

**BEFORE THE  
GOVERNING BOARD OF THE  
CENTINELA VALLEY UNION HIGH SCHOOL DISTRICT  
In the Matter of the Statement of Reduction in Force  
Against:**

**CERTAIN CERTIFICATED EMPLOYEES OF THE  
CENTINELA VALLEY UNION HIGH SCHOOL DISTRICT,  
Respondents.**

**OAH No. 2023030680**

**PROPOSED DECISION**

Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on April 20, 2023, in Lawndale, California.

Christine Hsu and Zuzanna E. Tkaczow, Olivarez Madruga Law Organization, LLP, represented the Centinela Valley Union High School District (District).

Carlos R. Perez and Alejandra Gonzalez-Bedoy, Law Office of Carlos R. Perez, represented all respondents except for Mark McCormick and Walter Torres, who each represented themselves.

Sandra Goins, Executive Director of South Bay United Teachers, was present during the hearing.

Oral and documentary evidence was received, and argument was heard. The record closed and the matter was submitted for decision on April 20, 2023.

## **FACTUAL FINDINGS**

### **Board Resolution**

1. Stephen Nellman, Ed.D., Superintendent of the District, made and filed the Statement of Reduction in Force in his official capacity. Pamela Brown, Ed.D. (Dr. Brown), is the Assistant Superintendent of Diversity, Equity, and Inclusion. Daniel Urrutia, Ed.D. (Dr. Urrutia), is the Assistant Superintendent of Business Services. Drs. Brown and Urrutia, and their respective staffs, were involved in implementing certain aspects of the layoff.

2. On January 24, 2023, the Governing Board of the District (Board) adopted Resolution No. 22-23/022 (Resolution), which proposed a layoff of certificated employees corresponding to 104 full-time equivalent (FTE) positions. (Exh. 1.) The Board determined that such action is in the best interest of the District and the welfare of the District's schools and students. The Resolution provided for the reduction or discontinuance of the following particular kinds of services:

<u>PARTICULAR KINDS OF SERVICE</u>	<u>FTE Reduction</u>
English	27
Math	17
Biology	12
Chemistry	2

Social Sciences	11
Spanish	13
Art	5
Music	3
Physical Education	3
Health	2
Psychologist	1
Adaptive Physical Education	1
Counseling	3
CTE Arts/Media Entertainment	3
Dance	1
Total FTE Reduction	104

3. The Resolution established tiebreaker criteria for determining the relative seniority of certificated employees who first rendered paid service to the District on the same date. (Exh. 1, pp. 4-5.) It provided that the order of termination shall be based on the needs of the District and its students in accordance with certain criteria. Specifically, the tiebreaker criteria required consideration of the type of credentials (preliminary versus clear), possession of any English Language authorizations, and possession of any advanced degrees (master's or doctorate). In the event of a tie after reference to all the listed criteria, the tie would be broken by drawing lots.

4. The Resolution was required because of the District's need to reduce services in order to address the District's current and projected budget deficits, which are the amounts the District's expenditures exceed its revenues. For the current school year, the District has a budget deficit of approximately \$16.8 million. (Exh. 19, p. 35.) Over the next two school years, the District is projected to have budget deficits of \$13.7 million in the 2023-2024 school year, and \$14.7 million in the 2024-2025 school year. (*Id.* at p. 120.) The District has determined the reduction in force proposed in the Resolution will stabilize the District's fiscal health and enable it to meet its financial expenditures in the next school year. The District's budget determinations related to this layoff proceeding were reviewed and approved, as required, by the Los Angeles County Office of Education.

5. Dr. Urrutia explained the District's budget projections are subject to change. The Legislature is currently reviewing the state's priorities in education and possible changes to the Cost-of-Living Adjustment (COLA). Dr. Urrutia noted that a ballot proposition passed by the voters may provide funding for music and art programs, and the Legislature is currently working on clarifying language, which may not be completed until after June. This funding, once available, potentially could be used to bring back music and art teachers.

### **Preliminary Layoff Notices**

6. Between February 27, 2023, and March 6, 2023, the District served 88 certificated employees (collectively, respondents) with written notice (March 15 notice) that it had been recommended notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would be terminated at the close of the current school year. (Exhs. 4, 5.) The March 15 notice explained the reasons for the

recommendation and notified the employees of their right to request a hearing to determine if there is cause for not reemploying them for the 2023-2024 school year.

7. Respondents are probationary or permanent certificated employees of the District. Individual respondents are identified by their name and their number on the seniority list (Exhibit 11).

8. Seventy-three respondents timely submitted written requests for a hearing to determine if there is cause for not reemploying them for the 2023-2024 school year. (Exh. 6.) Thereafter, the District timely served a Statement of Reduction in Force with required accompanying documents on all respondents, regardless of whether they submitted a request for a hearing. (Exh. 9.) The District received Notice of Participation forms from some, but not all, respondents. (Exh. 8.) The District, however, did not object to any respondent who did not submit a Notice of Participation form from participating in this layoff proceeding. The District served a Notice of Hearing on all respondents. (Exh. 10.)

## **Seniority List**

9. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignment, credentials, English Language authorizations, and advanced degrees. (Exh. 11.) Certificated employees, including respondents, were given access to the seniority list to update or correct their information.

10. Only one certificated employee requested a change to his seniority date. Respondent Jomo Stewart (#287) provided information to the District that his seniority date should be changed from August 16, 2019, to August 27, 2018. The District, after reviewing its personnel files, agreed to change Stewart's seniority date to August 27,

2018. The change in Stewart's seniority date, however, did not affect his status as an employee subject to layoff.

11. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. 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 may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) 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.

12. The District identified respondents Claire Forster (#264) and Gary DiPierro (#233) as employees subject to layoff, but who also had "bumping" rights allowing them to elect reassignment to another position they were certificated and competent to fill. By letter dated March 1, 2023, the District notified Forster she could elect to "bump" into the position of Chemistry Teacher. (Exh. 12.) At the time, Forster was assigned to teach anatomy. Forster has a seniority date of August 17, 2018, and holds clear single-subject credentials authorizing her to teach biology and chemistry. Respondents Nicole Toussaint (#292), whose seniority date is January 14, 2019, and Jessika Korzelius (#297), whose seniority date is August 16, 2019, are chemistry teachers with less seniority than Forster. On March 3, 2023, Forster agreed to be reassigned to the position of Chemistry Teacher, and she will be retained. (*Id.* at p. 3.)

She will “bump” into the position currently held by Toussaint. Toussaint and Korzelius are subject to layoff to account for the 2.0 FTE reduction in Chemistry.

13. Similarly, by letter dated March 1, 2023, the District notified DiPierro he could elect to “bump” into a vacant Special Education Teacher (Mild/Moderate Disabilities) position. (Exh. 13.) DiPierro has a seniority date of August 16, 2016, and holds clear special education credentials authorizing him to teach mild/moderate special education and adaptive physical education. The District determined DiPierro could “bump” into the vacant special education position. On March 15, 2023, DiPierro agreed to be reassigned to the vacant position, and he will be retained. (*Id.* at p. 3.)

14. The District used information from the seniority list to apply the tiebreaker criteria of the Resolution to determine the order of layoff between respondents in the same subject area who shared the same seniority date. The District documented its application of the tiebreaker criteria in Tie Breaker Worksheets. (Exh. 17.) The seniority list (Exhibit 11) includes the tiebreaker results. No claims were raised concerning the validity of the tiebreaker criteria.

15. The District properly considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered. Dr. Brown explained the District took into account several resignations and non-reelections before sending the March 15 notices, which resulted in only 88 certificated employees being served with the March 15 notice, even though the Resolution proposed a reduction of 104 FTE positions. Dr. Brown indicated subsequent retirements and resignations may be taken into account based on scheduling information the District receives from its school sites.

16. Dr. Brown further explained that a reduction of 88 FTE positions is appropriate due to the District changing from eight periods to six periods in the next school year. The change to six periods reduces the number of staff needed to provide instruction. Dr. Brown asserted students will see their teachers more often with six periods, i.e., every day for 55 minutes, than with eight periods, i.e., every other day for 87 minutes. The District will continue to offer students the same classes but only over six periods instead of eight. Dr. Brown asserted the District is not eliminating any courses or programs.

17. On April 10, 2023, the District rescinded the layoff notice to respondent Ana Carrera (#370), who was identified for layoff to account for the 1.0 FTE reduction for Psychologist. (Exh. 14.) The District determined Carrera's services as a Psychologist will be needed for the 2023-2024 school year. Dr. Brown confirmed the rescission of Carrera's layoff notice reduced the total number of respondents in this proceeding from 88 to 87. (Exh. 18.)

## **Respondents' Contentions**

18. Respondents' counsel asked Dr. Brown about the tiebreaker criteria related to advanced degrees, as applied to Employee #346 and respondent Jovana Giron (#350). Under the tiebreaker criteria, a teacher with an advanced degree is considered more senior than a teacher without an advanced degree. (Exh. 1, p. 5.) Employee #346 and Giron share a seniority date of August 13, 2021, and are second-year probationary English teachers. Giron has a master's degree while Employee #346 has no advanced degrees. Yet Employee #346 is shown on the seniority list as having more seniority than Giron (#350). Dr. Brown explained Employee #346 resigned and he will be removed from the seniority list.



19. Respondents' counsel also asked Dr. Brown about the tiebreaker criteria related to credential types, as applied to Employees #344 to #346 and respondents Allison Levine (#347) and Dorothy Morris (#348). Under the tiebreaker criteria, clear credentials are regarded as having greater seniority than preliminary credentials. (Exh. 1, p. 4.) Levine, Morris, and Employees #344 to #346 are second-year probationary English teachers and share the seniority date of August 13, 2021. Levine (#347) and Morris (#348) hold clear credentials but are shown on the seniority list as having less seniority than Employees #344 to #346, who only have preliminary credentials. Dr. Brown explained Employees #344, #345, and #346 have resigned and they will be removed from the seniority list.

20. A. Respondents Bradley Smith (#338) and Antonio Villagrana (#337) are second-year probationary teachers who share a seniority date of August 13, 2021. Both hold single-subject credentials in social science. The seniority list indicates Villagrana holds a clear credential and Smith holds a preliminary credential. Smith contends Villagrana's credential is preliminary and not clear, based on information he reviewed on the Commission on Teacher Credentialing's website. Smith requests the District reassess Villagrana's credential information. Smith admitted his status as an employee subject to layoff will not change even if Villagrana's credential status is changed from clear to preliminary. Smith is concerned about the order of reemployment.

B. Dr. Brown testified if it is verified Villagrana only holds a preliminary credential, the tiebreaker criteria would be applied to determine the relative seniority among Smith, Villagrana, and respondent Katelyn Penuelas (#339), who is also a social science teacher with a preliminary credential and a seniority date of August 13, 2021.

Dr. Brown testified these three respondents remain subject to layoff but their rehire order might be impacted by the tiebreaker result.

21. A. Respondent Giron (#350) is a second-year probationary English teacher. She disputes her assigned seniority date of August 13, 2021. Giron contends her seniority date should be changed to a date in January 2021. Giron testified she worked as an unpaid student teacher in the 2020 fall semester, and then worked as a long-term substitute teacher for the entire 2021 spring semester, which began in January 2021. Giron contends her seniority date should reflect her service as a long-term substitute during the 2021 spring semester.

B. Giron did not present any documentation to support her request to change her seniority date. Additionally, Giron did not establish she worked as a substitute teacher for at least 75 percent of the number of days of the 2020-2021 school year, as required under Education Code section 44918, in order to be deemed to have served a complete school year as a probationary employee during that school year. At most, Giron worked only one semester or approximately 50 percent of the days of the 2020-2021 school year. Giron's seniority date and her status as an employee subject to layoff remain unchanged.

22. Several respondents testified about how their layoff will negatively impact their students and the courses and programs they teach. The testimony related to the dedicated support classes for English learners; Link Crew; AVID; the Marine Science Academy; Project Lead the Way; the drama program; ceramics courses; and music instruction. These respondents expressed concern their courses and programs will, in effect, be eliminated due to a lack of teachers with their unique training, experience, and specialized knowledge. The testimony of these respondents reflected

a strong dedication and commitment to the courses and programs in their subject area and the well-being of their students.

23. Respondent Clinton Fernicola (#376) is an English teacher with a seniority date of August 10, 2022, which he does not dispute. Fernicola raised a concern about the District's hiring process. He contends he would not have left his position in another school district had he known of the District's budget deficits discussed during the hearing. Issues regarding the District's hiring process are not within the jurisdiction of this layoff proceeding.

## **LEGAL CONCLUSIONS**

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1-8.)

2. The services identified in the Resolution are particular kinds of services which may be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services was not arbitrary or capricious and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. A school 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.)

4. Boards of education hold significant discretion in determining the need to reduce or discontinue particular kinds of services, which is not open to second-guessing in this proceeding. (*Rutherford v. Board of Trustees, supra*, 64 Cal.App.3d at p. 167.) Such policy-making decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and action must be reasonable under the circumstances, with the understanding that "such a standard may permit a difference of opinion." (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.)

5. Cause exists, pursuant to Education Code section 44949 and 44955, to reduce the number of certificated employees of the District due to the reduction or discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

6. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

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## **ORDER**

1. Notice shall be given to employees occupying 87 full-time equivalent certificated positions that their services will not be required for the 2023-2024 school year because of the reduction and discontinuance of particular kinds of services.
2. Notice shall be given in inverse order of seniority.

DATE: 05/02/2023

*Erlinda Shrenger*

ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings