

**BEFORE THE
GOVERNING BOARD OF THE
PASADENA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

**In the Matter of the District Statement of
Reduction in Force Against:**

**Certain Certificated Employees of the
Pasadena Unified School District,**

Respondents.

OAH No. 2022040010

CORRECTED PROPOSED DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on April 27, 2022, by videoconference.

Jeff C. Marderosian, Esq., represented Pasadena Unified School District (District).

Carlos R. Perez, Esq., represented Respondents.

The record closed and the matter was submitted for decision at the conclusion of the hearing. A Proposed Decision thereafter was issued. However, on May 17, 2022, District timely requested, without objection, correction of a mistake in the Order, in which the ALJ mistakenly used the wrong school year. This Corrected Proposed Decision is issued to correct that mistake, and only that one change is made herein.

SUMMARY

Respondents challenge aspects of District's proposed layoff of 29.5 full-time equivalent positions due to economic woes faced by District. However, only Respondents' challenge of District's decision to skip two junior teachers involved in the Advancement Via Individual Determination (AVID) Program at Madison Elementary School is successful. In all other respects, District met its burden of establishing by a preponderance of the evidence that its proposed layoff may proceed as it intends.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Brian McDonald, Ed.D., made and filed the District Statement of Reduction in Force in his official capacity as District's Superintendent. (Ex. 3.)
2. On March 10, 2022, the Governing Board of District (Board) adopted Resolution No. 2646 (Resolution), which proposes to reduce or discontinue the particular kinds of services encompassing 29.5 full-time equivalent (FTE) positions by the close of the 2021-2022 school year. (Ex. 1.)
3. Before March 15, 2022, District served 28 certificated employees with preliminary notice that their services would not be required for the next school year pursuant to Education Code sections 44949 and 44955 (layoff notice). Of the certificated employees given layoff notices, two of them were given what is referred to as a precautionary layoff notice, because those certificated employees are subject to one of the Board's skipping categories, described in more detail below, and therefore would not be laid off if the skipping category pertaining to them is upheld. (Exs. 2, 4.)

4. Of those of who received the above-described layoff notice, 18 timely requested a hearing to determine if there is cause for not reemploying them for the 2021-2022 school year. (Exs. 4, 5.) Those certificated employees were thereafter served with the District Statement of Reduction in Force and other related documents (RIF package). (Exs. 3, 5.)

5. Respondents are the 14 certificated employees who timely filed Notices of Participation, or were deemed to have done so, after receipt of the RIF package. (Exs. 5, 6.) Respondents are identified in the List of Respondents filed at the conclusion of the hearing and marked for identification as Exhibit F.

6. All prehearing jurisdictional requirements were met.

7. During the hearing, District rescinded the layoff notice to Respondent Sabrina Grimes (#475, her designated number on District's seniority list), and rescinded .20 of the layoff notice to Respondent Penelope Ibbotson (#478), as a result of known attrition that occurred after the layoff notices were sent.

The Board's Resolution

8. The Resolution provides for the reduction or discontinuance of the following particular kinds of services corresponding to a total of 29.5 FTE positions:

Elementary/Middle School (Multiple Subject):	25.0 FTE
High School Teacher (Art):	.5 FTE
Program Specialist (McKinley):	1.0 FTE
Coordinator II (Student Wellness and Support Services):	1.0 FTE

TOSA II (Student Wellness and Support Services): 2.0 FTE

TOTAL FTE TO BE REDUCED: 29.5 FTE

9. The decision to reduce or discontinue 29.5 FTE positions was due to District's budgetary situation, which has forced it to make cuts in several areas, and declining student enrollment.

10. Exhibit A to the Resolution sets forth tie-breaking criteria to determine the relative seniority of certificated employees who first rendered paid probationary service on the same date. The validity of the tie-breaking process is not in dispute.

11. Exhibit B to the Resolution defines competency, for purposes of determining a certificated employee's competency to perform a service in accordance with Education Code section 44955 (bumping or skipping), as when the employee subject to layoff has, under the appropriate credential, performed the service for one complete school year within the last 10 years. One complete school year is defined as actual service of at least 75 percent of the number of days the regular schools of District are in session. The validity of the competency criteria is not in dispute.

Skipping

DISTRICT'S SKIPPING CATEGORIES

12. Education Code section 44955, subdivision (d)(1), permits a school district to deviate from the order of seniority in teacher layoffs when "District demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the employee [who is retained] has special training and experience necessary to teach that course or course of study . . . which others with more seniority do not possess."

13. Pursuant to the Resolution, the Board determined it was necessary to retain certificated employees for the following school year regardless of seniority (skipping) to teach specific courses or courses of study who possess the types of special training and experience that others with more seniority do not possess.

14. The Resolution provides that the courses or courses of study subject to skipping are those taught by certificated employees in the following categories:

A. Currently assigned to at least four periods in an International Baccalaureate (IB) position and in the last 10 years participated in a minimum of 18 hours of IB training (IB skip).

B. Currently assigned to a teaching position at the International Student Academy at Blair School (ISA skip).

C. Currently assigned to a teaching position at Altadena Arts Magnet Elementary, Eliot Arts Magnet Academy, Jackson STEM Dual Language Magnet Academy, John Muir High School Early College Magnet, Washington Elementary STEM Magnet School, or Washington STEAM Magnet Academy, and in the last 10 years participated in a minimum of 24 hours of training for the position (Magnet skip).

D. Current, valid Multiple Subject or Single Subject credential and possession of a current valid BCLAD in Mandarin, French and/or Spanish and either (1) is currently assigned to teach in a District dual immersion program or (2) has taught in a District dual immersion program for one year in the last five years (DI skip).

E. Currently assigned to a teaching position in the Vanguard Program at McKinley Middle School and in the last three years participated in a minimum of 24 hours of training for the position (Vanguard skip).

F. Currently assigned to a teaching position in an AVID Program and in the last year participated in a minimum of 24 hours of training for the position (AVID skip).

15. According to the Resolution, for purposes of determining the number of hours of required training for any skip category, the calculation shall be made as of February 1, 2022.

THE FIRST FIVE SKIP CATEGORIES

16. District's IB, ISA, Magnet, DI, and Vanguard skips, respectively, have been used in District's prior layoff proceedings and have been upheld, including the layoff proceedings conducted in 2018 and 2020. These five skips were not contested in this matter. District has a specific need for employees with the requisite special training and experience to provide instruction in these programs. These skips are valid under Education Code section 44955, subdivision (d)(1).

THE AVID SKIP CATEGORY

17. Respondents contest the validity of the AVID skip. It is a new skip category not implemented before by District. Respondents contend this skip category is not valid because AVID is not a course or course of study as defined by Education Code section 44955, subdivision (d)(1). Respondents also contend there are many teachers who have taught in the one AVID elementary school in the past year with none of the requisite training, which indicates having AVID training and experience is convenient but not necessary, as required by section 44955, subdivision (d)(1).

18. AVID is a college-readiness program designed to increase the number of students who enroll in four-year colleges. In District materials, AVID is said to "Prepare

for college by learning success skills, touring college campuses, and learning alongside college tutors.” (Ex. 11, p. A113.) The focus of AVID is to embed learning strategies throughout the learning day, such as writing, inquiry, note-taking, organizing, collaborating, and rigorous reading. (Testimony [Test.] of Noemi Orduna; Ex. 12.)

19. The focus of AVID is on the least served students in the academic middle. It is a fourth through twelfth grade system with rigorous standards. Typical students are those who may be first in their families to attend college and may come from low-income and/or minority families. AVID is usually associated with middle and high schools. However, District went along with a grass roots effort to incorporate it at Madison Elementary School (Madison) because Madison was identified as a school in need of assistance. AVID started at Madison in 2019 and has continued since. (Test. of Orduna.) Madison is the only elementary school participating in the AVID program within District. Madison has done so well using AVID that District has recognized it as a Signature Program, which denotes a special program within District subject to receiving funding and resources other schools in District do not. (Test. of Orduna; Ex. 11.)

20. District contends AVID constitutes a “course” or “course of study” pursuant to Education Code section 44955, subdivision (d)(1), because the program embeds specialized learning strategies throughout the entire learning day. The ALJ will pass on resolving whether the AVID Program constitutes a “course of study” as defined in Education Code section 51014 or a “course” as defined in section 51015, and therefore meets the requirements of Education Code section 44955, subdivision (d)(1), because there is a bigger problem with this skip category, as discussed below.

21. In order to teach in AVID, teachers go through specialized AVID training. When a new teacher comes to Madison, he or she is not expected to teach in an AVID

classroom without training. There is a summer AVID training program used to acquaint new teachers with the program. The summer training takes 18 hours. Another six hours of training comes from planning and implementing the program during the school year with colleagues. Thus, while a new teacher can teach in AVID with only 18 hours of training from the summer program, District mandated in the Resolution 24 hours of AVID training and experience in order to be eligible for the skip. (Test. of Orduna.)

22. The full AVID training program is designed to take three school years. While a teacher becomes proficient and able to teach in the AVID program after one summer of training, the teacher continues to improve in his or her aptitude through the first two school years, and typically masters the program after three years of training and experience in it. (Test. of Orduna.)

23. The AVID training is available to anyone who wants to attend it during the summer, whether or not they teach at Madison. However, only AVID-certified teachers have access to AVID's on-line resources and manuals. In the hands of someone not trained in AVID, the AVID training materials otherwise are not useful. District has paid approximately \$999 each year per teacher to train them in AVID. (Test. of Orduna; Ex. 12.)

24. Respondents Nancy Cruzat (#539) and Martin Dorado (#553) are the only two Respondents subject to the AVID skip. They are the two Respondents given precautionary layoff notices for that reason. They are in their third year of AVID and are proficient in the program. Madison's principal, Noemi Orduna, testified that if they are laid off and replaced by a new teacher untrained in AVID, those students will not be taught in the special AVID learning environment and essentially will be deprived of the AVID program.

25. According to a District Professional Development document (Ex. 13), 9 of the 24 teachers at Madison (Respondent Miller is not currently at Madison), or approximately 33 percent, have no AVID training. Principal Orduna testified there are only seven teachers at Madison without AVID training, but she did not reconcile her number with District's Professional Development document. In any event, according to Principal Orduna this means there are seven (or nine) Madison classrooms in which students do not receive AVID instruction. As Principal Orduna put it, "Not every student at Madison gets AVID teachers." This means a teacher can teach at Madison without any AVID training or experience. Principal Orduna also conceded a new teacher to Madison assigned in time to take the initial summer AVID training can at least teach AVID to his or her students.

26. Official notice was taken of prior layoff decisions from other school districts in which AVID was deemed to be a valid skip category. (See, e.g., *Long Beach Unified School District* (2010) Case No. 2010020244 [Daniel Juarez] and *Santa Ana Unified School District* (2017) Case No. 2017030750 [Samuel Reyes].) However, those decisions are distinguishable, in that they did not involve a situation as in the case at bar where there were many teachers in an AVID school that had no training or experience in AVID.

27. Based on the above, District failed to meet its burden of establishing the AVID skip is valid. There is a sizeable percentage of teachers at Madison who have no AVID training and experience, meaning many students at this AVID school do not receive AVID instruction. This means prior AVID training is not necessary to teach at Madison. Principal Orduna acknowledged a new teacher to Madison with no prior AVID experience could participate in the AVID program with only 18 hours of training this summer. This means prior AVID experience is not necessary to teach at Madison.

Therefore, it was not established that the AVID special training or prior AVID experience is necessary to provide instruction at Madison in the next school year, as required for a skip pursuant to Education Code section 44955, subdivision (d)(1).

The Seniority List

28. District maintains a seniority list that contains employees' seniority dates (first date of paid service), credential information, and current assignments. (Exs. 9, 10B.) Dr. Sarah Rudchenko, District's Director of Human Resources, testified to the accuracy of the seniority list and how it was compiled. There are no disputes in this case over a seniority date.

29. District used the seniority list to implement and determine the proposed layoffs. District developed staff reduction worksheets of the least senior certificated employees currently assigned in the particular kinds of services to be reduced. District then determined how many certificated employees assigned in the particular kinds of services are retiring or resigning; whether the least senior certificated employees in these particular kinds of services hold other credentials, can perform in other service areas, and are entitled to bump other more junior certificated employees; whether certain certificated employees should be skipped and retained; and how many certificated employees in each service area must be reassigned or laid off. (Test. of Rudchenko; Exs. 9, 10B.)

30. District used information from the seniority list to apply the tie-breaking criteria to determine the relative seniority among certificated employees who shared the same seniority date within their subject area. The teachers were re-ranked on the seniority list after application of the tie-breaking criteria. (Test. of Rudchenko; Ex. 8.)

Application of the tie-breaking criteria did not result in any certificated employee being subject to layoff.

31. District properly considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be given.

32. With the exception of the two precautionary Respondents involved in the AVID skip, no junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

Bumping

33. 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 perform. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified Sch. Dist.* (1975) 13 Cal.3d 469.)

34. Dr. Rudchenko explained in her testimony how District staff analyzed the seniority list for possible bumps but found no Respondent was certificated and competent (as defined by the Resolution) to do so. Dr. Rudchenko gave specific examples for some Respondents. Dr. Rudchenko's testimony was credible and corroborated by review of the master seniority list and the reduction worksheet concerning the layoffs of elementary and middle school teachers. (Exs. 9, 10B.)

35. On April 21, 2022, Dr. Rudchenko released internally throughout District a list of vacancies for the next school year. (Ex. A.) This action is required by the collective bargaining agreement (CBA) between District and the union representing District's certificated staff. The CBA requires a list of vacancies to be issued on April 15th of each year, but Dr. Rudchenko wanted to send it out after this proceeding

became final. The union demanded the list of vacancies be issued immediately and Dr. Rudchenko relented, albeit a few days late. (Test. of Rudchenko.)

36. The vacancies depicted in the list are those that have existed for months and not affected by the proposed layoffs, as well as those that will be created by the proposed layoffs in this case. Dr. Rudchenko explained that, because the Education Code requires layoff decisions to be made by seniority and not by the needs of individual schools within a school district, the proposed elementary and middle school layoffs are not evenly distributed throughout District, meaning some schools will lose more teachers than needed to adequately staff classes, while other schools will have more teachers than needed. The first solution is to allow teachers within District to request a voluntary transfer into an open position. Next, properly credentialed staff will be involuntarily transferred into an open position. If there are still vacancies, laid off Respondents will be recalled in order of seniority. The vacancies will not be posted to the public until all of these steps have been taken. (Test. of Rudchenko.)

37. Respondents argue unpersuasively the list of vacancies sent on April 15, 2022, demonstrates District failed to perform required bumping analysis in this proceeding. That argument is not supported by the evidence, as District did conduct such an analysis, as described in some detail by Dr. Rudchenko in her testimony. As District correctly argues, voluntary and involuntary transfers are not the same thing as bumping. Here, teachers senior to Respondents will be voluntarily or involuntarily transferred to open positions. More importantly, no Respondent demonstrated he or she could bump into any position within District. Put another way, Respondents failed to demonstrate District is retaining a teacher junior to any Respondent for a position any Respondent is credentialed and competent to perform, with the exception of the AVID skip discussed above.

Individual Contentions

38. Respondent Diana Morrison (#489) teaches a third grade class at McKinley Middle School. She is upset District is skipping teachers junior to her, based on the above-described skip categories, and she believes it is unfair District did not give her an opportunity to train for a position District intended to skip. Respondent Morrison conceded on cross-examination she does not meet any of District's valid skip categories. Her counsel did not cite any legal authority requiring District to act as she contends, and the ALJ is unaware of any such authority. Respondent Morrison established no basis to rescind her layoff notice.

39. Respondent Starene Cruse (#491) is currently assigned as an elementary teacher at Field School, which is a Mandarin/English Dual Language Immersion School subject to the DI skip. She has a multiple subject credential, as well as an Introductory English authorization. She is the English-speaking teacher who pairs with a Mandarin-speaking teacher in the classroom. Respondent Cruse is not fluent in Mandarin and does not have a BCLAD (Bilingual, Cross-Cultural, Language and Academic Development) authorization. For that reason, she is not eligible for the DI skip. At hearing, she presented other certificates of training and authorization not relevant to the DI skip category. (Ex. E.)

Respondent Cruse argues she should be retained because her Introductory English authorization gives her skills and experience to co-teach in a DI school that a teacher who transfers there will not possess. While that may be the case, Respondent Cruse failed to establish there is no teacher senior to her who is credentialed and competent to perform her position. Respondent Cruse also failed to prove she can bump into another position in the District, even with her Introductory

English authorization. Under these circumstances, Respondent Cruse established no basis to rescind her layoff notice.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1-6.)

2. In administrative hearings involving personnel matters, the burden of proof is on the agency prosecuting the charges. (See, e.g., *Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; *Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.) Thus, a school district seeking to skip junior teachers bears the burden of proving the skip is valid. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 138.) In this case involving the employment rights of Respondents, District bears the burden of proof, including for its skipping categories. As no other law or statute requires otherwise, the standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.)

3. The services identified in the Resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of District's schools and pupils within the meaning of Education Code section 44949.

4. A school district may reduce services within the meaning of Education Code 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.)

5. Cause exists to reduce the number of certificated employees of District due to the reduction or discontinuation of particular kinds of services. District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

6. A school district has discretion in determining whether an employee is certified and competent, as provided by Education Code section 44955, subdivision (b), to be reassigned and, as a result, displace a junior employee, as provided by subdivision (c). (See *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 565.) The criteria used to determine a teacher's competence must be reasonable. (*Id.* at p. 566.) Competency criteria that consider the skills and qualifications required of the teacher are reasonable. (*Id.* at pp. 565-566.) It was established that the competency criteria adopted in the Resolution are reasonable, a point not disputed by Respondents.

7. Aside from the AVID skip, no junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render. (Factual Findings 8-39.)

8. Based on the rescission of the layoff notice to Respondent Grimes, and the rescission of .20 of the layoff notice to Respondent Ibbotson, the District Statement of Reduction in Force shall be dismissed as to those Respondents corresponding to the percentage of the rescissions. (Factual Finding 7.)


9. However, the precautionary layoff notices to Respondents Cruzat and Dorado shall not be rescinded, as the AVID skip relative to them is invalid. (Factual Finding 27.) The parties agree if these two Respondents are retained, the remainder of Respondent Ibbotson's .80 layoff notice should be rescinded, the entire layoff notice to Respondent Yesu Baymus (#486) should be rescinded, and .20 of the layoff notice to Respondent Lisa Glen (#487) should be rescinded.

ORDER

1. Notice may be given to employees occupying 29.5 full-time equivalent certificated positions that their services will not be required for the 2022-2023 school year because of the reduction and discontinuance of particular kinds of services. Notice shall be given in inverse order of seniority. Except as provided in paragraph 2 of this Order, such notice may be given to Respondents and to the certificated employees who did not request a hearing.

2. The notice provided in paragraph 1 of this Order may not be given to Respondents identified in Legal Conclusion 8, except Respondent Ibbotson is subject to .80 layoff. If Respondents Cruzat and Dorado are retained, the notice provided in paragraph 1 of this Order may not be given to Respondents identified in Legal Conclusion 9, except Respondent Glen would be subject to .80 layoff.

DATE: 05/20/2022


Eric C. Sawyer (May 20, 2022 14:20 PDT)

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings