

BEFORE THE
GOVERNING BOARD OF THE
SAN GABRIEL UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation against:

Certificated Employees of the San Gabriel
Unified School District,

Respondents.

OAH Case No. 2009031199

PROPOSED DECISION

Administrative Law Judge Susan L. Formaker of the Office of Administrative Hearings heard this matter on April 17, 2009, in San Gabriel, California.

Keith Breon of Breon & Schaeffer represented Assistant Superintendent for Human Resources Susan Naeve (Naeve), San Gabriel Unified School District (District).

Jonathan Klar of Rothner, Segall & Greenstone represented Priscilla Quinde (Quinde), Georgia Singleton (Singleton), Quynh Smith (Smith), Pauline Vuong (Vuong), Carol Thompson (Thompson), Jenna Dizon (Dizon), and Pamela Johnson (Johnson), to the extent the Respondents' interests were not in conflict. Tracy Green, Attorney at Law, additionally represented Dizon to the extent Dizon's interests were separate and potentially in conflict with other Respondents. Quinde, Singleton, and Smith additionally each represented themselves, to the extent any of such Respondents' interests were separate and potentially in conflict with any other Respondent. No certificated employees affected by the District's proposed action, other than those listed here, appeared. The Accusation was withdrawn as to Mary Edkins, Kathryn Ross, and Maggy McAfee prior to the hearing.

The record remained open until April 24th to allow Ms. Green to provide Dizon's closing argument, and Mr. Breon to present the District's rebuttal argument, in writing. Dizon timely submitted a "Supplemental Memorandum of Points and Authorities Re: Grounds Why Permanent Employee Dizon Cannot Be Terminated Prior to Probationary Employees During Reduction in Force," which was marked for identification as Exhibit C; a subsequent Notice of Errata Re: Memorandum was marked for identification as Exhibit D. The District timely submitted Petitioner's Post Hearing Brief, which was marked for identification as Exhibit 9; the District's subsequent Amended/Corrected Petitioner's Post Hearing Brief was marked for identification as Exhibit 10.

Oral and documentary evidence having been received, and the matter having been deemed submitted for decision on April 27, 2009, the Administrative Law Judge makes the

following Proposed Decision:

FACTUAL FINDINGS

1. Naeve, acting in her official capacity with the District, caused all pleadings, notices and other papers to be filed and served upon Respondents.

2. Quinde, Singleton, Smith, Vuong, Thompson, Dizon, and Johnson (Respondents) are certificated employees of the District.¹

3. On March 10, 2009, the Governing Board of the District (Governing Board) adopted Resolution number 17, reducing 12.63 full-time equivalent (FTE) positions for the 2009-2010 school year, in the following services: K-5 grade classes (9.0 FTE), 6-8th grade French (.83 FTE), 9-12th grade Chinese for Chinese Speakers (.60 FTE), 9-12th grade French (.20 FTE), Teacher on Special Assignment in Educational Services (1.0 FTE), and Teacher on Special Assignment in Human Resources (1.0 FTE).

4. In Resolution number 17, the Governing Board exempted the following personnel from the order of certificated layoff:

“A. Special Education Credentialed teachers;

“B. Speech Pathologist Credentialed teachers;

“C. Teachers with a full California Teaching Credential (clear or preliminary) and are NCLB compliant and authorized for the subject area of Chinese (excluding interns or Education Code authorization);

“D. Teachers with single subject authorization with recent teaching experience (within the last subject area framework adoption) in the credential-authorized assignment; and

“E. Teachers with multiple-subject authorization who taught grades K-6 within the San Gabriel Unified School District with the exception of the nine least senior K-6 teachers who will be laid off.”

5. In adopting Resolution number 17, the Governing Board took account of the recommendations of a District-wide staffing committee, of identified vacancies for the 2009-

¹ Two of the certificated employees affected by the layoff, Betty Ting and Laura Suarez, did not submit requests for hearing or notices of defense. They are not considered Respondents in this matter.

2010 school year due to positive assured attrition (confirmed retirements or resignations), and of the release of certain temporary teachers.

6. On March 11, 2009, the District provided letters designated “Re: Notice of Layoff” to most of the Respondents and other certificated employees affected by the proposed action, but not to Quinde and Singleton. In the first sentence of each letter, it stated that the employee was “hereby notified, pursuant to sections 44949 and 44955 of the California Education Code, that it is recommended that you shall not be reemployed by the San Gabriel Unified School District for the 2009-2010 school year.” Each letter referred to an enclosed copy of Resolution number 17 identifying the need to reduce particular kinds of services and noted that the action was due to the decreased state funding for education. In addition, the certificated employees receiving these letters were notified that they could “request a hearing to determine if there is cause for not reemploying [them] for the 2009-2010 school year,” that they had seven days from the date of receipt of the letters to request a hearing in writing, and that failure to request a hearing would constitute a waiver of the right to a hearing. Copies of Education Code sections 44949 and 44955 and blank requests for hearing were enclosed with the letters, in addition to copies of Resolution number 17. All Respondents other than Quinde and Singleton submitted timely requests for hearing in response to these letters from the District.

7. On March 11, 2009, the District provided different letters designated “Re: Layoffs” to Quinde and Singleton. These letters included copies of Education Code sections 44949 and 44955, copies of Resolution number 17, and blank requests for hearing. The letters to Quinde and Singleton stated as follows:

“The layoff sections of the Education Code authorize school districts to retain specially trained and experienced teachers with less seniority than others, based upon a specific need for teachers to teach specific courses of study.

“The District believes you are one of these teachers.

“Even so, other more senior teachers may not agree with the District. Therefore, the District must send you a layoff notice in order to protect the rights of all teachers involved.

“Please return the enclosed Request for Hearing form. This will permit you to be represented at the layoff hearing. The hearing is expected to take place in April. We will be able to determine your status when the results of the hearing are announced.

”On behalf of the District, we would like to extend to you our sincere appreciation for your understanding during this process. We will keep you updated regarding information as to the hearing dates and results as they are made known to us.”

8. When Quinde received her letter from the District, she was confused about its meaning. She had heard about possible layoffs and thought the letter meant the District wanted to retain her. Quinde believed she might receive an additional layoff notice. She testified that if she had received a letter telling her that she was the subject of a layoff, she would have sought independent legal representation. However, she admitted that she attended California Teachers Association layoff meetings about the layoff process and met with regional union staff and counsel prior to the hearing. Despite Quinde's confusion, she timely requested a hearing.

9. Singleton was relieved when she received her letter from the District. She understood that others were getting laid off but that her retention would involve controversy. Singleton compared her letter with the letter that was received by Dizon. Based on her comparison of the letters, Singleton concluded she was not being laid off and that the letter she had received was informational. Singleton did not consult with union staff or counsel until the date of the hearing with respect to the contents of the letter she received; prior to the date of the hearing, she only spoke with union staff regarding obtaining a substitute teacher to attend the proceeding. However, she timely requested a hearing. Singleton testified she would have approached the process differently if she had known she might be laid off, although it was unclear how her approach might have been different had she known.

10. On or about March 27, 2009, the District filed and served the Accusation on Respondents. All Respondents thereafter filed timely notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

11. All prehearing jurisdictional requirements have been met. Although the notices given to Quinde and Singleton were not optimal, they provided sufficient notice of the proceedings for Quinde and Singleton timely to submit their requests for hearing and notices of defense, to confer with counsel and union staff, to appear and be represented at the hearing, and to present their own arguments to the extent their positions were in conflict with other Respondents. As a result, Quinde and Singleton failed to demonstrate any prejudice arising from the form of notice they received.

12. The services set forth in Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.²

² On April 14, 2009, the Governing Board decided to delay the planned elimination of the French program in the District, causing the withdrawal of the Accusation as against Maggy McAfee, Mary Edkins, and Kathryn Ross in connection with the 6-8th grade French (.83 FTE) and 9-12th grade French (.20 FTE) reductions set forth in Resolution number 17. Although Mary Edkins and Kathryn Ross do not teach French and are not certificated to teach French, they were provisionally noticed in the event Maggy McAfee could “bump” into their positions.

13. The reduction of services set forth in Factual Finding 3 is related to the welfare of the District and its pupils. The Governing Board took action to reduce the services set forth in Finding 3 primarily because of a reduction in state funding and resulting budgetary concerns. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

14. The District maintains a seniority list which contains employees' seniority dates (generally, the first date of paid probationary service), indications as to whether employees are probationary or tenured, and current class assignments. A second seniority list, which is organized by subject area and includes all credentials, certifications, authorizations, and current school assignment for each teacher, is also maintained by the District. Certificated employees were provided the opportunity to review the first seniority list (Exhibit 3, pages 11 through 16) prior to its adoption by the Governing Board on February 24, 2009. In addition, certificated employees were provided an opportunity to correct the District's information that was contained on the second seniority list (Exhibit 3, pages 17 through 22) organized by subject area. Singleton asserted, and the District agreed, that she was improperly classified as a probationary 1 employee instead of a probationary 2 employee and that the first seniority list included an incorrect seniority date for her. Although Singleton also asserted that her first date of paid service might have been August 29, 2007, instead of September 4, 2007, she also acknowledged that the date made no difference in her placement on the seniority list for her subject area. There was no additional evidence of errors on the seniority lists.

16. On March 3, 2009, the Governing Board approved criteria and a point system to break ties in seniority among certificated employees with the same first date of paid probationary service. Thirteen criteria, including credentials, certifications, types of training, types of experience, and areas of participation, with points assigned to each, were included. The person with the most points was given the highest seniority. If, after consideration of these 13 criteria, there was still a tie, a fourteenth criterion was considered. A fifteenth criterion was to be considered only if there was still a tie after consideration of the fourteenth. In determining the order of layoff, the District properly applied the tie-breaking criteria.

17. The District used the seniority lists, any corrections thereto, and the tie-breaking criteria to designate who was proposed to be laid off and who might be able to "bump" less senior employees after considering the various services being reduced. In determining who would be laid off for each kind of service reduced, the District determined the impact on current staff in inverse order of seniority, with only the seniority date being considered. There was no distinction made between probationary and permanent (tenured) employees. The District also exempted from layoff those persons holding credentials and/or

having experience satisfying the “skipping” criteria in Resolution number 17, as set forth in Finding 4.

18. Smith is a permanent certificated employee who is teaching, and has been teaching for 13 years, a series of progressively more difficult levels of Chinese for Chinese Speakers at Gabrielino High School. She currently teaches levels I, II, and III. In the past, Smith has taught the most advanced, level IV. She fluently speaks three dialects of Chinese, including Mandarin, in addition to other languages. Smith holds Early Childhood Education, Standard Elementary, and Standard Secondary teaching credentials, authorizing her to teach from Kindergarten to 12th grade. It was unclear whether Smith could teach preschool. She is authorized by her Standard Secondary credential to teach Asian Studies, Humanities, French, and Music at the 7th through 12 grade levels. Smith's Asian Studies authorization also allows her to teach social studies. At the University of California, Irvine, her Asian Studies major focused on comparative cultures, and she specialized in Chinese culture. Smith's special skills and preparation in Chinese resulted in her being authorized to teach Chinese by a committee on assignments, pursuant to Education Code section 44258.7, subdivision (c). Although this code section provides that such assignments are to be for a maximum of one school year, the assignments may be extended by action of the committee. Smith's authorization to teach Chinese was so extended, and there was no evidence that her authorization was limited in time or that the authorization to teach Chinese was limited to teaching only the Chinese for Chinese Speakers series of classes. Smith teaches Mandarin, but she speaks to her students and their parents in other dialects. She understands that students taking her courses receive full credit for them for admission to the University of California. Naeve admitted that Smith was No Child Left Behind (NCLB) compliant in Chinese. Smith underwent training at Chapman College to teach AP Chinese when AP courses in Chinese were first recognized a few years ago, but the District did not ask Smith to teach AP Chinese. Smith's first date of paid service for seniority purposes was August 30, 1996.

19. Smith contended that she should be able to “bump” Yan Mao (Mao), the only other teacher in the District teaching Chinese. Mao is a permanent certificated employee whose first date of paid service for seniority purposes was September 1, 1999. She is thus junior in seniority to Smith. Up until two years ago, Mao taught special education using her clear Education Specialist credential. Mao then began teaching progressively more difficult levels of Mandarin, a Chinese language course for non-Chinese speakers, as authorized by her preliminary single subject credential in Chinese. Naeve testified, with some uncertainty, that although the subject matter seniority list indicates Mao's preliminary single subject credential is in “Chinese,” she understood it is actually in Mandarin. No documentary evidence of Mao's Chinese-language credential was submitted.

20. The District contended that Mao is entitled to “skip” over Smith, and to be retained before Smith, because of the exemptions from reductions in services set forth in

Resolution number 17. First, the District argued that Mao is the only person who qualifies to be exempt from reductions in services under exemption C. While both Smith and Mao have full California teaching credentials, are NCLB compliant, and are authorized for the subject area of Chinese, Mao's authorization to teach Chinese is not an "Education Code" authorization, according to Naeve. Naeve testified that the "Education Code" authorization, which was not exempt from reductions in services, was meant to refer to an authorization by a committee on assignments. There was nothing in the minutes pertaining to the Governing Board's approval of Resolution number 17 reflecting any discussion of the meaning of "Education Code" authorization. The second argument advanced by the District as to why Mao should be exempt from a reduction in services was that she is a special education credentialed teacher. There was no evidence that Mao is currently assigned to teach special education or that she will be assigned to teach special education in the 2009-2010 school year.

21. Naeve explained that it was necessary to have a teacher credentialed in Mandarin teach the course of that name because Smith's committee on assignments' authorization to teach Chinese purportedly meant that she could not teach courses recognized for foreign language credit by the University of California in its "a through g" course admissions requirements. According to Naeve, the Chinese for Chinese Speakers courses taught by Smith only counted for elective credit in the University of California's "a through g" course admissions requirements. Naeve also explained that to her understanding, only a person credentialed in Mandarin could teach AP Mandarin, and not someone who is authorized to teach Chinese through a committee on assignments. The District did not submit evidence that it is currently offering AP Mandarin or that it intends to offer AP Mandarin in the 2009-2010 school year.

22. Smith's factual contentions are supported by evidence of which the Administrative Law Judge may take official notice pursuant to Government Code sections 11425.50, subdivision (c), and 11515, and Evidence Code section 452, subdivisions (c) and (h). Education Code section 44258.7, subdivision (c), and relevant portions of The Administrator's Assignment Manual published by the Commission on Teacher Credentialing (8th Rev., September 2007) (marked as Exhibit E), state that a "committee on assignment's" authorization to teach a subject may be for an elective course, which is defined as a course "other than English, mathematics, science, or social studies." Using this definition, both Mandarin and Chinese for Chinese Speakers are "electives" for which a committee on assignments' authorization in "Chinese" provides the necessary teacher certification. Moreover, the University of California's official website (which the Administrative Law Judge accessed to provide information specific to Gabrielino High School at <http://doorways.ucop.edu/list>) indicates that both the Chinese for Chinese Speakers and Mandarin courses currently offered by the school qualify for foreign language credit, and not just elective credit, for admission to the University of California. (See print-outs of information from the University of California's website, marked as Exhibit F.) Finally, the

College Board, which administers the AP program, states in the “AP Central” portion of its official website (accessed by the Administrative Law Judge at <http://apcentral.collegeboard.com/apc/public/teachers/index.html>) that the “AP Program does not have a set of formal requirements that teachers must satisfy prior to teaching an AP course, . . . [although] AP teachers [should] have considerable experience, and usually an advanced degree in the discipline, before undertaking an AP course. Participating in an AP workshop for professional development is generally one of the first steps to becoming a successful AP teacher.” (See printout of information from the College Board's website, marked as Exhibit G.) Smith's 13 years' experience teaching Chinese, and her training in teaching an AP course, appears to make her more qualified than Mao to teach an AP course in Mandarin. Thus, all of the District's justifications for requiring a credential versus an authorization by a committee on assignments, as a basis for not retaining Smith, are factually unfounded.

23. Nor could the District justifiably retain Mao based on her special education credential if the purpose of “skipping” her over Smith was to have her teach Mandarin. There was no evidence that Mao would teach special education in the 2009-2010 school year or at any point thereafter.

24. Considering Findings 22 and 23, it cannot be said that Mao holds special skills, experience, or credentials making her competent to render services in the teaching of Mandarin that Smith is not certificated or competent to render. As a result, the District's “skipping” criteria A and C are arbitrary and capricious as applied to Mao and Smith. Smith, the more senior teacher, is entitled to “bump” Mao as to .60 FTE of Mandarin.

25. Dizon is a permanent elementary school teacher with a clear Multiple Subject credential. She first started working as a teacher for the District in 1998 and became a permanent employee in 2003. Dizon resigned in 2006 but returned within 39 months, allowing her to keep her permanent status. According to the seniority list, her seniority date was September 2, 2008. Although she testified that her first date of paid service after returning to the District should have been listed as August 26, 2008, because of teacher training beginning that day, Dizon did not contest the seniority list because the extra days would not change her place on the seniority list. In addition to her Multiple Subject credential, Dizon has CLAD certification, is “highly qualified” under No Child Left Behind Act guidelines, has a clear Reading Certificate, has a professional clear Specialist Instruction Credential in Reading, and has a Master of Arts in Education with a reading emphasis.

26. Diane Tse, Christina Baker, Bianca Serrano, Jason Trapp, and Mary Edkins are all probationary employees teaching elementary school with multiple subject credentials. They all have earlier seniority dates than Dizon and are being retained by the District. In addition, Quinde and Singleton are both probationary employees teaching elementary school with multiple subject credentials. They were provided provisional notices of layoff, but the

District seeks to retain them. No evidence indicated that any of these probationary employees held special credentials or skills that would justify their “skipping” ahead of Dizon. The District seeks to retain these probationary employees ahead of Dizon under the District's retention criterion E, which seeks to retain all but the “nine least senior K-6 teachers.” Naeve's testimony made clear that “seniority” was based solely upon the applicable seniority date.

27. There is no factual basis for retaining the probationary employees listed in Finding 26 ahead of Dizon. Dizon is certificated and competent to render the services these probationary, more junior employees provide. She is entitled to retain her job and to bump any of them, for up to 1.0 FTE.

28. Quinde, Singleton, Vuong, Thompson, and Johnson did not raise any objections to their order of seniority on the seniority list. Vuong, Thompson, and Johnson did not identify any employee they felt they could “skip” pursuant to the District's retention criteria. Quinde and Singleton both argued that their experience teaching elementary school in the District should allow them to “skip” over Smith if Smith sought to “bump” into their elementary school positions. In light of Finding 24, an analysis of such “skipping” rights is unnecessary. No certificated employees junior to Quinde, Singleton, Vuong, Thompson, or Johnson were retained to render services which any of these Respondents is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of Findings 1 through 3 and 5 through 13. Education Code section 44949, subdivision (a), requires that the preliminary notice of layoff state that it has been recommended that the notice be given to the employee and that the “reasons therefor” be provided. Subdivision (b) further provides that the notice shall advise the employee of the provisions of subdivision (b), whereby the employee may request a hearing to determine if there is cause for not reemploying him or her, that the request for hearing shall be in writing and shall be delivered to the person who sent the notice on or before a specified date not less than seven days after the date the notice was served, and that failure to request a hearing shall be a waiver of the employee's right to do so. The District's letters sent to all Respondents, other than Quinde and Singleton, complied with these requirements. While the letters sent to Quinde and Singleton did not on their own strictly comply with the requirements of Education Code section 44949, when considered together with the enclosures the letters provided sufficient notice to Quinde and Singleton of the District's reasons for the layoffs and of Quinde's and Singleton's obligations. As set forth in Finding 11, the form of the letters received by Quinde and Singleton was not prejudicial. Because “[n]onsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors,” cause does not exist to dismiss the

Accusation against Quinde and Singleton based on the letters they received. (Educ. Code §44949, subd. (c) (3).)

2. The services listed in Factual Finding 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of Findings 3 and 12.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in Factual Finding 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of Factual Findings 1 through 13. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

4. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 473-474; *Krausen v. Solano County Junior College District* (1974) 42 Cal.App.3d 394, 402.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess special credentials or needed skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.) The District has the burden of proof to show by a preponderance of the evidence that a junior teacher should be retained over a more senior teacher.

5. By reason of Findings 18 through 24 and Legal Conclusion 4, cause does not exist under Education Code section 44955 to retain Mao over Smith. While Mao holds a credential to teach Chinese language, and Smith only holds a committee on assignments' authorization to do so, the credential does not confer on Mao any special skills or capabilities that Smith does not have. As set forth in Finding 18, in providing Smith with the authorization to teach Chinese for 13 years, the committee on assignment was required to find that Smith had "special skills and preparation outside of . . . her credential authorization" in Chinese. (Educ. Code §44258.7, subd. (c).) When the Governing Board then contended that Smith lacks the competence, that is, the specific skills or qualifications required to teach Mandarin, it was an abuse of discretion. Mao's special education credential cannot provide an alternate basis for "skipping" Mao because it does not confer any special skills or capabilities that Smith does not have that will be used by the District. In *Alexander v. Board of Trustees* (1983) 139 Cal.App.3d, 567, the Court of Appeal considered whether special language abilities forming the basis to skip an employee must be used to qualify as valid

skipping criteria. The Court of Appeal found that “[o]ne of the [t]eachers sought to show that a teacher retained because of language skills was not *using* the language ability. Counsel for respondent objected that ‘[w]hether she uses the language ability or not is irrelevant.’ We disagree.” (*Id.*, at p. 576.) Accordingly, Smith is entitled to “bump” Mao as to .60 FTE of Mao's teaching position in Mandarin.

6. Cause does not exist to lay off Dizon under Education Code section 44955. That section provides that “the services of 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.” The law in California consistently has been that no permanent employee may be terminated before a probationary employee when they both are competent and certificated for the position. (*See Krausen, supra*, 42 Cal.App.3d at 405 [interpreting a predecessor to section 44955]; *Davis v. Gray* (1938) 29 Cal.App.2d 403, 406 [same].) While Dizon's seniority date was junior to that of some of the probationary teachers retained, that did not make her junior to them for layoff purposes. To rule otherwise would render the concept of tenure meaningless. The District's citations to Education Code section 44848, *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, and *California Teachers Association v. Vallejo* (2007) 149 Cal.App.4th 135, are inapposite. Education Code section 44848 only establishes that Dizon's seniority date among permanent employees is the date she first rendered paid services to the District after her reemployment, rather than her first date of paid probationary service. Dizon did not contest this point. Moreover, neither the *San Jose* nor *Vallejo* cases held that probationary teachers could be retained ahead of permanent teachers when they are both competent and certificated for the position. Indeed, the Court of Appeal in *Vallejo, supra*, 149 Cal.App.4th at 145, specifically stated that “[l]ayoffs proceed down the classification scheme, in accordance with seniority,” and reiterated that no probationary employee, or any other employee with less seniority, may be retained in a position a permanent employee is certificated and competent to render. As a result, and as set forth in Findings 25 through 27 and Legal Conclusions 1 through 4, Dizon is entitled to retain her elementary teaching position.

7. Cause exists to terminate the services of Respondents Quinde, Singleton,

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Vuong, Thompson, and Johnson by reason of Factual Findings 1 through 28, and Legal Conclusions 1 through 6.

ORDER

The Accusation is dismissed as to Smith and Dizon, and the District must retain them to teach during the 2009-2010 school year. With respect to Respondents Quinde, Singleton, Vuong, Thompson, and Johnson, the Accusation is sustained, and the District may notify them that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

Dated: May 7, 2009

SUSAN L. FORMAKER
Administrative Law Judge
Office of Administrative Hearings