

BEFORE THE  
GOVERNING BOARD OF THE  
GARVEY SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter Of The Lay Offs Of:

OAH No. 2011030907

CERTIFICATED EMPLOYEES OF THE  
GARVEY SCHOOL DISTRICT,

Respondents.

**PROPOSED DECISION**

This matter was heard by Mark Harman, Administrative Law Judge (ALJ) of the Office of Administrative Hearings, State of California, on April 7, 2011, in Rosemead.

James R. Lynch and George M. Yin, Attorneys at Law, represented Garvey School District (District). Jean Shin, Staff Attorney, California Teachers Association, and Joshua Adams, Attorney at Law, represented respondents Claudia P. Barajas, Debra T. Benavidez, Suzana Carlos, Sappho Chow, Jenny Duque, Gloria Galaz (Galaz), Rene Herrera (Herrera), Sandra Seonah L. Hong, Charles Lee Howell, Tran Ma, Michelle Mendoza, Blanca Rios-Quiroz, Teresa S. Rodriguez (Rodriguez), Lindsay M. Sotero (Sotero), May Yueh Tam, Monica A. Upathumpa, Breanna Hunt, and Tonie Tran-Wang, all of whom were present. There were no appearances by or on behalf of respondents Robert Boyd, Martin Garcia, Susan Kobilarcsik, or Elizabeth C. Silva.<sup>1</sup>

The District decided to reduce or discontinue certain educational services and gave 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.

Evidence was received by oral stipulations, documents, and testimony. The matter was submitted for decision on April 7, 2011.

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<sup>1</sup> These four certificated administrators may have rights affected by this proceeding. The District has released them from their administrative positions effective at the end of the school year. According to the District, Martin Garcia and Elizabeth Silva may be able to “bump” into position currently filled by other respondents in this proceeding.

## FACTUAL FINDINGS

1. The District operates 11 schools for approximately 5,500 students. Sandra D. Johnson, Ed.D. (Johnson), is the Superintendent of the District. Genaro Alarcón (Alarcón), Assistant Superintendent, Human Resources, and his staff were responsible for implementation of the technical aspects of the layoff. Alarcón filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. On or before March 10, 2011, Johnson recommended to the Governing Board of the District (Governing Board) that it reduce or discontinue particular kinds of services for the 2011-2012 school year and, for that reason, that it give notice to certain certificated employees that their services will not be required for the 2011-2012 school year. On March 10, 2011, the Governing Board adopted Resolution No. 10-11-11 (the Resolution), determining to reduce or discontinue services of 14.54 full-time equivalent (FTE) positions, as specified below, and to terminate at the end of the 2010-2011 school year the employment of certificated employees of the District in a quantity and kind corresponding to the 14.54 FTE's.

PARTICULAR KINDS OF SERVICES	NUMBER OF FTE POSITIONS
K-6 Classroom Teacher	7.00
K-8 Art Teacher	1.00
K-6 Resource Specialist (RSP) Teacher	0.34
7-8 Art Teacher	1.00
7-8 Language Arts Teacher	1.60
7-8 Science Teacher	1.00
7-8 Social Studies Teacher	1.00
Physical Education Teacher	1.40
Adapted Physical Education Teacher	<u>0.20</u>
<b><u>Total FTE Reduction</u></b>	<b>14.54</b>

4. On March 11, 2011, Johnson provided written notice to the Governing Board and to respondents that she recommended the termination of respondents' services for the 2011-2012 school year due to the reduction of particular kinds of services. Respondents received these notices and requested a hearing. On or after March 17, 2011, the District served an Accusation and related materials on respondents, and respondents filed their Notices of Defense. The parties stipulated that service of all notices and jurisdictional documents was proper. All prehearing jurisdictional requirements have been met.

5. 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.<sup>2</sup>

6. The Governing Board took action to reduce or discontinue 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.

7. 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.

8. The District maintains a seniority list which contains employees' seniority dates (the date that an employee first rendered paid service in a probationary capacity), current assignments, and credentials. The Resolution included criteria for determining the order of seniority of those employees with the same seniority date (tie-breaking criteria). The District applied these criteria to determine the order of seniority among employees who had the same seniority date. No respondent challenged either the reasonableness of these criteria or the manner in which the District applied the tie-breaking criteria to determine the particular persons who would receive layoff notices.

9. The District used the seniority list to develop a proposed lay-off list of the least senior employees who would be laid off for each kind of service being reduced or discontinued. 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 determined whether these employees held credentials in another area and were entitled to "bump" other, more junior employees.

