, on Saturday, August 11, 2007. She then obtained an Internship Pupil Personnel Services Credential in school counseling, valid between August 13, 2007 and September 1, 2009. Saunders also obtained a Temporary County Certificate, which

was effective August 13, 2007. On September 18, 2007, Saunders signed a contract for temporary certificated employment with the District, which stated that the period of Saunders' temporary employment began on August 13, 2007. Saunders was asked to report with the other counselors at Valencia High School on August 3, 2007, before school was in session, in order to prepare for the upcoming school year. Saunders understood, however, when she reported for work with the other counselors, that she would not be paid for reporting to work before the start of the school year. Saunders was not required to report for work on that date. Saunders testified that she reported for work on August 3, 2007 because she wanted to prepare for the school year at the same time as the other counselors. Saunders testified that she was "okay with it" (i.e. not getting paid for reporting before the start of the school year).

15. b. It was argued that the seniority date for Saunders should be August 3, 2007 because she is paid annually, and her work as a counselor for the 2007-2008 school year began on August 3, 2007. The seniority date of a certificated employee is defined as the date the employee "first rendered paid service in a probationary capacity." (§ 44845.) A school district cannot pay an employee for certificated services if the employee does not possess a valid credential. (§ 45034.) It is undisputed that Saunders did not receive her credential until August 13, 2007. Her first date of paid service as a probationary counselor for the District is therefore August 13, 2007. Since Respondent Saunders was not a certificated employee before August 13, 2007, her work before that date may not be credited toward her seniority as a certificated employee.

16. a. Respondent Iyashema Redd (Redd) is a counselor at Valencia High School (1.0 FTE). She disputes her seniority date of August 8, 2007.³ It is undisputed that Redd had previously been identified for layoff in a reduction in force action and, at that time, the District had assigned her the seniority date of August 1, 2007, which reflected the date Redd's contract with the District commenced. Robert C. Gapper (Gapper), Assistant Superintendent, Human Resources and Student Services, explained that the District changed its previous practice so that seniority dates would reflect the first date the employee was paid for service to the District. Gapper consulted a District payroll document, which indicated to Gapper that Redd was first paid for services on August 8, 2011.⁴ Redd challenges the accuracy of the payroll document.

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³ Redd was given a layoff notice as a precautionary matter, in the event Saunders prevailed in arguing that her seniority date should be adjusted to an earlier date.

⁴ The District currently requires certificated employees to verify the dates they are present and working versus the dates they are absent each month. This was not the District practice in 2007. Redd never verified the document, or source documents, relied upon by Gapper in arriving at Redd's first date of paid service.

16. b. Redd convincingly testified that she began her employment with the District on August 1, 2007. Redd explained that she was assigned as an “1802 split counselor” between two high schools, Sequoia and Bowman. She recalls being directed by Lori Andrews, the administrator for Sequoia Charter School, to report to work on Wednesday, August 1, 2007. Andrews wanted Redd to report early so Redd would have an opportunity to learn the protocols of the school, as well as other technical information and student background data.⁵ Redd remembers that Andrews was not present when Redd reported for work and that District office personnel instructed Redd to instead report to Bowman High School. Redd followed their directions and began her work with the District that day. Redd has a distinct recollection of beginning work for the District on August 1, 2007, she was a credible witness who testified in a straightforward manner, and her testimony was not contradicted by the District. Gapper’s conclusion, based upon the unverified document, lacks sufficient support and foundation to overcome Redd’s credible testimony concerning the first date she rendered paid service for the District. Redd was hired to render services as a high school counselor, and she was certificated on or before August 1, 2007. The work she performed on August 1, 2007, for which she was paid, was part of the counseling services she was hired to perform. Redd established that, instead of a seniority date of August 8, 2007, her seniority date should be August 1, 2007.

17. The District did not retain any certificated employee junior to any Respondent to render a service which 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 9.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 10.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 12.

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⁵ The District has a practice of requiring its high school counselors to start work in advance of the school year in order to prepare for the school year in advance of student attendance. Counselors are paid on an annual basis; their contracts require that they work ten days more than the number of days in the school year. The additional work days are typically before the start of the school year.

4. Respondents contend that any precautionary layoff notices should be dismissed to the extent they are in excess of the 5.2 FTE reduction authorized by Resolution No. 10/11-26. This contention is not persuasive. The purpose of the initial notice of non-reemployment is to notify employees of the probability that their services will not be required for the ensuing school year so that they may consider looking elsewhere for employment. (*Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 653.) In order to ensure that all employees who potentially may be affected by a layoff receive proper notice, it is sometimes necessary for a school district to notice more employees than will actually be laid off. In this matter, only one employee, Redd, was given a precautionary layoff notice. The District served the notice to Redd in order to ensure that 3.2 counselors will be laid off, in accordance with the Board's resolution, in the event Saunders prevailed in changing her seniority date. There is no evidence the District will eliminate more positions than those authorized in Resolution No. 10/11-26, or that any harm was caused by over-noticing as to one person. No persuasive authority or argument was presented in support of Respondents' contention. The District acted appropriately to ensure the Board's resolution was followed.

5. The seniority date of a certificated employee is defined as the date the employee "first rendered paid service in a probationary capacity." (§ 44845.) These words must be given their plain and commonsense meaning in order to effectuate the legislative intent. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775; *California Teachers Assn. v. Governing Bd. of Rialto Unified School District* (1997) 14 Cal.4th 627, 632-633; *Steketee v. Lintz, Williams & Rothberg* (1985) 38 Cal.3d 46, 51-52.) The statute requires crediting a certificated employee with the seniority date on which he or she was first paid to render service in a probationary capacity. The statute does not expressly require a particular salary rate or schedule, a particular type of service in a probationary capacity, or that the service be "mandatory," in order for the paid service to be credited for seniority purposes.

Respondent Justine Saunders rendered her first day of paid counseling service for the District in a probationary capacity on August 13, 2007. Section 45034 prohibits a school district from paying a person employed in a position requiring a credential if the employee does not hold a proper credential. Saunders obtained her credential on August 13, 2007. Since Respondent Saunders was not certificated to be employed as a counselor before August 13, 2007, this is the earliest date she may be credited toward her seniority as a counselor with the District.

Respondent Iyashema Redd rendered her first day of paid counseling services for the District in a probationary capacity on August 1, 2007. Redd was hired to render services in a probationary capacity and the work she performed on August 1, 2007, for which she was paid, was part of the counseling services she was hired to perform. Redd already held a credential when she performed the counseling work on August 1. Respondent Redd's proper seniority date is therefore August 1, 2007, as set forth in factual finding number 16.

6. The District did not retain any certificated employee junior to Respondents to perform a service Respondents are competent and certificated to render.

7. Cause exists to terminate the services provided by Respondents Karla Arriaran-Rodriguez, Shannon Ford, Araksia Kaladjian, Denise Parsons and Justine Saunders, by reason of factual finding numbers 1 through 17 and legal conclusion numbers 1 through 6.

8. Cause does not exist to terminate the services of Respondent Iyashema Redd, as set forth in factual finding numbers 1 through 17, and legal conclusion numbers 1 through 6.

RECOMMENDATION

1. It is recommended that the Accusation be sustained, and the District may notify Respondents Karla Arriaran-Rodriguez, Shannon Ford, Araksia Kaladjian, Denise Parsons and Justine Saunders that their services will not be needed during the 2011-2012 school year due to the reduction of particular kinds of services.

2. It is recommended that the layoff notice be rescinded, and the Accusation be dismissed as to Respondent Iyashema Redd. The seniority list should be changed to reflect that Respondent Redd's seniority date is August 1, 2007.

DATED: May ____, 2011

Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings