

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

In the Matter of the Accusation Against:	)	OAH NO. 2012030551
	)	
CERTIFICATED EMPLOYEES OF THE	)	
TEMPLE CITY UNIFIED SCHOOL DISTRICT,	)	
	)	
Respondents.	)	
_____	)	

**PROPOSED DECISION**

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 11, 2012, in Temple City, California.

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

Richard J. Schwab, Attorney at Law, represented Respondents Nicole Archuleta Medina, Stephanie Baker, Sherry Boyd, Scot Drew, Shelby Elliott, Iris Chiu Hannon, Diana Lan, Jennifer Lau, Andrea Saldana and Erin Wahbe (collectively, respondents). Music teacher Phillip Bailey failed to file a request for hearing and the matter proceeded on a default basis as to him.

Evidence was received, and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Dr. Chelsea Kang-Smith, Superintendent of the District, filed the Accusation in her official capacity on March 5, 2012.

2. Respondents are certificated employees of the District.

3. On February 22, 2012, the District's Board of Education (Board) adopted Resolution No. 1112-19 (the Resolution), which proposed a layoff of 10.80 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	8.8 FTE
Reduce Elementary Physical Education Services	1.0 FTE

Reduce Music Teaching Services

1.00 FTE

---

Total

10.80 FTE

4. On February 22, 2012, the Superintendent of the District recommended to the Board that notice be given to 11 certificated employees that their services would not be required for the 2012-2013 school year, based on the Resolution.

5. On or before March 9, 2012, the Superintendent provided written notification to 11 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 11 certificated employees, including respondents identified by the Superintendent as slated for layoff.

6. Respondents timely filed Requests for Hearing/Notices of Defense.

7. The procedure followed by the District differed somewhat from that specified in Education Code sections 44949 and 44955, 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 9, 2012. Respondents perfected their rights to a hearing by submitting a combined Request for Hearing/Notice of Defense on or before March 26, 2012. Although this process deviated from the Education Code, it did not prejudice any of the employees, including respondents, who were subject to layoff.<sup>1</sup> All prehearing jurisdictional requirements have been met.

8. In order to determine the number of employees to lay off, the District considered an expected shortfall in the budget for the 2012-2013 school year and positively assured attrition, including retirements, resignations, and other expected vacancies for the 2012-2013 school year. Dr. Julio Fonseca (Fonseca), Assistant Superintendent, Personnel Services, testified that, because of the potential loss of State funding, the District expected a

---

<sup>1</sup> 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.

serious budget shortfall in the 2012-2013 school year. The District estimated that it will incur an eight 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 Code<sup>2</sup> 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. 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 (bump) a more junior employee from his or her position. If there was no vacancy or 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:

“ ‘Competency’ as described in Education Code section 44955(b) for purposes of bumping and rehire shall include (1) possession of a valid clear or preliminary credential authorizing service in the subject(s) or grade level to which the employee will be assigned at the beginning of the 2012-2013 school year; (2) highly qualified status under the No Child Left Behind Act; (3) an appropriate EL authorization (if required by the position); and (4) to bump into an alternative education assignment, at least one complete year of experience teaching in an alternative education assignment setting in the District within the past five (5) school years.”

13. The Resolution calls for a reduction of 8.8 FTE positions in K-6 Classroom Teaching Services.

14. For at least the past five years, the District has operated an alternative school for students with emotionally challenging and problematic behaviors who are at great risk for

---

<sup>2</sup> All further statutory references are to the Education Code.

failure in their educational programs. It intends to retain three certificated employees, Andrew Jahan (seniority date August 28, 2006), Yvonne Rivera-Rosales (seniority date August 28, 2006) and Sean Patterson (seniority date September 2, 2008), all of whom have held teaching positions in this setting at least since September 2008. The District contends that there are no certificated employees subject to this layoff process who have more seniority than these three teachers, and who are competent to bump into their positions under the Resolution's competency criteria. 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 but 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 and training 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 and maintaining a consistent teaching staff for the at risk, troubled, pregnant and parenting students it services. The teachers provide instruction in a departmentalized setting but use a multidisciplinary team approach to educating the students. The teachers have training on computerized curriculum, trust and relationship building and issues specific to pregnant and parenting students, violence, abuse, neglect and special learning needs.

15. Respondent Erin Wahbe (Wahbe) contends that she should be allowed to bump into a position at the alternative school currently being taught by a teacher Sean Patterson who has a seniority date of September 2, 2008 and is scheduled to be retained. Wahbe has a seniority date of September 1, 2005 and teaches fifth grade students at Longden Elementary School. Wahbe possesses a clear multiple subject credential, has both bachelor's and master's degrees and is NCLB compliant. Wahbe has taught kindergarten and fifth grade and is certified to teach students in the gifted and talented education (GATE) program. She has experience using computerized curriculum in the classroom. She believes her experience as a teacher, and her credential, GATE certification and experience using a computerized curriculum makes her competent to teach in an alternative school setting. Wahbe's elementary school students are academically, developmentally and emotionally different than the teenage population of at risk and pregnant students at the alternative school and she has no experience teaching in the alternative setting. Wahbe does not meet the competency criterion (item 4) prescribed by the Board as set forth in Factual Finding 12 above and is therefore not entitled to bump into a teaching position at the alternative school setting.

16. Respondent Andrea Saldana (Saldana) contends that she should be allowed to bump into a position at the alternative school currently being taught by Sean Patterson who has a seniority date of September 2, 2008 and is scheduled to be retained. Saldana has a seniority date of October 5, 2005 and teaches first grade students at La Russa Elementary School. Sean Patterson has a seniority date of September 2, 2008 and teaches at the alternative school. Saldana possesses a clear multiple subject credential, has both bachelors'

and master's degrees and is NCLB compliant. Saldana has taught kindergarten, first, third and fourth grades. She has also substituted as a teacher in fifth grade and special education. She believes her experience as a teacher, her credential, certification as a home school teacher and experience home school teaching her seventh grade child using a computerized curriculum makes her competent to teach in an alternative school setting. Saldana's elementary school students are academically, developmentally and emotionally different than the teen age population of at risk and pregnant students at the alternative school. Her experience home schooling her own seventh grader does not demonstrate the competency required by the Board as set forth in Factual Finding 12 above. Therefore, Saldana is not entitled to bump into a teaching position at the alternative school setting.

17. Respondent Stephanie Baker (Baker) contends that she should be allowed to bump into a position at the alternative school currently being taught by Sean Patterson who has a seniority date of September 2, 2008 and is scheduled to be retained. Baker has a seniority date of November 5, 2007 and teaches third grade students at Emperor Elementary School as part of a job share where she teaches eighty percent (.8 FTE) of the position. Baker possesses a clear multiple subject credential, a clear reading certificate, a bachelors' degree and is NCLB compliant. Baker taught in the District's alternative school setting for one year during the 2009-2010 school year as part of a half time (.5 FTE) job share with another teacher. She accepted an elementary school teaching position and left the alternative school for the 2010-2011 school year. Baker's half time service for one school year does not meet the District's competency criterion to bump into a teaching position in the alternative education setting.

18. The Resolution also calls for a reduction of 1.0 FTE positions in Physical Education (PE) Classroom Teaching Services.

19. School Districts are mandated to provide 200 minutes of PE in each ten school day period. The parties agree that PE is a mandated service that cannot be reduced below this mandated level.

20. Scot Drew (Drew) has a seniority date of September 2, 2008. Drew holds a clear single subject PE credential and a bachelor's degree. He is the only elementary school PE teacher in the District. District insists that PE instruction will not fall below the mandated level of instruction, but does not yet have a plan as to how it will provide PE. District is considering requiring the regular elementary classroom teachers to provide PE instruction.

21. 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 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 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.)

3. Cause was established as required by Code sections 44949 and 44955 to reduce the number of certificated employees by 10.8 FTE 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 Wahbe, Saldana and Baker have argued that they are competent to teach at the alternative school, 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, 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 that Wahbe, Saldana and Baker possess the necessary credential; however, the District is not required to displace junior employees with more senior employees who are credentialed but lack the competency, one year of experience in a District alternative education setting in the last five years, as determined by the Board, to teach at the alternative school site. Wahbe, Saldana and Baker do not have the experience the Board has determined is necessary to teach competently in the alternative school and thus, are not competent to bump into the alternative education assignments of junior teachers.

5. The term “competent” as used in section 44955 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.

6. 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. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565, 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 that standard was reasonable. (*Duax, supra*, 196 Cal. App.3d 555, at p. 567.) The court also concluded that the standard did not define competency too narrowly. Similarly, in *Bledsoe v. Biggs Unified School District* (2008) 170 Cal. App. 4<sup>th</sup> 127, the Court upheld layoffs of employees made using criterion requiring one semester of experience in a continuation high school within the preceding ten years as a competency criterion to bump junior teachers.

7. The Resolution’s criteria, in pertinent part, require certificated employees to have one complete year of experience teaching in a District alternative school within the past five years in order to bump a more junior certificated employee who satisfies this criterion and who is currently in the assignment. The criteria relate to the skills, qualifications and training 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 have the experience and skills needed to work with at-risk students.

8. Code section 51210.2, subdivision (a), provides that District is required to provide PE instruction to elementary school children in grades one through 6 for a minimum of 200 minutes in each 10 school day period. Code section 51210.2, subdivision (b), provides a school district can meet the PE instruction requirement with either (1) a credentialed physical education teacher or (2) a teacher who either completes one college course in physical education or a yearly PE theoretical practical developmental training. Accordingly, District has flexibility in its delivery of PE services and is not required to use the services of a credentialed PE teacher. Although District may, for various reasons, have a challenge in meeting the state mandate for PE, it was not established that District’s level of PE service would fall below the mandated level in the event its sole PE teach is laid off. (see *Degener v. Governing Board* (1977) 67 Cal. App. 3d 689, 698.)

9. Cause exists for the District to terminate the services of respondents Nicole Archuleta (1.0 FTE), Stephanie Baker (.8 FTE), Sherry Boyd (1.0 FTE), Scot Drew (1.0 FTE), Shelby Elliott (1.0 FTE), Iris Chiu Hannon (1.0 FTE), Diana Lam (1.0 FTE), Jennifer Lau (1.0 FTE), Andrea Saldana (1.0 FTE) and Erin Wahbe (1.0 FTE) for the 2012-2013 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 21 and legal conclusion numbers 1 through 8.

## **ORDER**

1. The Accusation is sustained with respect to respondents Nicole Archuleta (1.0 FTE), Stephanie Baker (.8 FTE), Sherry Boyd (1.0 FTE), Scot Drew (1.0 FTE), Shelby Elliott (1.0 FTE), Iris Chiu Hannon (1.0 FTE), Diana Lam (1.0 FTE), Jennifer Lau (1.0 FTE), Andrea Saldana (1.0 FTE), Phillip Bailey (1.0 FTE) and Erin Wahbe (1.0 FTE).

2. The District may notify the above respondents 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