

BEFORE THE GOVERNING BOARD  
GUADALUPE UNION SCHOOL DISTRICT  
COUNTY OF SANTA BARBARA  
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Rosario Aronie; Martha G. Garcia;  
Susana M. Mosqueda; Jessie Oster;  
Sandra L. Rosas; Oliva Rubalcaba;  
Angela Soares; and Patricia Velasco,

Respondents.

OAH Case No. L2009031289

**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 20, 2009, in Guadalupe, California.

Frances E. Rogers, Attorney at Law, represented Hugo E. Lara (Lara), Superintendent of the Guadalupe Union School District (District).

Alexis Ridenour, Attorney at Law, represented Rosario Aronie (Aronie); Martha G. Garcia (Garcia); Susana M. Mosqueda (Mosqueda); Jessie Oster (Oster); Sandra L. Rosas (Rosas); Oliva Rubalcaba (Rubalcaba); Angela Soares (Soares); and Patricia Velasco (Velasco), collectively called Respondents.

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 2009-2010 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Superintendent Lara filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.

3. On March 10, 2009, the Board of Trustees of the District (Governing Board) adopted Resolution number 2008/2009-15, reducing or discontinuing the following services for the 2009-2010 school year:

<u>Service</u>	<u>FTE<sup>1</sup> Reduction</u>
Music Teacher	1.0
School Nurse	1.0
Education Services Coordinator	1.0
Director – Curriculum & Instruction	1.0
K-6 Elementary School Classroom Teaching Services	<u>8.0</u>
 Total	 12.0

4. Superintendent Lara notified the Governing Board that he had recommended that notice be provided to Respondents that their services will not be required for the 2009-2010 school year due to the reduction of particular kinds of services.

5. On March 11, 2009, the District provided notice to Respondents that their services will not be required for the 2009-2010 school year due to the reduction of particular kinds of services.

6. Respondents thereafter timely requested a hearing to determine if there is cause for not reemploying them for the 2009-2010 school year.

7. On March 25, 2009, the District issued the Accusation, and thereafter served it on Respondents.

8. Respondents thereafter, through counsel, timely filed notices of defense.

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.<sup>2</sup>

11. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of the uncertainty surrounding future State funding. The District estimates a revenue shortfall of approximately \$970,000 for the 2009-

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<sup>1</sup> Full-time equivalent position.

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

2010 school year. 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.

12. The reduction 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.

13. The District retained six employees junior to some of the Respondents. Rebecca Geisler, Julee Gay, and Darlene McKinney, who have seniority dates of August 11, 2006, August 13, 2004, and April 17, 2002, respectively, were retained to render special education services and hold credentials that enable them to teach the classes. Lynda Schiff, Kevin Baldizon, and Salvador Reynoso, Jr., who have seniority dates of August 15, 2003, August 16, 2002, and August 27, 2002, respectively, were retained to teach in the District's middle school; they each have credentials that allow them to teach single subjects, Social Science, English, and Science, respectively. The services provided by these certificated employees have not been reduced or discontinued, and Respondents do not possess the credentials that would allow them to provide the services of the retained certificated employees. Retention of these six individuals is appropriate as the District demonstrated the specific need for their services and the certificated employees have the requisite training and experience to provide the services.

14. Respondent Oster provided the nursing services discontinued by the District. The District plans to offer mandated State nursing services using other delivery methods.

15. Respondent Soares was first hired on August 13, 2004, to fill 50 percent of a teaching position. Her contract of employment stated that it was a provisional contract pursuant to section 44911, and that employment was temporary. The position was shared between Respondent Soares and Elaina Gutierrez (Gutierrez). However, Gutierrez became ill, and Respondent Soares filled Gutierrez's portion of the assignment as a substitute teacher. Gutierrez returned to work in April 2005, and Respondent Soares stopped working while Gutierrez filled the position on a full-time basis to make up for time lost during her absence. On August 29, 2005, Respondent Soares was hired as a probationary employee.

16. Respondents Aronie, Garcia, Mosqueda, Rosas, Rubalcaba, Soares, and Velasco all hold multiple subject credentials. With seniority dates of August 10, 2007 (Rubalcaba), August 29, 2005 (Soares), August 13, 2004 (Rosas), August 15, 2003 (Mosqueda), August 27, 2002 (Reynoso), and August 16, 2002 (Velasco and Garcia), they are the most junior employees providing a service, elementary school classroom teaching, which has been reduced by 8 FTEs.

17. No certificated employee junior to any Respondent was retained to render a service which any Respondent is 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 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 District to reduce or discontinue 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 17.

4. Courts have permitted districts to reduce or discontinue particular kinds of services, including those of school nurses, as long as mandated services continue to be performed. (See, e.g., *Gallup v. Alta Loma School District Board of Trustees* (1996) 41 Cal.App.4th 289 (*Gallup*); *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 639-640.) The District plans to continue to provide State-mandated nursing services, and it was not established that the discontinuation of nursing services set forth in factual finding number 3 will preclude the District from discharging its health care obligations.

5. The Education Code (Code) permits certificated employees to be classified in one of four ways: permanent, probationary, substitute, or temporary. (*Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911, 916 (*Kavanaugh*)). A certificated employee is classified as permanent, i.e., acquires tenure, if, after having been employed for two complete successive school years in a position requiring certification qualifications, he or she is reelected for the following year. (§ 44929.21, subd. (b); *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1278-1279 (*Bakersfield*)). Probationary employees are “those persons employed in positions requiring certification qualifications for the school year, who have not been classified as permanent employees or as substitute employees.” (§ 44915.) “[S]ection 44915 has been understood to make probationary status the default classification for certificated employees who are not otherwise required by the Code to be classified as permanent, substitute, or temporary employees. [Citations].” (*Bakersfield, supra*, 145 Cal.App.4th at p. 1281.) Substitutes are “those persons employed in positions requiring certification qualifications, to fill positions of regularly employed persons absent from service. . . .” (§ 44917.) Temporary employees are those requiring certification qualifications, other than substitute employees, who are employed for limited assignments, as defined in the Code, such as in sections 44918, 44919, 44920, and 44921. (*California Teachers Association v. Vallejo City Unified School District* (2007) 149 Cal.App.4th 135, 146 (*Vallejo*)).

Employment as a substitute or other temporary status may become employment in a probationary capacity in some circumstances. “A year of employment as a temporary teacher may, in some cases, be treated as a year of probationary service for purposes of attaining permanent status if the employee is rehired for the following year ‘as a probationary employee in a position requiring certification qualifications’ (§ 44909); ‘in a position requiring certification qualifications’ (§ 44917); ‘as a probationary employee’ (§ 44918); or ‘in a vacant position requiring certification qualifications’ (§ 44920). . . .” (*Bakersfield, supra*, 145 Cal.App.4th at p. 1279, fn 11.)

Section 44918, subdivision (a), provides: “Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following year.”

Section 44911, cited in Respondent Soares’ employment contract as the basis for her temporary status, provides: “Service by a person under a provisional credential shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district. . . .” However, Respondent Soares is already a permanent employee and does not seek to count this service for the purpose of tenure. Moreover, as the courts in *Bakersfield* and *Vallejo* held, employees may not be classified as temporary employees merely because of the nature of their credential. Accordingly, Respondent Soares commenced employment as a probationary part-time employee on August 13, 2004.

Because of Gutierrez’s illness, Respondent began a long-term substitute assignment for the remaining 50 percent of the assignment shortly after the start of the school year, a position she discharged for more than 75 percent of the school year. Therefore, pursuant to section 44918, Respondent Soares also qualifies for probationary status as of August 13, 2004.

The seniority date of a certificated employee is defined as the date the employee “first rendered paid service in a probationary capacity.” (§ 44845.) If an employee is misclassified as a temporary teacher, or if the date on which the employee first rendered paid service in a probationary capacity is otherwise incorrect, the employee’s seniority date may need to be adjusted to reflect the earlier first date of probationary service. (*Bakersfield, supra*, 145 Cal.App.4th at p. 1273.)

Respondent Soares’ correct seniority date is August 13, 2004, because she started working in a position requiring certification and she was retained as a probationary employee for the 2005-2006 school year. However, this additional seniority does not allow her to bump a less senior employee retained to perform services she is certificated and competent to render.

6. Cause exists to terminate the services of Respondents Aronie, Garcia, Mosqueda, Oster, Rosas, Rubalcaba, Soares, and Velasco, by reason of factual finding numbers 1 through 17, and legal conclusion numbers 1 through 5.

ORDER

The Accusation is sustained and the District may notify Respondents Aronie, Garcia, Mosqueda, Oster, Rosas, Rubalcaba, Soares, and Velasco that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

DATED: \_\_\_\_\_

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings