

BEFORE THE
GOVERNING BOARD OF THE
AZUSA UNIFIED SCHOOL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

In the Matter of the Accusation Against

OAH No. 2012031106

GRISELDA BERRY, ROSANNA
SHINALL, and AMANDA TELLEZ-
MORAN,

Respondents.

PROPOSED DECISION

This matter was heard by Glynda B. Gomez, Administrative Law Judge of the Office of Administrative Hearings, State of California, on April 19, 2012, in Azusa, California.

Sharon J. Ormond, Attorney at Law, represented the Azusa Unified School District (District). Richard Schwab, Attorney at Law, represented Griselda Berry, Rosanna Shinall, and Amanda Tellez-Moran (collectively, Respondents). All Respondents were present at hearing.

The District decided to reduce or discontinue certain educational services and gave Respondents and other certificated District employees notice of its intent not to reemploy them for the 2012-2013 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2012-2013 school year.

Oral and documentary evidence was received. The matter was submitted for decision on April 19, 2012.

FACTUAL FINDINGS

1. Cynthia Cervantes McGuire is the Superintendent of the District. She filed the Accusation in her official capacity. Corey James (James), Assistant Superintendent, Human Resources, and his staff were responsible for implementation of the technical aspects of the layoff.

2. Respondents are certificated employees of the District.

3. On March 6, 2012, the Superintendent recommended to the Governing Board of the District (Board) that it reduce or discontinue particular kinds of services for the 2012-

2013 school year and, for that reason, that it gives notice to certain certificated employees that their services would not be required for the 2012-2013 school year. On March 6, 2012, the Board adopted Resolution No. 11-12:73 to reduce or discontinue the following services:

PARTICULAR KINDS OF SERVICES	NO. OF FULL-TIME EQUIVALENT (FTE) POSITIONS
K-5 Classroom Teaching Services	7.0
6th grade (CORE) Classroom Teaching Services	3.0
Secondary Health Teaching Services	2.0
Secondary Social Science Teaching Services	1.0
Vice Principal, Adult Education	1.0
<u>Total FTE Reduction</u>	14.00

4. Pursuant to this resolution, on or before March 14, 2012, the District served preliminary layoff notices, via personal service, to 14 certificated employees currently serving as K-12 teachers or management, including Respondents, that the District's Superintendent had recommended to the Governing Board that the District give notice to these employees that their services would not be required in the 2012-2013 school year.

5. The Preliminary Layoff packets included a Request for Hearing form that, if returned to the District by March 29, 2010, would constitute a request for hearing. On or before March 29, 2010, five individuals returned this form. Two individuals later rescinded their requests for hearing.

6. On April 4, 2012, District served an Accusation packet including the Accusation, Resolution for Reduction or Discontinuance of Particular kinds of services, Notice of Defense Form, Notice of Hearing and copies of Government Code section 11506, 11507.5, 11507.6, 11507.7, and 11520. On or before April 6, 2012, Respondents each served a Notice of Defense. Counsel for Respondents also timely submitted a Request for Hearing and Notice of Defense pursuant to Government Code section 11506 on their behalf.

7. All prehearing jurisdictional requirements have been met.

8. 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 (the Code) section 44955.¹

9. The Board took action to reduce the services set forth in factual finding number 3 primarily because of the anticipated ten million dollar deficit over the next three years. 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.

10. 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 Board.

11. On January 17, 2012, the Board adopted Resolution 11-12:49 which includes criteria for determining the order of seniority of those employees with the same first date of paid service (tie-breaking criteria). These tie-breaking criteria included: credentialing; authorization to teach English Language Learners; experience within the District; and number of higher education credits/degrees. The District applied these criteria to determine the order of seniority among employees who had the same seniority date.

12. The District maintains a seniority list which contains employees' seniority dates, current assignments, and credentials. The District used the seniority list to develop a proposed lay-off list of the least senior employees currently assigned to the various services being reduced. In determining who would be laid off for each kind of service reduced, 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 displace and replace (bump) other, more junior employees.

13. The Governing Board's Resolution No. 11-12:73 provides that:

"In order for an employee serving in a position identified for reduction or discontinuance to be eligible for bumping an employee with less seniority, the senior employee must be both credentialed and competent to render the service currently being performed by the junior employee pursuant to Education Code Section 44955, 44956 and 44957. For purposes of implementing this Resolution, a more senior employee is defined as competent for reassignment into a position currently held by a more junior employee, if he or she: (a) currently possesses a clear or preliminary credential which authorizes instruction in each subject(s) or grade level to which the employee will be assigned at the beginning of the 2012-2013 school year; (b) has previously taught under the credential(s) required for the entire assignment to which the employee will be assigned at the beginning of the 2012-2013 school year in the District for one complete school year within the last 10 school years; (c) is

¹ All further statutory references are to the Education Code.

compliant with the provisions of the No Child Left Behind Act; and (d) has an appropriate EL authorization. In no event may a more senior employee displace a more junior employee unless the more senior employee is both competent and credentialed for the entire assignment of the more junior employee.”

14. Respondent Griselda Berry’s (Berry) seniority date is September 3, 2002 and has been assigned seniority position number 422. Berry holds a clear multiple subject credential, a supplementary subject matter authorization to teach Social Science and Reading and a Bilingual Cross Cultural Language and Academic Development certification (BCLAD). She is No Child Left Behind (NCLB) compliant on all of her credentials. She received a Bachelor of Arts degree in Liberal Studies from California State University at Los Angeles and a Master of Arts in Reading from the University of LaVerne. Berry teaches Math and Science to sixth graders at Slauson Middle School. Berry was first employed in the District as a teacher in January of 1997. She was a permanent teacher until June of 2001 when she resigned. Berry worked intermittently for the District as a substitute teacher until she was rehired as a permanent teacher in September of 2002 for the 2002-2003 school year. Berry contends that her seniority date should be June 26, 2002, when she returned to the District to teach summer school. Pursuant to Code section 44845, 44848, and 44913, summer school is not a required assignment, does not involve a full day of service, does not accrue credit toward permanent or probationary status and is more akin to a temporary or intercession assignment. Berry’s summer school assignment in June of 2002 does not result in an earlier seniority date. Her seniority date is as assigned by the District, September 3, 2002, when she returned to service as a permanent teacher pursuant to Code section 44848 within thirty nine (39) months of her resignation. Berry also contends that she should be permitted to bump into a middle school position of (.8 FTE) History and (.2 FTE) Leadership currently held by junior employee Ronald Barsh whose seniority date is October 7, 2002 and has the seniority position number 427. While Berry has the credential and an English Language Learner (EL) authorization to assume the assignment, she does not meet all of the Board’s competency criteria because she has not taught social studies or leadership for a complete year within the last ten years.

15. Respondent Rosanna Shinall (Shinall) has a seniority date of September 3, 2002 and has been assigned seniority position number 425. She holds a clear multiple subject credential, supplemental authorization in social science and a Cross Cultural Language and Academic Development certification (CLAD). She is also eligible for an administrative services credential. Shinall is NCLB compliant on all of her credentials. She received a Bachelor of Arts degree from California State University at Fullerton and a Master of Science degree in Administration and Leadership from Claremont Graduate School. Shinall teaches fourth grade at Powell Elementary School. She has also taught sixth, seventh and eighth grade physical education and Social Science as “overload” in the 1997-1998 school year.² Shinall was first employed with District as a teacher on August 28, 1997. She was a permanent District teacher when she resigned on June 30, 2001 and was rehired by the

² Overload is when a teacher gives up his/her preparation period to assume a class. Teachers receive additional compensation for the overload assignment.

District as a permanent teacher within thirty nine months of her resignation pursuant to Code section 44848. Similar to Berry, Shinall taught summer school in June of 2002 before resuming a permanent position with District on September 3, 2002 and similarly is not entitled to an earlier seniority date for her summer school service for the same reasons. Shinall also contends that she should be permitted to bump in the eighth grade History/Leadership position held by Barsh. Shinall's experience teaching social studies in the District in an overload assignment is more than 10 years ago and she has no experience teaching Leadership. Accordingly, Shinall does not meet the District's competency criterion and may not bump into the position held by junior employee Barsh.

16. Respondent Amanda Tellez-Moran (Tellez-Moran) has a seniority date of August 29, 2002 and has been assigned seniority position number 412 by District. Tellez-Moran holds a Multiple Subject credential and a CLAD. She earned a Bachelor of Arts degree. Moran teaches first grade at Hodge Elementary School. Tellez-Moran contends that the District should have considered the resignation or retirement of Barbara Beardsley given on March 27, 2012, after the Resolution was adopted. Beardsley holds a K-5 teaching position that Tellez-Moran would be credentialed and competent to fill. District was not aware of Beardsley's retirement until after the Board's Resolution. Assistant Superintendent James testified that Beardsley's position does not create an available 1.0 FTE because there are three job share arrangements which are being dissolved for the 2012-2013 school year and each of the teachers involved in the job share arrangements has a right to return to a full 1.0 FTE. District was not aware that the teachers in those job share arrangements would elect not to continue in the arrangements at the time of the Resolution. The teachers in the job share arrangements are all more senior than the respondents. District will have to absorb at least 2.0 FTEs as result of the situation. District considered positive attrition known to at the time of the Resolution. Beardsley's retirement, if considered, in light of the recently discovered job share situations, would not have resulted in an available FTE through attrition.

17. The District did not retain any certificated employee junior to Respondents to render a service which these 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 6.

2. The services listed in factual finding number 3 are particular kinds of services that could be reduced or discontinued under section 44955.

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 9.

4. Cause exists to terminate the services of Respondents Griselda Berry, Rosanna Shinall, and Amanda Tellez-Moran for the 2012-2013 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 17, and legal conclusion numbers 1 through 3.

ORDER

The Accusation is sustained and the District may notify Griselda Berry, Rosanna Shinall, and Amanda Tellez-Moran that their services will not be needed during the 2012-2013 school year due to the reduction of particular kinds of services.

Dated: April 30, 2012

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings