

**BEFORE THE BOARD OF EDUCATION
OF THE TEMPLE CITY UNIFIED SCHOOL DISTRICT**

In the Matter of the Accusation Against:)	OAH NO. 2011030576
)	
CERTIFICATED EMPLOYEES OF THE)	
TEMPLE CITY UNIFIED SCHOOL DISTRICT,)	
)	
Respondents.)	
_____)	

PROPOSED DECISION

Mark Harman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 13, 2011, in Temple City, California.

Sharon J. Ormond, Attorney at Law, represented the Temple City Unified School District (District).

Richard J. Schwab and Lillian Kae, Attorneys at Law, represented Clarice Acosta, Nicole Archuleta, Katherine Arrighi, Phillip Bailey, Stephanie Baker, Marta Bourjeili, Sherry Boyd, Mary Jane Card, Ken C. Chin, Shelby Elliott, Denise Galvan, Susan Gordon, Iris Chiu Hannon, Andrew Jahan, Heather Jara, Samantha Jennings, Diana Lam, Jennifer Lau, Christina A. Lee, Michele Montierro, Dawn Neufeld, Wen (Brenda) Pan, Mary Ann Parrille, Sean Patterson, Amanda Paulson, Gloria Regalado, Reggie Rios, Monica Rodriguez, Yvonne Rosales-Rivera, Andrea Saldana, Robyn Selders, Lisa Smith, Hoa (Jenny) My Thai, Erin Wahbe, and Jacqueline Wu-Chan (collectively, respondents).

Evidence was received, and the matter was submitted for decision. Prior to the hearing, the District rescinded the layoff notice previously issued to Sandra Johnson. At the hearing, the District stipulated, and waived any jurisdictional defects, to allow Shelby Elliott and Gloria Regalado to participate as respondents in this proceeding.

Respondents filed a written Motion to Dismiss All Precautionary Notices (marked for identification as exhibit A). The District filed a Pre-Hearing Brief (Exhibit 12). The parties argued the motion, and the motion was denied for the reasons stated on the record.

FACTUAL FINDINGS

1. Dr. Chelsea Kang-Smith, Superintendent of the District, filed the Accusation in her official capacity.

2. Respondents are certificated employees of the District.

3. On February 23, 2011, the District's Board of Education (Board) adopted Resolution No. 1011-15 (the Resolution), which proposed a layoff of 26.30 full-time equivalent (FTE) certificated employees. Specifically, the Resolution provided for the reduction or discontinuance of the following particular kinds of services:

Reduce K-6 Classroom Teaching Services	16.00 FTE
Reduce Secondary English Teaching Services	2.00 FTE
Reduce Secondary Math Teaching Services	1.50 FTE
Reduce Elementary Music Teaching Services	0.80 FTE
Reduce Counselor Services	2.00 FTE
Reduce Special Education Teaching Services (Mild/Moderate)	2.00 FTE
Reduce Secondary Librarian	1.00 FTE
Reduce Curriculum Coordinator	1.00 FTE
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Total	26.30 FTE

4. On or before March 10, 2011, the Superintendent of the District recommended to the Board that notice be given to 37 certificated employees that their services would not be required for the ensuing 2011-2012 school year, based on the Resolution to reduce or discontinue particular kinds of services for the 2011-2012 school year.

5. On or before March 12, 2011, the Superintendent provided written notification to 37 certificated employees, including respondents, that it had been recommended that their services would not be required for the next school year. The notices included the reasons for the notifications and were accompanied by the Resolution. In addition to the notices, the Superintendent filed and served the Accusation and other required documents on all 37 certificated employees, including respondents, 26 of whom were identified by the Superintendent as slated for layoff, and 11 others who received "precautionary" notices that their rights may be affected by challenges made of the District's application of tie-breaking criteria, bumping rights, skipping, or other related issues.

6. Respondents who received these documents thereafter filed Requests for Hearing/Notices of Defense, except Julia Di Fiore, Shelby Elliott, and Gloria Regalado.

7. The procedure followed by the District differed somewhat from that specified in Education Code sections 44949 and 44955,¹ in that the District followed a one-step process whereby the District served respondents with all jurisdictional documents, including the Accusation, on or before March 12, 2011. Respondents perfected their rights to a hearing by submitting a combined Request for Hearing/Notice of Defense on or before March 28, 2011. Although this process deviated from the Education Code, it did not prejudice any of the employees, including respondents, who were subject to layoff. All prehearing jurisdictional requirements have been met.

8. In order determine the number of employees to layoff, the District considered an expected shortfall in the budget for the 2011-2012 school year, and positively assured attrition, including retirements, resignations, and other expected vacancies for the 2011-2012 school year. Karen Reed, Assistant Superintendent, Personnel Services, testified that, because of the potential loss of State funding, the District expected a serious budget shortfall in the 2011-2012 school year. The District estimated that it will incur an \$8 million dollar deficit over the next three years unless it reduces its staff.

9. 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 Code² section 44955. The decision to reduce or discontinue the particular kinds of services in light of the potential loss of revenue is neither arbitrary nor capricious, but is rather a proper exercise of the District's discretion. The reduction of services set forth in factual finding number 3, given the possible reduction in State funding and the District's need to remain solvent to serve its students, 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.

10. The District maintains a seniority list which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations.

11. The District used the seniority list to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced.

¹ The Education Code sets forth a two-step process whereby certificated employees subject to layoff are served, prior to March 15, with a Notice of Recommendation That Services Will Not be Required, a Request for Hearing form, and copies of Education Code sections 44949 and 44955. If an employee files a Request for Hearing with the District within seven days after receiving the above documents, the District is required to serve on each employee a Notice of Accusation, a copy of the Accusation, a blank Notice of Defense, and copies of relevant Government Code sections that set forth hearing procedures. The employee must then file a Notice of Defense within five days to perfect his/her right to a hearing.

² All further statutory references are to the Education Code.

The District then determined whether any of these employees, beginning with the most senior, could be reassigned to a vacant position resulting from attrition, or displace (i.e., “bump”) a more junior employee from their position. If there was no vacancy and no such junior employee, then the identified employee performing the particular kind of service being reduced would be subject to layoff.

12. In determining whether a senior employee could be reassigned or “bump” a more junior employee, the District used the following competency criteria established by the Resolution:

“WHEREAS, 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 . . . For purposes of implementing this Resolution, a more senior employee is defined as competent for bumping purposes, if he or she currently possesses a clear or preliminary credential in the subject(s) or grade level to which the employee will be assigned at the beginning of the 2011-2012 school year and an appropriate EL authorization; and to bump into an alternative education assignment, at least one complete year of experience teaching in an alternative education setting in the District within the past five (5) school years; . . .”

13. The Resolution calls for a reduction of 16.0 FTE positions in K-6 Classroom Teaching Services. Julia Di Fiore is one of the teachers performing this particular kind of service who received a preliminary layoff notice. She submitted her resignation effective June 18, 2011. Gloria Regalado (Regalado) has a regular teaching assignment in an elementary school position which is being eliminated under the Resolution; however, Regalado most recently taught English in lieu of another teacher who has been on leave. The District’s seniority list reflected this special assignment and Regalado was not identified for layoff, although Regalado received a precautionary layoff notice for this proceeding. The District amended its seniority list to accurately reflect Regalado’s regular assignment, which then subjected Regalado to layoff. This change saved two elementary school teachers who received notices for layoff, as follows: Samantha Jennings will be retained for her full 1.0 FTE position, and Heather Jara will be retained for 0.5 FTE of her position. Regalado is credentialed and competent to teach English, and will “bump” Dawn Neufeld, who received a precautionary notice and is less senior than Regalado.

14. The parties entered into a stipulation that, for purposes of this layoff proceeding only, and without creating a precedent or waiver as to the application of the Resolution’s competency criteria, respondent Susan Gordon is credentialed and competent to bump into the position held by respondent Katherine Arrighi, a junior English teacher.

15a. For at least the past five years, the District has operated an alternative school setting for students with emotionally challenging and problematic behaviors, who are at great risk for failure in their educational programs. It intends to retain four certificated employees, Andrew Jahan, Sean Patterson, Reggie Rios, and Yvonne Rosales-Rivera, all of whom have

held teaching positions in this setting at least since September 2008. The District maintains that there are no certificated employees subject to this layoff process who have more seniority than these four teachers, and who are competent to “bump” into their positions under the Resolution’s competency criteria requiring a certain level of experience to “bump” into assignments at the alternative school. Respondents argued that the Resolution’s competency criteria are arbitrary and unreasonable as applied, and that there are certificated employees with greater seniority who are subject to layoff and who are competent to teach in the alternative school setting. The District argued that the Board properly exercised its discretion when it established these criteria in order to retain teachers with teaching experience at the alternative school setting. In the District’s view, only teachers with experience in this setting have the necessary skills to motivate these students and to meet their particular needs, as well as contend with the difficult emotional situations that arise. The District has made efforts to develop the alternative school program and its teachers, by providing special educational opportunities to those teachers performing these services, for example, a course called Healthy Relationships that suggests methods of addressing the issues of pregnant students, and by building trusting relationships between pupils and staff.

15b. Respondent Mary Jane Card (Card) maintains that she should be allowed to “bump” into a position at the alternative school setting currently being taught by a teacher who is scheduled to be retained. She has a seniority date of September 2, 2008, and is credentialed to teach mild to moderate mentally and developmentally delayed students. She has her master’s degree in special education, a certificate in Autism, and is NCLB compliant. In her 17-year career, Card has taught elementary, middle, and high school. She currently teaches a special day class for special education students in kindergarten through the third grade. There are no general education students in her classroom. Card’s students are significantly different in several respects than most of the students in the alternative school setting. Generally, these students have deficits in cognitive functioning such that they are not on track for obtaining a high school diploma, whereas alternative school students often are placed for reasons that include disciplinary problems, attendance problems, and not having enough credits to graduate. Card works with her students on academics and learning life skills. Her students’ abilities to be independent are very limited. Card’s most relevant experience for teaching in an alternative school setting was teaching a Reading Recovery Program and for which she received a certificate; however, the certificate was not part of her credential and this experience occurred more than 20 years ago. She has had no experience teaching in an alternative school setting within the past five years.

15c. Respondent Amanda Paulson (Paulson) teaches fourth grade students at Emperor Elementary School. Her seniority date is August 29, 2005, and she possesses a clear multiple subject credential with a supplementary authorization to teach Economics. She has both bachelors’ and master’s degrees and is NCLB compliant. She believes her experience of teaching independent study, after school, at a learning center for one semester during the 2007-2008 school year makes her competent to teach in an alternative school setting. This job involved one hour of one-on-one instruction per student, for a total of four hours per week. She made the assignments and graded the students’ work. Paulson did not perform these services for a full year. She believes that she was told by another employee

that she would have an opportunity to bump into a position at the alternative school setting, and she would gladly have taken any necessary training had she known how it might affect her job future.

16. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all respondents.

2. 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.)

3. Cause was established as required by Education Code sections 44949 and 44955 to reduce the number of certificated employees by 26.30 FTE’s due to the reduction or discontinuation of particular kinds of services, for the reasons set forth in factual funding numbers 1 through 9. The Board’s decisions to reduce or eliminate the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District’s schools and the pupils within the meaning of Education Code section 44949.

4. Respondents Card and Paulson have argued that they are competent to teach at the alternative school site, and thus, are entitled to “bump” into the positions held by Sean Patterson, or any other employee with less seniority, who currently renders these services. The Resolution specifically requires that, for employees to be competent to teach at the alternative school site, they must have the appropriate credential and at least one complete year of experience teaching in an alternative education setting in the District within the past five school years. There is no dispute Card and Paulson possess the necessary credential; however, the District is not required to displace junior employees with more senior employees who are credentialed but lack the “experience” necessary to competently teach at the alternative school site. Card and Paulson do not have the experience the Board has determined is necessary to teach the assignment, and, thus, are not competent to “bump” into the alternative education assignments of junior teachers.

“Competent” has been defined by the courts. In *Forker v. Board of Trustees* (1994) 160 Cal.App.3d 13, 19, the court defined the term in a reemployment proceeding under section 44956, in terms of the teachers’ skills and qualifications, specifically, as “relating to special qualifications for a vacant position, rather than relating to the on-the-job performance of the laid-off permanent employee.” In doing so, the court noted that courts in reduction in force

cases, namely *Brough v. Governing Board* (1981) 118 Cal.App.3d 702, 714-15, and *Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 654-55, had interpreted the term in a similar manner.

Courts in analogous layoff and reemployment contexts, construing provisions similar to section 44955, have recognized that school districts have discretion to establish rules to define teacher competency. Thus, after reviewing earlier cases, the court in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565 (*Duax*), wrote: “Hence, from these authorities we conclude that a board’s definition of competency is reasonable when it considers the skills and qualifications of the teacher threatened with layoff.” (See also *Martin v. Kentfield School District* (1983) 35 Cal.3d 294, 299-300; *Forker v. Board of Trustees, supra.*)

In *Duax*, the governing board had established a standard of competency that required one year of full-time teaching in the subject area within the last ten years. The court found such standard “clearly related to skills and qualifications to teach” and therefore a reasonable one. (*Duax, supra*, 196 Cal. App.3d 555, at p. 567.) The court also concluded that the standard did not define competency too narrowly.

The Resolution’s criteria, in pertinent part, require certificated employees to have one complete year of experience teaching in an alternative school setting within the past five years in order to “bump” a more junior certificated employee who satisfies this criterion and who is currently serving in the related assignment. The criteria relate to the skills and qualifications of certificated employees, and may be used by the District in implementing the layoffs, as they are a reasonable means for assuring that teachers assigned to the alternative school setting have the experience and skills they need to work with at-risk students.

5. Cause exists for the District to terminate the services of respondents Clarice Acosta, Nicole Archuleta, Katherine Arrighi, Phillip Bailey (0.8 FTE layoff), Stephanie Baker, Marta Bourjeili, Sherry Boyd, Mary Jane Card, Ken C. Chin (0.7 FTE layoff), Shelby Elliott, Iris Chiu Hannon, Heather Jara (0.5 FTE layoff), Diana Lam, Jennifer Lau, Christina A. Lee, Michele Montierro, Dawn Neufeld, Wen (Brenda) Pan (0.8 FTE layoff), Mary Ann Parrille, Amanda Paulson, Monica Rodriguez, Andrea Saldana, Lisa Smith, Hoa (Jenny) My Thai, and Erin Wahbe for the 2011-2012 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 18 and legal conclusion numbers 1 through 4.

6. Cause exists to dismiss the Accusation with respect to respondent Susan Gordon, for the reason that the parties have stipulated to her retention, as set forth in factual finding number 14.

7. Cause exists to dismiss the Accusation with respect to respondents Denise Galvan, Gloria Regalado, Robyn Selders, and Jacqueline Wu-Chan, in that they only received precautionary notices, and with respect to respondent Samantha Jennings, for the reasons set forth in factual finding number 13.

8. Cause exists to dismiss the Accusation with respect to Andrew Jahan, Sean Patterson, Reggie Rios, and Yvonne Rosales-Rivera, for the reasons set for in factual finding numbers 15a, 15b, and 15c, and legal conclusion number 4.

ORDER

1. The Accusation is sustained with respect to respondents Clarice Acosta, Nicole Archuleta, Katherine Arrighi, Phillip Bailey (0.8 FTE layoff), Stephanie Baker, Marta Bourjeili, Sherry Boyd, Mary Jane Card, Ken C. Chin (0.7 FTE layoff), Shelby Elliott, Iris Chiu Hannon, Heather Jara (0.5 FTE layoff), Diana Lam, Jennifer Lau, Christina A. Lee, Michele Montierro, Dawn Neufeld, Wen (Brenda) Pan (0.8 FTE layoff), Mary Ann Parrille, Amanda Paulson, Monica Rodriguez, Andrea Saldana, Lisa Smith, Hoa (Jenny) My Thai, and Erin Wahbe. The District may notify the above respondents that their services will not be needed during the 2011-2012 school year due to the reduction of particular kinds of services

2. The Accusation with respect to respondents Susan Gordon, Denise Galvan, Andrew Jahan, Samantha Jennings, Sean Patterson, Gloria Regalado, Reggie Rios, Yvonne Rosales-Rivera, Robyn Selders, and Jacqueline Wu-Chan is dismissed.

Dated: May __, 2011

MARK HARMAN
Administrative Law Judge
Office of Administrative Hearings