

BEFORE THE
BOARD OF TRUSTEES
EAST WHITTIER CITY SCHOOL DISTRICT

In the Matter of the Accusation Against:

THE CERTIFICATED EMPLOYEES OF
THE EAST WHITTIER CITY SCHOOL
DISTRICT NAMED IN ATTACHMENT A,

Respondents.

OAH No. 2013020349

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on April 23, 2013, in Whittier. The record was closed and the matter was submitted for decision on April 23, 2013.

Eric Bathen, Esq., and Jordan C. Meyer, Esq., represented the East Whittier City School District (District).

Kent Morizawa, Esq., and Angela Serranzana, Esq., represented the Respondents who are identified in exhibit A. The other Respondents did not appear at the hearing, except for Priscilla Mathis, who appeared on her own behalf.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Accusation was made and filed by Mary Branca and Dorka Duron, Ph.D., in their official capacities as duly appointed Co-Superintendents for the East Whittier City School District (District).

2. Respondents are certificated employees of the District.

3. On February 25, 2013, the District's Board of Trustees (Governing Board) approved Resolution No. 4-12/13, which resolved to reduce and discontinue particular kinds of services totaling 59.6 full-time equivalent (FTE) positions and directed the Co-Superintendents to proceed to layoff certificated staff pursuant to Education Code sections 44949 and 44955.¹

¹ All further statutory references are to the Education Code unless otherwise noted.

4. The Governing Board further determined to decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent positions, and directed the Co-Superintendents, or their designees, to proceed accordingly by notifying the appropriate employees.

5. On or before March 15, 2013, pursuant to Resolution No. 4-12/13 and the provisions of sections 44949 and 44955, the Co-Superintendents gave written notice to Respondents that it had been recommended to the Governing Board that notice be given to them that their services will not be required for the 2013-2014 school year. Respondents requested a hearing to determine if there is cause for not employing them for the ensuing school year. Respondents were also provided all required documents.

6. During the hearing, the District rescinded the preliminary layoff notices issued to Respondents Deborah Hernandez, Joelle Walton, Jasmine Simmons, Hyo Chin Lee, Wendy Jewett, Michelle Dorn, Lisa Ramos, Roberta Cukro, Shannon Stroh, Sarah Neely, Tanya Gavino DeFlores, Melissa Torres, Marisa Magana, Christi Wilkinson, Jennifer Erickson, Carrie Quesada, Patrice Molle, Priscilla Mathis, Joseph Lamb, Jennifer Dement, Christine Muetzel, Patricia Morse, Melissa La Carra, Terri Ottman, Craig Davis, Lori Lee McIntosh, Amy Langan, Lorelei Juarez, and Patricia Zenteno.

7. Resolution No. 4-12/13 provides for the reduction or elimination of the following particular kinds of services:

<u>Services</u>	<u>FTE Positions</u>
Assistant Principals	3.0
Preschool Administrator	1.0
Multiple Subject Classroom Teachers (K-8)	30.0
English Teaching Services (6-8)	4.0
Mathematics (6-8)	3.0
Physical Education (6-8)	2.0
Social Studies (6-8)	2.0
Middle School Music (6-8)	1.0
Special Education (SDC Mod/Sev)	1.0
Special Education Program Specialist-Behavior	1.0
Special Education Speech	5.0
Nurses	3.0
Counselors	2.6
Program Specialist-Safe Schools/Healthy Schools Grant	1.0
 Total Full-Time Equivalent Reduction:	 59.6

8. The services or programs set forth in Factual Finding 7 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955. The Governing Board's determination to reduce or discontinue these services or programs is within its sound discretion and was not proven to be arbitrary or capricious. Services will not be reduced below mandated levels. The reduction or discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees.

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

10. The Governing Board also adopted Resolution No. 2-12/13, which contained criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the District on the same date. The Governing Board resolved that such criteria would best serve the needs of the District and its pupils. Respondents did not challenge the tie-breaking criteria.

11. It was also determined to retain certain certificated staff in the particular kinds of services identified in Factual Finding 7, regardless of seniority, who have special training and experience in the area of special education, and thus individuals were retained over more senior Respondents who lacked the special education, training and credentials to competently perform those assignments. Respondents did not contest the skipping decisions exercised.

12. The District considered personnel changes due to attrition, retirements, and the releases of temporary employees in making its determination to issue layoff notices. Twenty one certificated staff members have decided to resign or retire no later than the end of this school year. Ten of those occupy multiple subject classroom assignments. Of those ten teachers, two were on leaves of absence. The District intends to apply the temporary teacher releases toward the FTE positions subject to reduction. There is a factual dispute between the parties regarding how many of the temporary teachers occupied multiple subject classroom assignments. Based on the direct testimony of Co-Superintendent Branca, it was established by a preponderance of the evidence that only four of the temporary teachers released held multiple subject classroom positions. Though it is possible that there was a fifth temporary teacher in a multiple subject classroom assignment, Respondents' evidence on this point was less persuasive than the District's.

13. A. Respondents argue that the District failed to properly calculate and attribute the attrition described above to those noticed for layoff holding a multiple subject classroom position. The evidence on this topic is far from clear, primarily because the District did not provide an integrated seniority list showing all of the bumping, skipping and reassignments made in the process of implementing this layoff.

B. In any event, it was established that based on the four temporary teacher releases in the multiple subject classroom positions described above, the most junior teacher in this subject area, Aaron Delatorre, occupied the fifth such position eliminated. The next 25 more senior such teachers subject to layoff ends at employee number 348, Patricia Molle.

C. Two more senior employees whose administrative positions were subject to reduction, Annette Mendoza and Michael Remland, are credentialed and competent to bump into a multiple subject classroom position. The District has chosen to do so.² Therefore, the next two more senior multiple subject classroom teachers to Respondent Molle are subject to layoff, who are Respondents Priscilla Mathis and Joseph Lamb.

D. The above assignments and reassignments would account for the reduction of 30 FTE positions in multiple subject classroom teaching.

E. Because a number of other multiple subject classroom teachers have the same seniority date of Respondents Mathis and Lamb, they were also given layoff notices as a matter of precaution, for the reason discussed in Factual Finding 14. Those teachers were, in increasing order of seniority, Jennifer Dement through Patricia Zenteno. During the hearing, and after the uncertainty regarding the seniority date issue dissipated, the layoff notices for the “over-noticed” Respondents Dement through Zenteno were rescinded.

F. Based on the ten FTE positions in this area that were accounted for by the above-described resignations and retirements, Respondents argue that the ten most senior teachers in multiple subject classroom positions subject to layoff should have their layoff notices rescinded to account for that attrition. It was not clear from the evidence how much of that attrition had already been accounted for by the District when it began implementing this layoff. However, it is clear that two of the more junior 26 multiple subject classroom teachers subject to layoff have been skipped by the District, because they hold special education credentials and they will be reassigned to special education positions next school year. Those two teachers are Roberta Cukro and Sarah Neely. Their layoff notices were rescinded. Based on that evidence, two more of the 30 FTE multiple subject classroom positions have been reduced, since the two teachers holding those positions will be reassigned next school year to entirely different subject matter positions and presumably they will not be replaced. Therefore, only eight of the ten positions accounted for by the retirement or resignation attrition should be deemed available for rescission.

G. The eight most senior multiple subject classroom teachers subject to layoff are, in decreasing order of seniority, Respondents Joseph Lamb through Melissa Torres. However, all of the Respondents in that group had their layoff notices rescinded during the hearing.

² 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 is said to displace or bump a junior employee who is filling that position. (§ 44955, subd. (c); *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

H. Under these circumstances, cause was not established to rescind the layoff notice for the next more senior multiple subject classroom teacher, Respondent Ronda MacDonald, or anyone in such a position less senior to her.

14. Valerie Redd. As discussed above, the District eliminated two FTE positions in social studies. Respondent Valerie Redd is assigned to social studies this school year. Two Respondents junior to Ms. Redd in that subject area were noticed for layoff. Respondent Redd was the third person noticed for layoff in that subject area as a matter of precaution due to a situation where a number of other Respondents have the same seniority date and some uncertainty existed over whether their seniority dates were valid. After that uncertainty dissolved during the hearing, Respondent Redd's social studies position was no longer subject to layoff. However, Respondent Melissa Torres had her layoff notice rescinded during the hearing after she established through her testimony that she is able to bump into Respondent Redd's social studies position. Respondent Torres is senior to Respondent Redd. However, Respondent Torres was initially subject to layoff because her multiple subject classroom position was eliminated. Based on how the District's attrition was accounted for, as discussed above, Respondent Torres' multiple subject classroom position was no longer subject to layoff. Respondent Torres' layoff notice should have been rescinded for that reason, not because she could bump into another teacher's position. Therefore, Respondent Torres should not be deemed to have bumped into Respondent Redd's position. Respondent Redd is no longer subject to layoff, in that her position was not reduced or eliminated and she has not properly been bumped by a more senior certificated employee.

15. Finally, Respondents argue that the District should rescind one more multiple subject classroom layoff notice because of an assignment and/or reassignment that the District failed to make. As described above, Annette Mendoza's assistant principal position was eliminated as part of this layoff process. Due to her seniority, she is able to bump into one of the remaining multiple subject classroom assignments. However, Ms. Mendoza has a school psychologist credential and has previous experience in such a position. Yuvinka Gallego is a school psychologist junior to Ms. Mendoza, and she is being skipped because of her special education credential. Respondents argue that the District should have bumped Ms. Mendoza into Ms. Gallego's school psychologist position instead of a multiple subject classroom position. However, it was not established that Ms. Mendoza is currently competent to perform the school psychologist assignment. Moreover, the District has discretion to perform its assignments and reassignments as it deems appropriate, so long that it acts in good faith.³ Respondents failed to establish this reassignment was done in bad faith or was arbitrary and capricious.

³ School districts have discretion to define positions in the manner which they will be taught as long as it is done in good faith. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334.) In determining whether the decision of a school board is reasonable or in good faith, its action is measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject. (*Campbell v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

16. During the hearing, the District changed the seniority date of Christine Anderson to August 24, 2010. In light of that change, Respondent Anderson's classification changed from a probationary employee to a permanent employee. However, that change in her seniority date will still subject her to layoff.

17. 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. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) For example, in administrative hearings dealing with personnel matters, the burden of proof is ordinarily on the agency prosecuting the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113.) In personnel matters concerning the dismissal of a teacher for cause, the burden of proof is similarly on the discharging school district. (*Gardner v. Commission on Prof. Competence* (1985) 164 Cal.App.3d 1035.) As no other law or statute requires otherwise, the standard of proof in this case requires proof to a preponderance of the evidence. (Evid. Code, § 115.)

2. All notice and jurisdictional requirements of Education Code sections 44949 and 44955 were met.

3. The services identified in Resolution 4-12/13 are particular kinds of services that can be reduced or discontinued pursuant to section 44955. The Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Services will not be reduced below mandated levels. Cause for the reduction or discontinuation of those particular services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. (Factual Findings 1-8.)

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. (Factual Findings 1-11.)

5. During the hearing, the District rescinded the preliminary layoff notices issued to Respondents Deborah Hernandez, Joelle Walton, Jasmine Simmons, Hyo Chin Lee, Wendy Jewett, Michelle Dorn, Lisa Ramos, Roberta Cukro, Shannon Stroh, Sarah Neely, Tanya Gavino DeFlores, Melissa Torres, Marisa Magana, Christi Wilkinson, Jennifer Erickson, Carrie Quesada, Patrice Molle, Priscilla Mathis, Joseph Lamb, Jennifer Dement, Christine Muetzel, Patricia Morse, Melissa La Carra, Terri Ottman, Craig Davis, Lori Lee McIntosh, Amy Langan, Lorelei Juarez, and Patricia Zenteno. The Accusation against them will be dismissed. (Factual Finding 6.)

6. Cause was not established to layoff Respondent Valerie Redd. The District failed to meet its burden of proving that either her position has been eliminated or that she will be bumped out of her position by a more senior employee. The Accusation against her shall be dismissed. (Factual Finding 14.)

7. Taking into account the above findings and conclusions, no junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-17.)

ORDER

1. The Accusation is dismissed against Respondents Deborah Hernandez, Joelle Walton, Jasmine Simmons, Hyo Chin Lee, Wendy Jewett, Michelle Dorn, Lisa Ramos, Roberta Cukro, Shannon Stroh, Sarah Neely, Tanya Gavino DeFlores, Melissa Torres, Marisa Magana, Christi Wilkinson, Jennifer Erickson, Carrie Quesada, Patrice Molle, Priscilla Mathis, Joseph Lamb, Jennifer Dement, Christine Muetzel, Patricia Morse, Melissa La Carra, Terri Ottman, Craig Davis, Lori Lee McIntosh, Amy Langan, Lorelei Juarez, and Patricia Zenteno. The District shall not give them final layoff notices for the next school year.

2. The Accusation against Valerie Redd is dismissed. The District shall not give her a final layoff notice for next school year.

3. The Accusation is sustained as against the remaining Respondents. The District may give a final notice of layoff to those Respondents. Notice shall be given to those Respondents that their services will not be required for the 2013-2014 school year, and such notice shall be given in inverse order of seniority.

Dated: May 2, 2013

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearing

Attachment A: The Respondents

Anderson, Christine
Blanco, Kathleen
Cadena, Liana
Cervantes, Monica
Cosgrove, Emily
Cronin, Theresa
Cukro, Roberta
Davis, Craig
De La Torre, Aaron
Dement, Jennifer
Dorn, Michelle
Eligio, Teresa
Erickson, Jennifer
Fauke, Shannon
Frenes-Gomez, Denisse
Garcia, Jessica
Gavino De Flores, Tanya
Green, Blanca Patricia
Hartman, Loren
Hernandez, Deborah
Hernandez, Melissa
Inouye, Kelly
Jewett, Wendy
Juarez, Lorelei
Kwok, Jennifer
La Carra, Melissa
La Monica, Mark
Lamb, Joseph
Langan, Amy
Lee, Hyo Chin
Ling, Betty
Mac Donald, Ronda
Magana, Marisa
Mathis Priscilla
McIntosh, Lori Lee
Mena, Hector
Molle, Patrice
Morse, Patricia
Muetzel, Christine
Mullin, Mia
Neeley, Sarah
Nerio, Brandi
Nguyen, Mylinh
Ocon, Jennifer
Onga, Yvette
Ottman, Terri
Person, Jenelle
Quesada, Carrie
Lisa Ramos
Redd, Valerie
Rosa, Clifton
Ruiz, Fabiola
Sansone, Marianna
Sevilla, Adriana
Simmons, Jasmine
Stroh, Shannon
Thieme, Gina
Torres, Haylei
Torres, Melissa
Voralik, Julie
Walton, Joelle
Wilkinson, Christi
Will, Jessica
Yarbrough, Brian
Zenteno, Patricia