10. The District stipulated that two of the respondents who were noticed for this proceeding are not subject to being laid off: Herrera and Rodriguez. Herrera currently teaches 0.60 Assisted Physical Education (APE) and 0.40 Physical Education (P/E). In the 2011-2012 school year, he will be teaching 1.0 APE, having bumped junior teacher Galaz of 0.40 of her APE assignment (the remainder of Galaz's assignment of 0.20 will be

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<sup>2</sup> All further statutory references are to the Education Code.

eliminated). Sotero is a P/E teacher and is senior to Herrera, but she does not have authorization to teach APE. Her 1.0 assignment of P/E classes is being eliminated, as well as Herrera's 0.40 assignment. Since Sotero is not able to teach APE, she may not bump into the APE position that Herrera will teach next year.<sup>3</sup>

11. Rodriguez has a clear multiple subject (M/S) teaching credential and "Embedded English Learner Program" authorization from the California Commission on Teacher Credentialing. She has been teaching a 7th grade language arts departmentalized classroom since September 2005 pursuant to the Governing Board's authorization. (See § 44256, subd. (b), under which a Board may authorize a person with an M/S teaching credential to teach any subject in departmentalized classes to a given class or group of students below grade 9, provided the teacher has completed at least 12 semester units, or six upper division or graduate units, of coursework in the subject to be taught.) The Board's authorization and the oral stipulation by the parties establish that Rodriguez is qualified to teach 7th grade language arts in the 2011-2012 school year, and that no respondents have challenged this assertion. Three teachers of language arts, Tamera Dominguez, Ruth S. Mak, and Robert Richardson, did not receive lay-off notices. Each of these teachers is junior to Rodriguez and Rodriguez has bumping rights as to these teachers' positions. Therefore, Rodriguez is not subject to termination in this proceeding.

12. The District stipulated that the seniority date of respondent May Yueh Tam is November 22, 2010.

13. Charles Lee Howell (Howell) has been teaching nearly 30 years. He teaches visual arts to middle school students. The Governing Board is eliminating his position and the position of the only other art instructor in the District, Debra T. Benavidez. Howell argued many reasons why visual arts instruction is critical and unique to the entire educational program of the District. He believes the District will continue some form of art program in the future, perhaps without certificated personnel. The District asserted it is not legally required to provide visual arts courses as part of the District's educational program.

14. Michelle Mendoza is employed part time, three hours per day, as a resource specialist program (RSP) teacher at Dewey Elementary School. She has taught special education in the District, with a short break in service, since 1998. Her 0.34 position will be

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<sup>3</sup> Sotero is one of two female P/E teachers of 7th and 8th grade girls at Garvey Intermediate School. Sotero argues, as further grounds for her being retained, that she and her female colleague must supervise the girls' locker room before and after P/E classes, and that a single person would not be able to manage the 70 - 90 girls each period under the present circumstances, nor is it possible for the District to assign these duties to a male P/E teacher. The ALJ lacks jurisdiction to decide whether the Governing Board's determination to eliminate Sotero's position is wise. On this record, the District has established that it is within its discretion to provide alternative means to ensure the safety of students in the locker room and it is not required by law to retain Sotero to perform this function.

eliminated at the end of this school year. She argued that the Governing Board's determination ignores a real need for more rather than fewer RSP teachers in the District.

15. Except as modified herein, the District will not retain any certificated employee junior to respondents 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 4.

2. The services listed in factual finding number 3 are particular kinds of services that could be reduced or discontinued under section 44955. The ALJ has considered the circumstances and individual arguments presented by respondents.

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 7.

4. Cause exists to terminate the services of Claudia P. Barajas, Debra T. Benavidez, Suzana Carlos, Sappho Chow, Jenny Duque, Gloria Galaz, Sandra Seonah L. Hong, Charles Lee Howell, Tran Ma, Michelle Mendoza, Blanca Rios-Quiroz, Lindsay M. Sotero, May Yueh Tam, Monica A. Upathumpa, Breanna Hunt, Tonie Tran-Wang, Robert Boyd, Martin Garcia, Susan Kobilarcsik, and Elizabeth C. Silva for the 2011-2012 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 15, and legal conclusion numbers 1 through 3.

#### ORDER

The Accusation is sustained and the District may notify respondents Claudia P. Barajas, Debra T. Benavidez, Suzana Carlos, Sappho Chow, Jenny Duque, Gloria Galaz, Sandra Seonah L. Hong, Charles Lee Howell, Tran Ma, Michelle Mendoza, Blanca Rios-Quiroz, Lindsay M. Sotero, May Yueh Tam, Monica A. Upathumpa, Breanna Hunt, Tonie Tran-Wang, Robert Boyd, Martin Garcia, Susan Kobilarcsik, and Elizabeth C. Silva, that their services will not be needed during the 2011-2012 school year due to the reduction of particular kinds of services.

Dated: April \_\_, 2011

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MARK E. HARMAN  
Administrative Law Judge  
Office of Administrative Hearings