

BEFORE THE GOVERNING BOARD OF THE  
CENTINELA VALLEY UNION HIGH SCHOOL DISTRICT

In the Matter of the Non-Reemployment of  
80.0 Full Time Equivalent Certificated  
Employees,

Respondents,

Consolidated for hearing with:

In the Matter of the Non-Reemployment of  
28.25 Full Time Equivalent Certificated  
Employees,

Respondents.

Consolidated OAH No. 2009030592

**PROPOSED DECISION**

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this consolidated matter on April 14 and 15, 2009, at the Centinela Valley Union High School District Office in Lawndale, California.

Candace M. Bandoian of Miller, Brown & Dannis represented the Centinela Valley Union High School District (District). Lawrence B. Trygstad, of Trygstad, Schwab & Trygstad represented all Respondents except Tania Cabeza, Mirta Howells and Rimma Sokolova Melaten. Respondents Tania Cabeza, Mirta Howells and Rimma Sokolova Melaten were present and represented themselves.

Oral and documentary evidence was received, and argument was heard. The matter was continued until April 17, 2009, to allow the District to submit additional evidence for amendment to the Seniority List. The additional evidence was timely received, and was marked and admitted as District Exhibit W. The record was closed, and the matter was submitted for decision on April 17, 2009.

**FACTUAL FINDINGS**

1. Complainant, Bob Cox, filed the Accusations while acting in his official capacity as the Assistant Superintendent of Human Resources for the District.
2. The Accusation entitled *In the Matter of the Non-Reemployment of 80.0 Full Time Equivalent Certificated Employees* (Secondary Education Accusation) pertained to the non-reemployment of secondary education employees. The Accusation entitled *In the*

*Matter of the Non-Reemployment of 28.25 Full Time Equivalent Certificated Employees* (Adult Education Accusation) pertained to the non-reemployment of adult education employees. The Accusations were consolidated for hearing.

3. Respondents are certificated employees of the District.

*Facts re: Secondary Education Accusation*

4. On February 24, 2009, the Governing Board (Board) of the District adopted a resolution to reduce and discontinue the following particular kinds of services provided by the District no later than the beginning of the 2009-2010 school year:

1. Principal	1.0 FTE
2. Professional Development/Instructional Coach	6.0 FTE
3. Project Facilitator	4.0 FTE
4. Dean	4.0 FTE
5. ELD Coordinator	3.0 FTE
6. School Nurse	1.0 FTE [ <sup>1</sup> ]
7. Counselors (excluding DIS Counselors)	10.0 FTE
8. Business	2.0 FTE
9. English	28.0 FTE
10. Math	5.0 FTE
11. Social Sciences	6.0 FTE
12. Art	4.0 FTE
13. Physical Education	2.0 FTE
14. French	2.0 FTE
15. Spanish	2.0 FTE
 TOTAL:	 80 FTE

5. The Board further determined that the reduction in services necessitated a decrease in the number of certificated employees at the close of the 2009-2010 school year by a corresponding number of FTE positions, and directed the Superintendent to notify the appropriate employees to implement the Board's determination.

6. On or before March 15, 2009, the District gave notice to each Respondent of the potential elimination of his/her position for the 2009-2010 school year. On March 25, 2009, the District served the Accusation on each Respondent.

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<sup>1</sup> Following the Board's February 24, 2009 Resolution, the District determined that it would not discontinue the 1.0 FTE School Nurse.

7. Respondents timely filed requests for hearing and Notices of Defense to determine if there was cause for not reemploying them for the 2009-2010 school year.

8. The services set forth in Factual Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue the identified particular kinds of services was neither arbitrary nor capricious, and constituted a proper exercise of discretion.

9. The reduction or discontinuation of particular kinds of services was related solely to the needs and welfare of the District and its pupils.

10. The 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.

11. The District maintains a Seniority List which contains employees' seniority dates, current assignments, permanency description and credential and certificate information.

12. At the hearing, counsel stipulated to make the following changes to the Seniority List (Seniority List or Exhibit H):

a. Tenured employee, Phyliss Buchanon, #244 on Exhibit H - seniority date was changed from September 6, 2005, to August 22, 2005;

b. Tenured employee, Jaime Chavez, #243 on Exhibit H - seniority date was changed from September 6, 2005, to August 22, 2005;

c. Tenured employee, Christopher James, #279 on Exhibit H - seniority date was changed from September 20, 2006, to November 14, 2005;

d. Tenured employee, Sonia Saldana, #226 on Exhibit H - seniority date was changed from September 6, 2005, to August 22, 2005;

e. Probationary 1 employee, Santa Maria Miller, #318 on Exhibit H - added a Social Sciences credential and a Master's Degree to her credential and other information;

f. Tenured employee, Stephanie McCoy, #189 on Exhibit H - seniority date was changed from September 7, 2004, to August 26, 2004.

g. Tenured employee, Edgar Alas, #248 on Exhibit H – added a Master's Degree to his credential and other information;

h. Tenured employee, Tania Cabeza, #201 on Exhibit H – seniority date was changed from September 7, 2004, to August 26, 2004 (but see Factual Finding 13, below);

i. Tenured employee, Claudia Gonzales, #243 on Exhibit H – seniority date was changed from September 6, 2005, to August 23, 2005.

13. Respondent Tania Cabeza (#201) is a tenured employee. Her first date of paid service was August 23, 2004, when she began attending the mandatory New Teacher Summer Institute, for which she was paid. Therefore, her seniority date should be August 23, 2004. This places her above #188 on the Seniority List.

14. Respondent Jane Ann (#228) is a tenured employee. Her first date of paid service was on August 22, 2005, when she began attending the mandatory New Teacher Summer Institute, for which she was paid. Therefore, her seniority date should be August 22, 2005. This places her above #224 on the Seniority List.

15. Respondents Erica Harbison (#230) and Joshua Schlener (#229) are tenured employees. Their first dates of paid service were on August 15, 2005, when they were required to begin attending, and were paid for, one week of Studio training. Thereafter, on August 22, 2005, they began attending the mandatory New Teacher Summer Institute. Therefore, their seniority dates should be August 15, 2005. This places them above #224 on the Seniority List.

16(a). Respondents Scot Butwell (#252), Christopher Perdue (#253), and Erin Ashwell (#255) are tenured employees who claim they are entitled to earlier seniority dates because they participated in the New Teacher Summer Institute in the summer of 2006. These three Respondents are incorrect.

16(b). During 2004 and 2005, attendance at the New Teacher Summer Institute by new teachers was mandatory and attendees were paid an hourly wage. The District apparently acknowledge that such mandated attendance would constitute “service” to the District, since it stipulated to change the seniority dates of the employees who attended the 2004 and 2005 Summer Institute (see Factual Finding 12a, b, d, f, h and i). However, in 2006 and thereafter, attendance by new teachers was not required, although it was encouraged, and the Summer Institute days were not part of the contract year (the 184 days teachers are required to work under their collective bargaining agreement). In 2006 and thereafter, the District compensated the new teachers for attending the training by issuing them a stipend in addition to their regular salary. Therefore, the District properly determined the first dates of paid service for Respondents Butwell, Perdue and Ashwell.

17(a). Jaime Diego Chavez (#243), is a tenured counselor for the District. His listed seniority date is September 6, 2005. During July and August of 2005, he was paid for “extra duty,” which counselors “can choose” to do during the summer. Although he asserted that his first date of paid service was July 5, 2005, he did not establish that his work during the

summer of 2005 was required. Therefore, the District properly determined the first dates of paid service for Respondent Chavez.

18(a). Respondent Edgar Alas (#248) is a tenured Social Studies teacher. His listed seniority date is February 1, 2006. On September 9, 2005, he began work with the District as a day-to-day substitute. On approximately September 16, 2005, he began a long-term substitute assignment as a social studies teacher and kept that assignment until February 1, 2006, when he signed a contract for probationary service for the same assignment.

18(b). Respondent Renee Dibrill is a Probationary 1 English teacher. She began a long term substitute teaching assignment on October 15, 2007, and taught in that assignment until February 4, 2008, when she signed a contract for probationary service for the same assignment.

18(c). Although Respondents Alas and Dibrill argued that their seniority dates should be the date they first worked as long term substitutes, this argument was not persuasive. Neither Respondent established that his/her months of substitute teaching mandated an earlier seniority date. Therefore, the District properly determined the seniority dates Respondents Alas and Dibrill.

19. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the services being reduced.

20. At the hearing, District Assistant Superintendent of Human Resources, Bob Cox (Cox), testified that seven English teachers (with seniority numbers lower than 216), two math teachers (with seniority numbers better than 327), and one social studies teacher (with a seniority number less than 239) were “over-noticed,” and that the District wishes to retain these teachers. Given the testimony that the District wishes to retain these teachers, the seven most senior English teachers, the two most senior math teachers and the most senior social studies teacher should be retained. For English, these teachers are: Tania Cabeza (#201 on Exhibit H), Erik Carlstone (#192 on Exhibit H); Lissette Morales (#196 on Exhibit H); Tali Sherman (#197 on Exhibit H); Alisha Park (#198 on Exhibit H); Kimberly Merritt (#199 on Exhibit H); and Ruoc Le (#200 on Exhibit H). For math, these teachers are: Wendy Truong (#326 on Exhibit H) and Courtney Mikamo (#327 on Exhibit H). For social studies, the teacher to be retained is Nguyen Nguyen (#238 on Exhibit H).

21. Except as provided below in Factual Findings 22 and 23, no certificated employee junior to any Respondent was retained to perform any services which any Respondent was certificated and competent to render.

22(a). The District determined that nobody less senior than Respondents was being retained to render services Respondents are certificated and competent to render.

22(b). In making this determination, the District retained the following certificated probationary employees, while less senior, tenured Respondents received notices:

Probationary employees Erin Estrada (#131 – English teacher), Reginald Morris (#149 – Social Studies teacher), Strawn Holmes (#150 –English Teacher), and Steve Hokanson (316 – Art teacher).

22(c). In retaining the more senior, probationary employees, the District argued that seniority, alone controls the order of layoff. This position is incorrect. (See Legal Conclusion 4, below.)

23(a). At the hearing, Cox admitted that the following tenured teachers are certificated and competent to perform instructional services performed by Estrada: Erik Carlstone(#192); Lissette Morales (#196); Tali Sherman (#197); Alisha Park (#198); Kimberly Merritt (#199); Ruoc Le (#200); Regina Flores (#216); Jason Chamberlin (#218); Sonia Saldana (#226); Jane Ann (#228); Joshua Schlener (#229); Erica Harbison (#230); Scot Butwell (#252); Christopher Perdue (#253); Erin Ashwell (#255); Catherine Frank (#257); Megan Anderson (#258). The evidence also established that Tania Cabeza (#201) is a tenured English teacher who was certified and competent to perform instructional services performed by Estrada.

23(b). Cox also testified that any of the above-listed Respondents with seniority numbers up to 192 are certificated and competent to perform instructional services performed by Holmes.

23(c). Cox also testified that the following tenured teachers are certificated and competent to perform instructional services performed by Morris: Claudia Gonzalez (#239), Edgar Alas (#248), Kevin Haefner (#264), and Christopher James (#279).

23(d). Cox also testified that the following tenured teachers are certificated and competent to perform instructional services performed by Hokanson: Michael Prendergast (#265), Matthew Bivens (#211), and Amelia Arambula (#172).

23(e). Therefore, the District must retain the four, most-senior, tenured teachers who are certificated and competent to perform instructional services performed by probationary employees Estrada, Holmes, Morris and Hokanson. Although Respondents argue that they should all be retained as a result of the improper retention of the four probationary employees, they provided no authority which would mandate this action. Rather, a one-for-one exchange is the more appropriate resolution.

23(f). Since, by the District's admission, the seven most senior English teachers should already be retained (see Factual Finding 21), the next most senior tenured English teachers who should be retained, in place of probationary employees Estrada and Holmes, are: Regina Flores (#216 on Exhibit H) and Jason Chamberlin (#218 on Exhibit H). Since, by the District's admission, the most senior social studies teacher should already be retained (see Factual Finding 21), the next most senior tenured social studies teacher who should be retained, in place of probationary employee Morris, is Claudia Gonzalez (#239). The most

senior art teacher who should be retained, in place of probationary employee Hokanson is Amelia Arambula (#172 on Exhibit H).

24(a). The District retained the services of Ryan Winkler who is assigned to the Guidance Room. Winkler was not sent a layoff notice. The District originally provided Respondents with a seniority list (Exhibit C) which included Winkler, at #351, with a seniority date of October 5, 2008, and a single subject credential in physical education. Winkler was listed as a probationary employee. Winkler's name was eliminated from the revised Seniority List, Exhibit H.

24(b). The District did not have documentation setting forth Winkler's status as a temporary employee. However, Cox testified that Winkler began working as a day-to-day substitute, and later became a long term substitute. Winkler was not present at the hearing to assert his position regarding his employment status. The District's classification of Winkler as a temporary employee is presumed to accurate for this proceeding.

24(c). In asserting that Stephanie McCoy (#189) should be assigned to the Guidance Room, Respondent's counsel argued that Winkler's statutory default status was that of probationary employee, based on Education Code section 44916. However, without Winkler's participation, no conclusion will be made in this proceeding which would affect his employment status.

Facts re: Adult Education Accusation

25. On March 10, 2009, the Governing Board (Board) of the District adopted a resolution to reduce and discontinue the following particular kinds of services provided by the District no later than the beginning of the 2009-2010 school year:

1. Older Adults	5.00 FTE
2. Counseling	.75 FTE
3. Homemaking	1.00 FTE
4. Parent Education	.50 FTE
5. English as a Second Language (ESL)	10.50 FTE
6. High School Diploma/ GED	.50 FTE
7. Adult Basic Education	2.00 FTE
8. Computer Applications	2.50 FTE
9. Dental Services	1.00 FTE
10. Office Occupations	1.50 FTE
11. Career Technical Education/ Voc. Ed.	3.00 FTE
TOTAL:	28.25 FTE

26. The Board further determined that the reduction in services necessitated a

decrease in the number of certificated employees at the close of the 2009-2010 school year by a corresponding number of FTE positions, and directed the Superintendent to notify the appropriate employees to implement the Board's determination.

27. On or before March 15, 2009, the District gave notice to each Respondent of the potential elimination of his/her position for the 2009-2010 school year. On March 25, 2009, the District served the Accusation on each Respondent.

28. Respondents timely filed requests for hearing, and Respondent Rimma Sokolova-Melaten filed a Notice of Defense to determine if there was cause for not reemploying her for the 2009-2010 school year. Although Respondent Mirta Howells did not file a Notice of Defense, the District did not object to her appearing and testifying at the hearing.

29. The services set forth in Factual Finding 25 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue the identified particular kinds of services was neither arbitrary nor capricious, and constituted a proper exercise of discretion.

30. The reduction or discontinuation of particular kinds of services was related solely to the needs and welfare of the District and its pupils.

31. The 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.

32. The District maintains a Seniority List which contains employees' seniority dates, current assignments, permanency description and credential and certificate information.

33(a). The District determined that nobody less senior than Respondents was being retained to render services Respondents are certificated and competent to render.

33(b). Although Respondents Howells and Sokolova-Melaten testified at the hearing, their testimonies did not establish that the District's determination was erroneous.

34. No certificated employee junior to any Respondent was retained to perform any services which any Respondent was certificated and competent to render.

## LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1 through 7, and Factual Findings 25 through 28.)



## ORDERS

I. The Accusations served on Respondents Tania Cabeza, Erik Carlstone, Lissette Morales, Tali Sherman, Alisha Park, Kimberly Merritt, Ruoc Le, Wendy Truong, Courtney Mikamo, Nguyen Nguyen, Claudia Gonzalez, Regina Flores, Jason Chamberlin, and Amelia Arambula are dismissed.

II. The Accusations served on all other Respondents are sustained. Notice may be given to those Respondents before May 15, 2008, that their services will be reduced or terminated for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services as indicated.

Dated: May 6, 2009

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JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings