

BEFORE THE  
GOVERNING BOARD OF THE  
COACHELLA VALLEY UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force of  
Certain Certificated Employees of Coachella  
Valley Unified School District.

OAH No. 2018030556

**PROPOSED DECISION**

Administrative Law Judge Vallera J. Johnson, State of California, Office of  
Administrative Hearings, heard this matter in Thermal, California, on April 18, 2018.

Margaret A. Chidester, Attorney at Law, Law Offices of Chidester & Associates  
represented the Coachella Valley Unified School District.

Jon Y. Vanderpool, Attorney at Law, Smith, Steiner, Vanderpool & Wax, represented  
respondents identified in Exhibit "I".

There was no appearance by or on behalf of Gwendolyn Dixon, Ralph England, Holly  
Kaye, Hidall Garcia, Olga Noris and Abraham Ramirez Oropez. Mr. Vanderpool did not  
represent the foregoing individuals.

The matter was submitted on May 3, 2018.<sup>1</sup>

**SUMMARY OF PROPOSED DECISION**

The Governing Board of the Coachella Valley Unified School District determined to  
reduce or discontinue particular kinds of services provided by teachers for budgetary reasons.

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<sup>1</sup> The record remained open for receipt of briefs. On April 26, 2018, the parties filed  
briefs. The District's Post- Hearing Brief was marked for identification as Exhibit 13, and  
Respondents' Closing Brief was marked for identification as Exhibit C. On May 3, 2018, the  
District notified the administrative law judge and opposing counsel that she would not file a  
reply brief; this document was marked for identification as Exhibit 14

On May 3, 2018, the record was closed, and the matter was submitted.

The decision was not related to the competency or dedication of the individuals whose services are proposed to be reduced or eliminated.

The Coachella Valley Unified School District (District) staff carried out the Governing Board's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between/among employees with the same first dates of paid probationary service. The selection process was in accordance with the requirements of the Education Code.

## FACTUAL FINDINGS

1. The Coachella Valley Unified School District serves more than 17,000 students and consists of 14 elementary schools, three middle schools, two comprehensive high schools, one middle high school, a continuation school and an adult education high school.

2. For the 2018-2019 school year, the District is facing a projected budget deficit of \$11 million over the next two years. On March 1, 2018, in an effort to bridge the projected budget deficit, the Governing Board adopted Resolution No. 2018-#62. According to the Resolution, the Governing Board determined that it was "in the best interests of the District, and the welfare of the students thereof, to reduce or discontinue certain particular kinds of services hereinafter enumerated."

In the Resolution, the Governing Board directed the Superintendent to send notices to all employees affected by the particular kinds of services (PKS) reductions or eliminations. Also, the Governing Board directed the Superintendent, or his designee, to make assignments and reassignments of certificated employees following implementation of the PKS reductions or eliminations to ensure that each remaining certificated employee is assigned to a position for which he or she is properly credentialed pursuant to Education Code section 44955.<sup>2</sup>

3. The Resolution identified the following PKS for reduction or elimination by Full Time Equivalent (FTE) for a total of 96 FTEs:

<b><u>PKS</u></b>	<b><u>FTE</u></b>
Multiple Subject Credential Teachers (K-8)	63
English Teachers	10
Social Science Teachers	5
Mathematics Teachers	5
Mild Moderate Special Education Teacher	1
PE Teacher	1

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<sup>2</sup> Hereinafter all reference is to the Education Code unless otherwise stated.

Spanish Teachers	2
Counselors	6
Science Teachers	2
Agriculture	1

4. On March 2, 2018, Maria G. Gandra, Ed.D. (Dr. Gandra), Assistant Superintendent of Human Resources and Risk Management, sent preliminary layoff notices to the certificated employees identified for layoff. A copy of the Resolution and information concerning the right to request a hearing were enclosed with the preliminary layoff notices.

5. In response to the preliminary notices, 96 people submitted hearing requests. These persons are identified in Exhibit “II”.

6. All prehearing jurisdictional requirements were satisfied.

7. Although properly noticed, there was no appearance by or on behalf of Respondents Gwendolyn Dixon, Ralph Dixon, Holly Kaye, Hidall Garcia, Olga Noris and Abraham Ramirez Oropez, and the matter proceeded against them as a default pursuant to Government Code section 11520.

8. The District considered all known attrition, including resignations and retirements, in determining the actual number of final layoff notices to be delivered to its certificated employees. As a result of attrition, the District proposed to reduce or eliminate 57 FTE positions.

During the hearing, the District rescinded the layoff notice previously issued to Gabriel Baca.

9. The District’s Assistant Superintendent of Human Resources and Risk Management was responsible for implementing the technical aspects of the layoff. She developed a seniority list for probationary or permanent certificated staff that included, among other matters, the name of the certificated employee, seniority date, status, assignment, credential(s) and authorization(s).

The seniority date was based on the first date of paid service rendered.<sup>3</sup> A teacher hired as a probationary employee who worked as a substitute or temporary employee for at least 75 percent of the school days during the previous year and had performed the duties normally required of a certificated employee of the school district, was deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year. The teacher was entitled to have that earlier year

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<sup>3</sup> Code section 44845

counted as a year of probationary service. The prior year was “tacked” on for seniority purposes,<sup>4</sup> but only one year could be tacked.

Dr. Gander used the seniority list to develop a proposed order of layoff to determine the least senior employees currently assigned to provide the service being reduced. Then, she determined whether the least senior employees held credentials in another area that would entitle them to “bump” other junior employees. In determining who would be laid off for the service reduced, Dr. Gander counted the number of reductions and determined the impact on incumbent staff in inverse order of seniority. Then, she checked the credentials of each affected individual and whether he/she could “bump” another employee.

10. Respondent Nicole Reyes challenged her seniority date of October 7, 2015, arguing that her seniority date should be changed to August 29, 2014.

During the 2013-2014 and 2014-2015 school years, Ms. Reyes did not have a credential; instead, she worked with a 30-day emergency substitute teaching permit. From October 29, 2014, to December 12, 2014, she worked a long-term substitute assignment without a credential and then worked a second long-term assignment to the end of the 2014-2015 school year. Although both assignments served third grade students, they were distinct. The first was substituting for a classroom teacher who returned in December 2014, and the second was substituting in intervention instruction.

Service under a provisional credential, such as a 30-day short term substitute permit, does not count toward permanency.<sup>5</sup> On October 7, 2015, Ms. Reyes received her intern multiple subject teaching credential and a regular assignment. An intern serves two complete consecutive years, then a full third year. Only after three years, two under an intern credential, and one under a preliminary credential, does the individual earn permanency.

Seniority is determined as of the date a certificated employee “first rendered paid service in a probationary position.” (*See Bakersfield Elementary Teachers Assn. v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1300-1301, citing *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 640-641 [statute applies to probationary service in any position requiring certification qualifications].). Accordingly, employees who are hired to serve in a capacity other than probationary employment are not entitled to have that service recognized for purposes of seniority. (*Id.* at p. 1293 [“temporary employees do not accrue seniority”].)

Based on the foregoing, Respondent Reyes’s seniority date should not be changed to August 29, 2014. Her seniority date of October 7, 2015, was properly calculated.

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<sup>4</sup> Code section 44918

<sup>5</sup> Code section 44911

11. The Governing Board elected to exempt certain certificated employees from the order of certified layoff because of special training experience or credentials that others with more seniority do not possess. Relevant to this proceeding were “dual immersion teachers who are presently assigned to teach dual immersion instruction and who will be assigned to teach in a District dual immersion program in 2018-2019.”

As to the Governing Board’s decision to skip the dual language immersion teachers, Code section 44955, subdivision (d)(1), authorizes a District to deviate from terminating a certificated employee in order of seniority if it demonstrates a specific need for personnel to teach a specific course or course of study and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

Because subdivision (b) of Code section 44955 mandates that “the services of no permanent employee may be terminated . . . while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render,” junior employees may be given retention priority pursuant to section 44955, subdivision (d)(1), only if they possess special training and experience that their more senior counterparts lack. (*Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567, 571; *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 655.)

The “*special training and experience necessary*” language in Code section 44955, subdivision (d)(1), must be read in context with Code section 44955, subdivision (b). When one does that, it appears that the word “necessary” substantially limits Code section 44955, subdivision (d)(1). A district may require special training and special experience, but a district cannot require more of either than is “necessary” to teach the course. If “necessary” were not read in that limiting way, Code section 44955, subdivision (d)(1), could be used to circumvent the seniority rights secured by Code section 44955, subdivision (b). On the other hand, reading “necessary” in that limiting way harmonizes the language of the two subdivisions.

Thus, a district may not use skipping criteria that are not “necessary” to teach a course. Requiring a certain type of experience or a certain length of experience may be appropriate but only if it is shown to be “necessary.” There are a few decisions in which courts have approved of a requirement of prior experience. *Martin v. Kingfield School District* (1983) 35 Cal.3d 294, is an example. That case concerned the section 44956 preferred right of reappointment. An elementary school teacher who had been terminated asserted her right to be rehired to fill a new position as a middle school science teacher, a position for which she was credentialed. The district established a requirement of prior experience as a middle school teacher and did not rehire Martin for the position. The case stands for the proposition that a district, in requiring prior middle school experience for a middle school science position, did not abuse its discretion. However, as the job descriptions introduced at this hearing demonstrated, the District did not *require* prior secondary school experience before hiring counselors, it merely *desired* it.

The seminal case for the retention of less senior employees, *Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, requires a district to not only establish a specific need for personnel to teach a specific course of study, but to also establish that the certificated employee it proposes to retain has special training and experience necessary to teach that course or course of study or to provide those services. (*Id.* at p.138.) Prior administrative law decisions may be relied upon when making those determinations. (*Id.* at 137-142.)

The District has a diverse student population and a significant number of students who learn in Spanish and in English; in certain schools, there is a relatively high demand for teachers who are fluent in both languages. The junior teachers who are being skipped and retained hold the credentials necessary to teach in both languages.

With the exception of the dual language immersion teachers exempted by the Governing Board Resolution at Exhibit B, no less senior teachers are retained while more senior teachers credentialed to perform the same service are laid off. There are no more senior teachers being laid off who possess a Bilingual, Cross-cultural, Language and Academic Development Authorization, Bilingual Certificate of Competence or Bilingual Authorization in Spanish, the credentials required to teach in a dual immersion program (the 2017-2018 standard of dual immersion competency). No senior teacher is being laid off to allow retention of a junior teacher with the same credential.

12. The services that the Governing Board proposed to reduce were “particular kinds of services” that can be reduced or discontinued within the meaning of Education Code section 44955. The Governing Board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious but constituted a proper exercise of discretion.

13. The Governing Board’s reduction or discontinuance of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuance of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Governing Board.

14. There was no evidence that the District proposes to eliminate any services mandated by state or federal statute or regulations.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections are satisfied.

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 vs. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists under Education Code sections 44949 and 44955 for the Coachella Valley Unified School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

4. A senior teacher whose position is discontinued has the right to transfer to a continuing position that he/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. (*Poppers v. Tamalpais Union High School Dist.* (1986) 184 Cal.App.3d 399, 405.)

5. No employee with less seniority than any respondent is being retained to perform a service that any respondent is certificated and competent to render.

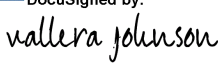
#### ORDER

1. The layoff notice issued to Gabriel Baca is rescinded. The Preliminary Notice of Not to Reemploy and Statement of Reduction or Discontinuance of Particular Kinds of Services against Gabriel Baca is dismissed.

2. Except as provided in paragraph one of this Order, the Preliminary Notices of Intent Not to Reemploy and Statement of Reduction or Discontinuance of Particular Kinds of Services against Respondents listed on Exhibit “II” are sustained. The Coachella Valley Unified School District shall give notice to these Respondents listed on Exhibit “III” before May 15, 2018, that their services will not be required for the 2018-2019 school year because of the reduction or discontinuance of particular kinds of services.

3. Notice shall be given in inverse order of seniority.

DATED: May 4, 2018

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VALLERA J. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings