

BEFORE THE GOVERNING BOARD OF THE
POMONA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

OAH No. 2013030539

CERTIFICATED EMPLOYEES OF THE
POMONA UNIFIED SCHOOL DISTRICT,

Respondents.

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 17, 2013, at Pomona, California.

Howard A. Friedman and Martha I. Casillas, Attorneys at Law, of Fagen Friedman & Fulfroft, LLP, represented Pomona Unified School District (District).

Joshua Adams, Attorney at Law, of Rothner, Segall & Greenstone, represented 88 of the 90 respondents named in Exhibit A attached hereto and made a part hereof. The other two respondents, Michelle Jean Allen and Chung-Mo Paul J. Kim, appeared on their own behalf. As stipulated by all parties, due notice of the time and place of hearing was given as required by law, and all pre-hearing jurisdictional requirements have been met.

Oral and documentary evidence was received and the record was closed. The matter was submitted on April 17, 2013.

FACTUAL FINDINGS

1. Richard Martinez, Superintendent of the District, acting in his official capacity, caused all pleadings, notices, and other papers, including the Accusation, to be filed and served upon respondents under the provisions of Education Code¹ sections 44949 and 44955. All pre-hearing jurisdictional requirements have been met with respect to the District and all respondents.

¹ Except as otherwise noted, all statutory references are to the Education Code.

2. Respondents are certificated employees of the District.

3. On March 5, 2013, the District’s Governing Board adopted a resolution, Resolution Number 20, to reduce and discontinue the services of 108.4 full-time equivalent (FTE) certificated positions at the close of the 2012-2013 school year, as follows:

Counselor.....	2.0
Elementary Teacher.....	38.6
Intervention Teacher.....	1.0
Intervention Specialist.....	2.0
Secondary Teacher – English.....	6.0
Secondary Teacher – Social Science.....	5.0
Secondary Teacher – Mathematics.....	8.0
Secondary Teacher – Physical Science.....	2.0
Secondary Teacher – Earth Science.....	2.0
Secondary Teacher – Music.....	.8
Secondary Teacher – Foreign Language –Spanish.....	3.0
Secondary Teacher – Business.....	2.0
Secondary Teacher – Physical Education.....	5.0
Secondary Teacher – Health.....	1.0
Teacher Specialist/Academic Coach.....	13.0
Teaching Teacher Specialist.....	9.0
Teacher on Assignment (TOA).....	8.0
Total.....	108.4

4. These services are “particular kinds of services” that may be reduced or discontinued within the meaning of 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 discretion. The reduction or discontinuation of these particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

5. The Board properly considered all known attrition, resignations, retirements, deaths, and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees as of March 15, 2013.

6. The District maintains a seniority list, which contains employees' seniority dates, current assignments and locations, credentials, and authorizations. The District identified the most junior employees working in a particular kind of service being reduced or discontinued and determined which employees would receive layoff notices.

7. In its Resolution Number 20, the Board directed the Superintendent or his designee to serve notices of termination in accordance with and in the manner prescribed by sections 44949 and 44955.

8. The Board also adopted criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the District in a probationary position on the same date. The Board resolved that the order of termination of those employees shall be determined by reference to certain tiebreaker criteria and to points assigned to each category of tiebreaker criteria, as set forth in exhibit A to Board Resolution 20. The Board determined that such criteria best serve the needs of the District and its students.

9. On March 12, 2013, under Board Resolution 20, described in Finding 2, and the provisions of sections 44949 and 44955, the Superintendent's designee, Assistant Superintendent Darren A. Knowles, gave written notice to respondents that he had recommended to the Board that notice be given to respondents that their services will not be required for the 2012-2013 school year. Respondents requested a hearing to determine whether there is cause for not employing them for the ensuing school year.

10. On April 2, 2013, the District filed and timely served an Accusation, copies of Resolution Number 20, a Statement to Respondent, a blank Notice of Defense, Request for Discovery, and pertinent sections of the Government and Education Codes upon respondents, who filed timely Notices of Defense.

11. During the hearing, the District rescinded the layoff notices issued to respondents Olga Maritza Alvarez, Kimberly A. Caganap, Noelia Carrillo, Trinh Soai Chan, Cynthia Corona-Flores, Ivette Decasas, Elizabeth Dimauro, Erika Cristina Duran, Erick W. Figueroa, Michelle Vega Gonzales, Wanda Y. Hernandez, Philip Jesus Herrera, Diane Lynn Hubbard-Knight, Islene Leon, James H. Loehrke III, Elizabeth Alison McAllister, Carmen Mejico, Patricia Melendrez, Rosa Miranda-Zimmer, Christopher A. Mitts, Zachary A. Moore, Christopher Tran Nguyen, Paula Rafael, Tina Renee Solorzano, Cesar Torres, Esmeralda Vargas, and Yesenia Zambrano.²

² The District also rescinded the layoff notices issued to 18 certificated employees who were not respondents.

12. The District also made the following seniority list changes:

<u>Certificated Employee</u>	<u>New Seniority Date</u>
Karen L. Taylor	September 8, 2009
Sandra Cerda	September 25, 2004
Arturo Molina	September 3, 2010
Christopher T. Nguyen	August 20, 2003
Jennifer N. Dineen	September 3, 2010

Seniority Date and Status Disputes

13. Respondent Mariselva Avila does not dispute her assigned seniority date, February 8, 2011, but testified that she was originally hired as a Probationary 2 employee and has now attained the status of a permanent employee. The District's seniority list reflects that respondent Avila is currently a Probationary 1 employee. Her first paid date of service was February 8, 2011, which was in the middle of the 2010/2011 school year. The following school year, 2011/2012, her status was unchanged. Respondent Avila then went on parental leave on April 7, 2012. She testified that she believes she worked at least 75 percent of the 2011/2012 school year. District records reflect, though, that she was on leave for 62 days out of 180 work days in that school year, so she worked only about 66 percent of the 2011/2012 school year.³ Respondent Avila testified that Assistant Superintendent Knowles told her when she was hired that she would start as a Probationary 2 employee. But her employment contract, dated February 8, 2011, and bearing Respondent Avila's signature, states that she was hired as a Probationary 1 employee. Based on the evidence at hearing, the District established that Respondent Avila should not currently be accorded the status of a permanent employee.

14. Respondent Wendy Garcia disputes her assigned seniority date of September 10, 2004. She testified that her correct seniority date should be September 7, 2004. She testified that she came to school on Labor Day, September 6, 2004, to prepare her classroom, and taught class on Tuesday, September 7. She also believes she received a letter from the District two years ago agreeing to change her seniority date to September 7, 2004, but she cannot not find the letter. The District's payroll records reflect that Respondent Garcia's first date of paid service was September 10, 2004. Respondent Garcia also signed a survey on February 4, 2011, sent to her by the District on January 20, 2011, verifying that her seniority date should be September 10, 2004, but she testified that she did not realize when signing the

³ Under section 44908, to be deemed to have served a complete school year, a probationary employee must have served for at least 75 percent of the number of school days in the year.

survey that seniority is determined by first date of paid service, which was September 7, and not the date she signed her contract. She was not given a contract to sign until Friday, September 10, 2004. Assistant Superintendent Knowles testified that he reviewed the District's records for the 2004/2005 school year; from those records he determined that the first day of class was a shortened day on September 8, 2004, and that although teachers may have reported on September 7, there were no students present in class until the following day. Respondent Garcia testified that she attended orientation with several other teachers hired on the same day as she, and that at least one of them has a seniority date of September 7, 2004. The teachers' orientation date does not establish the first date of paid service, however. Also, Assistant Superintendent Knowles testified that Respondent Garcia's name does not appear on the September 2004 orientation sign-in sheet. Based on the evidence at hearing, the District established that Respondent Garcia's seniority date should not be changed to September 7, 2004.

15. Respondent Jacquelyn Coe disputes her assigned seniority date of September 10, 2004. She testified that her correct seniority date should be September 7, 2004. She testified that she attended orientation on September 3, 2004, the Friday before Labor Day weekend, prepared her classroom the same day, and taught class on Tuesday, September 7. The District's payroll records reflect that Respondent Coe's first date of paid service was September 10, 2004. Respondent Coe signed a survey, sent to her by the District on January 20, 2011, verifying that her seniority date should be September 10, 2004. Assistant Superintendent Knowles testified that he reviewed the District's records for the 2004/2005 school year; from those records he determined that the first day of class was a shortened day on September 8, 2004, and that although teachers may have reported on September 7, there were no students present in class until the following day. Based on the evidence at hearing, the District established that Respondent Coe's seniority date should not be changed to September 7, 2004.

16. It was not established that any of the facts described in Factual Findings 12 through 15 will otherwise affect the layoffs of the involved individuals.

17. Respondent Patrice Heuring, who has a seniority date of November 29, 2010, is being bumped by Brandi N. Friedman, who has a seniority date of August 21, 2002, to teach in the Cal Safe program. Cal Safe is a program for pregnant minors and for male and female teen parents. Respondent Heuring currently has over 22 students in her Cal Safe classroom. She also conducts home visits and is responsible for teaching her students through pregnancy and all the years they remain in school. Respondent Heuring testified that she is more qualified than Friedman to teach in the Cal Safe program, and that Friedman is not certificated and competent to teach in the Cal Safe program. Friedman has a clear single subject credential in health science and biological sciences, among other things. Respondent Heuring also has a clear single subject credential in health science as well as in psychology and child development, among other things. Respondent Heuring testified that the District's seniority list erroneously omits the fact that her credentials include parenting, and that she believes that because Friedman does not have a parenting credential, Friedman cannot bump into the Cal Safe position. Respondent Heuring admitted that she does not know what the

minimum credential requirement is for teaching in the Cal Safe program. Assistant Superintendent Knowles testified that the minimum requirement is a credential in health science; a parenting credential is not required. The Board eliminated one FTE for health science, thereby subjecting Friedman to being laid off, but determined that Friedman is senior to Respondent Heuring and is certificated and competent to teach in the Cal Safe program, and therefore that Friedman may bump into Respondent Heuring's position.⁴ Whether Respondent Heuring is "more qualified" than Friedman is not relevant to whether Friedman can bump into her position. Based on the evidence at hearing, the District established that Brandi N. Friedman is certificated and competent to bump into Respondent Heuring's position.

18. Taking into account the changes described above, no junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for these proceedings exists under sections 44949 and 44955. The parties complied with all pre-hearing procedural requirements.

2. The services set forth in Factual Finding 3 are particular kinds of service that may be reduced or discontinued in accordance with applicable statutes and case law. (See § 44955.) The District's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

3. Cause exists to dismiss the Accusation issued against respondents Olga Maritza Alvarez, Kimberly A. Caganap, Noelia Carrillo, Trinh Soai Chan, Cynthia Corona-Flores, Ivette Decasas, Elizabeth Dimauro, Erika Cristina Duran, Erick W. Figueroa, Michelle Vega Gonzales, Wanda Y. Hernandez, Philip Jesus Herrera, Diane Lynn Hubbard-Knight, Islene Leon, James H. Loehrke III, Elizabeth Alison McAllister, Carmen Mejico, Patricia Melendrez, Rosa Miranda-Zimmer, Christopher A. Mitts, Zachary A. Moore, Christopher Tran Nguyen, Paula Rafael, Tina Renee Solorzano, Cesar Torres, Esmeralda Vargas, and Yesenia Zambrano, as set forth in Factual Finding 11.

4. Cause does not exist to dismiss the Accusation issued against respondents Mariselva Avila, Wendy Garcia, Jacquelyn Coe, and Patrice Heuring, as set forth in Factual Findings 12, 14, 15, and 17.

5. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

⁴ No permanent employee may be "terminated while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." (§ 44955, subd. (b).)

ORDER

The Accusation against respondents Olga Maritza Alvarez, Kimberly A. Caganap, Noelia Carrillo, Trinh Soai Chan, Cynthia Corona-Flores, Ivette Decasas, Elizabeth Dimauro, Erika Cristina Duran, Erick W. Figueroa, Michelle Vega Gonzales, Wanda Y. Hernandez, Philip Jesus Herrera, Diane Lynn Hubbard-Knight, Islene Leon, James H. Loehrke III, Elizabeth Alison McAllister, Carmen Mejico, Patricia Melendrez, Rosa Miranda-Zimmer, Christopher A. Mitts, Zachary A. Moore, Christopher Tran Nguyen, Paula Rafael, Tina Renee Solorzano, Cesar Torres, Esmeralda Vargas, and Yesenia Zambrano is dismissed. The District shall not give those respondents final layoff notices for the 2013/2014 school year.

The Accusation is sustained as against the remaining respondents. The District may give notice in reverse order of seniority to those respondents that their services will not be required for the 2013/2014 school year.

Dated: April 22, 2013

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

1.	ALBA, DANIELLA M.	WESTMONT
2.	ALLEN, MICHELLE JEAN	EMERSON
3.	ALVAREZ, OLGA MARITZA	ALCOTT
4.	AMANCIO, CARMEN	MADISON
5.	ARANDA, JOHN FRANCIS	INSTRUCTIONAL SERVICES
6.	ATILANO, MICHELE	SAN JOSE
7.	AVILA, MARISELVA	EMERSON
8.	BAEZA, ELVIRA H.	ROOSEVELT
9.	BALDRICHE, DARIEN	CORTEZ
10.	BARKER, MATTHEW K.	EMERSON
11.	CAGANAP, KIMBERLY A.	ALCOTT
12.	CARR, LACEY M.	MARSHALL
13.	CARRILLO, NOELIA	LINCOLN
14.	CERDA, SANDRA	WASHINGTON
15.	CHAN, TRINH SOAI	CORTEZ
16.	COE, JACQUELYN DENISE	ALCOTT
17.	CORONA-FLORES, CYNTHIA	SAN ANTONIO
18.	DAVIS, JILLIAN RENEE	FREMONT
19.	DE LEON, CLAUDIA J.	PHILADELPHIA
20.	DECASAS, IVETTE	LOPEZ
21.	DIMAURO, ELIZABETH	DIAMOND POINT
22.	DINEEN, JENNIFER NICHOLE	POMONA
23.	DURAN, ERIKA CRISTINA	LOPEZ
24.	ESPARZA, ALEC RAYMOND	DIAMOND RANCH
25.	FASTING, LILIANA P.	GAREY
26.	FIGUEROA, ERICK W.	CORTEZ
27.	FLORES, MARGARITA GARCIA	FREMONT
28.	GARCIA, MARIA ELENA	VEJAR
29.	GARCIA, WENDY	ALCOTT
30.	GOMEZ, ROSE MARIE	ALLISON
31.	GONZALES, MICHELLE VEGA	LEXINGTON
32.	GOSS, JEANETTE G.	BARFIELD
33.	GUADARRAMA-ALMAGUER, HERLINDA	PHILADELPHIA
34.	HERNANDEZ, WANDA Y.	ARROYO
35.	HERRERA, PHILIP JESUS	LOPEZ
36.	HEURING, PATRICE A.	POMONA

37.	HUBBARD-KNIGHT, DIANE LYNN	CORTEZ
38.	IBARRA, NORMA M.	FREMONT
39.	JAIME, ADAN J.	DIAMOND RANCH
40.	KIM, CHUNG-MO PAUL J.	VEJAR
41.	LAPIERRE, DANIELA G.	YORBA
42.	LEON, ISLENE	ALCOTT
43.	LOEHRKE III, JAMES H.	DIAMOND RANCH
44.	LOPEZ, LISA	ALCOTT
45.	MARTINEZ, WILBER A.	EMERSON
46.	MCALLISTER, ELIZABETH ALISON	CORTEZ
47.	MCKELVEY, VERONICA	SAN JOSE
48.	MEDINA-JIMENEZ, MONICA	VEJAR
49.	MEJICO, CARMEN	MADISON
50.	MELENDREZ, PATRICIA	HARRISON
51.	MINO, TAKAKO	DIAMOND RANCH
52.	MIRANDA-ZIMMER, ROSA	MADISON
53.	MITTS, CHRISTOPHER A.	DIAMOND RANCH
54.	MOLINA, ARTURO	POMONA
55.	MOORE, ZACHARY A.	LINCOLN
56.	MORALES, CYNTHIA	KINGSLEY
57.	MORRIS, EVAN SEAN	EMERSON
58.	NGUYEN, CHRISTOPHER TRAN	ALCOTT
59.	OLAIZ, RALPH S.	LOPEZ
60.	OLESCYSKI, ROSALINDA	INSTRUCTIONAL SERVICES
61.	OWEN, KARENA M.	VEJAR
62.	PHAN-NGUYEN, DEENA THU	HARRISON
63.	PUGA, SOPHIA	LINCOLN
64.	QUACH, LINDA	GANESHA
65.	RAFAEL, PAULA	LINCOLN
66.	RAMIREZ-ALIKHAN, LAURA PATRICIA	HARRISON
67.	REYNOLDS, CLAUDIA	POMONA
68.	RICE, ANTHONY L.	POMONA
69.	RICE, DARRICK LARONZ	GANESHA
70.	RIGONAN, ERIC CHRISTOPHER S.	INSTRUCTIONAL SERVICES
71.	ROBLES, SANDRA L.	SCHOOL MENTAL HEALTH SERVICES
72.	ROJAS, DEBORAH	SCHOOL MENTAL HEALTH SERVICES
73.	ROMERO, SARA	ARROYO
74.	ROMO, AMANDA	SAN ANTONIO
75.	SANCHEZ, CLAUDIA	POMONA

76.	SANTANA, JAMIE ERINA	ARMSTRONG
77.	SAPIEN-MARQUEZ, VIRGINIA	SEEO
78.	SHARMA, VIBHUTI	MONTVUE
79.	SOLORZANO, TINA RENEE	PARK WEST
80.	STONE, LEAH L.	ALLISON
81.	STONE, ROBIN S.	WASHINGTON
82.	SUN, TIFFANIE Y.	POMONA
83.	TAYLOR, KAREN LATRICE	FREMONT
84.	TORRES, CESAR	WASHINGTON
85.	VALDEZ, OSCAR	EMERSON
86.	VARGAS, ESMERALDA	ROOSEVELT
87.	WARBURTON, SARAH E.	LEXINGTON
88.	WINTRODE, JENNIFER A.	ARROYO
89.	ZAMBRANO, YESENIA	HARRISON
90.	ZEPEDA, PATRICIA MARISOL	ROOSEVELT