

**BEFORE THE
GOVERNING BOARD OF THE
SAUGUS UNION SCHOOL DISTRICT
STATE OF CALIFORNIA**

**In the Matter of the District's Reduction in Force of:

CERTAIN CERTIFICATED TEACHERS OF THE SAUGUS UNION

SCHOOL DISTRICT, Respondents.**

OAH No. 2022O40212

PROPOSED DECISION

On April 25, 2020, Administrative Law Judge Jennifer M. Russell, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference. Candace Bandoian, Attorney at Law, represented the Saugus Union School District (District). Daniel Rojas, Attorney at Law, represented Jeanette Reynolds, Hallie Bodner, Bridgette Martinez, Tamie Marie Martinez, and Christina Godinez.

At the outset of the hearing, the District announced it rescinded its layoff notice to Jeanette Reynolds, who was present. Ms. Reynolds was excused from further participation in the hearing. Hallie Bodner, Bridgette Martinez, and Tamie Marie Martinez were present at the hearing. Christina Godinez was not present at the hearing. Hallie Bodner, Bridgette Martinez, Tamie Marie Martinez, and Christina Godinez are collectively referred to as respondents.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision at the conclusion of the hearing.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 8, 2022, the Governing Board of the District (Governing Board) adopted Resolution number 2021-22 #47 (To Decrease the Number of Certificated Employees Due to a Reduction in Particular Kinds of Services), which provides for the reduction or discontinuance of seven full time equivalent Elementary School Counselor positions no later than the beginning of the 2022/2023 school year.

2. Under the direction of Jennifer Stevenson, Ed.D., the District's Assistant Superintendent of Human Resources, a tentative seniority list containing seniority dates, current assignments, and credentials and certifications, was created and distributed to the District's certificated employees for their review and verification of pertinent information. The seniority list identifies the probationary or permanent employees assigned to seven Elementary School Counselor positions in the District. The Governing Board adopted the seniority list as part of Resolution number 2021-22 #48 (Determination of Order of Employment for Certificated Employees for Reduction or Discontinuance of Particular Kinds of Services), which it also adopted on March 8, 2022.

3. On March 11, 2022, the District served five Elementary School Counselors, Hallie Bodner, Christina Godinez, Bridgette Martinez, Tamie Martinez, and Jeanette Reynolds, with preliminary notices about Resolution number 2021-22 #47 and

informed them of their right to a hearing to determine whether cause exists for not reemploying them for the ensuing school year. All five requested a hearing.

4. The District did not serve two Elementary School Counselors with the preliminary notices. One of these two employees, Jody Bolde (Seniority #144), whose credentials include a Multiple Subject Teaching Credential, was reassigned to a classroom teaching position. The other employee, Adam Jennings (Seniority #49), resigned from the District, effective April 22, 2022. Consequently, Jody Bolde and Adam Jennings did not request a hearing.

5. On March 14, 2022, the District served Hallie Bodner, Bridgette Martinez, Tamie Martinez, Christina Godinez, and Jeanette Reynolds with a formal Notice of Recommendation That Services Shall Not Be Required, Resolution number 2021-22 #47, a Request for Hearing form, and copies of Education Code sections 44949 and 44955.

6. Hallie Bodner, Bridgette Martinez, Tamie Martinez, Christina Godinez, and Jeanette Reynolds each timely filed a Request for Hearing. Pursuant to Education Code sections 44949 and 44955, the District served each with formal documents consisting of a Notice of District Statement of Reduction in Force, a District Statement of Reduction in Force attaching Resolution number 2021-22 #47, among other documents, a Notice of Participation in Reduction in Force Hearing, a Notice of Hearing, and copies of Government Code sections 11507.5, 11507.6, and 11507.7.

7. On April 22, 2022, the District informed Jeanette Reynolds she will not be laid off for the 2022-2023 school year and it rescinded her layoff notice.

8. All notices and prehearing jurisdictional requirements are satisfied.

Cause Exists For the District to Not Reemploy Respondents for the 2022/2023 School Year

9. The District's class specification for "Elementary Counselor" defines the position's "Primary Function" as follows: "To facilitate elementary student's personal, academic and/or social adjustment via individual or small group counseling." (Exh. 8.) The position requires a valid California credential with authorization for Pupil Personnel Services (PPS). A District employee functioning as an Elementary Counselor "[r]eceives functional direction from the principal of the school to which assigned, and administrative and technical direction from the Director of Special Education." (*Id.*)

10. The duties of an Elementary Counselor include assisting teachers to interpret the individual needs of specific children with learning or behavioral problems, or both; assisting parents to understand and relate to adjustments of their children's academic needs; assisting the faculty as a resource person guiding and conducting in-service workshops; assisting the school psychologists with student referrals to and coordination with community agencies; attending parent/teacher conferences to effect better understandings of school programs addressing children's behaviors; and assisting with the preparation of documents and students' cumulative records. (*Ibid.*)

11. The District's class specifications for "School Social Worker" state the District employees assigned the position work under the direction of the Director of Student Support Services to provide comprehensive school social work services to parents, students, and school staff to address barriers limiting students from receiving the full benefit of their educational experience. The class specifications enumerate the following required or preferred education and experience:

- Minimum of three years of successful experience in a position performing pupil personnel services and/or related functions in a school setting (such as School Counselor, Social Worker, or related occupation) preferred.
- Master's degree from an accredited school with a major in psychology, sociology, social work, or other related field.
- LCSW (Licensed Clinical Social Worker), LMFT (Licensed Marriage and Family Therapist), or LPCC (Licensed Professional Clinical Counselor) required.
- PPS required and CWA (Child Welfare and Attendance) certification preferred.
- Bilingual highly preferred.
- Word processing, spreadsheet development, and data management skills required.
- Possession of a valid California Driver's License.

(Exh. 9.)

12. In the District, an employee functioning as a "School Social Worker" performs various types of work, including conducting initial intake screening for a variety of behaviors and healthcare related services; conducting assessments of need and urgency response; monitoring the delivery of treatment and social services;

maintaining a case load of “at-risk” students; providing support for school-wide behavior plans; participating in multi-disciplinary assessments of students’ mental health; developing individual behavior plans; and providing crisis counseling.

13. Tonya Nowakowski, who is a licensed clinical social worker, has been the District’s Student Support Services Coordinator since August 2021. Ms. Nowakowski has undergraduate and graduate degrees in social work. She holds a Pupil Personnel Services Credential in School Social Work and Child Welfare and Attendance. Ms. Nowakowski’s responsibilities include overseeing and developing the District’s mental health program, which encompasses school counseling, school social work, and suicidal risk assessments, as well as supervising a multidisciplinary team of school counselors and social workers engaged in program development. She collaborates with members of a hiring panel to determine whether whether candidates seeking employment as School Social Worker should be hired.

14. At hearing, Ms. Nowakowski explained “it has been very hard” for the District and “the general education work force” to recruit licensed clinical social workers, licensed marriage and family therapists, and licensed professional clinical counselors for the “School Social Worker” position. She testified these are all licensed clinical professionals registered with the Board of Behavioral Sciences. The “baseline requirement” for registration eligibility with the Board of Behavioral Sciences includes possession of a master’s degree, completion of clinical training, and completion of certain courses such as Law and Ethics and Child and Elder Abuse Reporting.

15. Ms. Nowakowski explained the District’s “more relaxed standard” for determining qualification for the “School Social Worker” position. “We allow for an ACSW, which is an associate clinical social worker, an MFT Intern, which is a marriage and family therapist intern, and an APCC, which is an associate professional clinical

counselor. They have met the requirements but have not passed the licensing exam. They have not completed 3,000 hours of supervised clinical experience over the course of no less than 104 weeks. . . . Our practice has been to require 600 clinical hours to register with the Board but we don't have that documented anywhere. . . . We have not required the PPS credential in school social work, yet it is preferred." Without the PPS credential, the employee must work under the supervision of someone with a PPS credential.

16. In consultation with Assistant Superintendent Stevenson, Ms. Nowakowski reviewed the education and experience of the District's certificated employees in Elementary Counselor positions to determine their qualification for a School Social Worker position. Assistant Superintendent Stevenson and Ms. Nowakowski determined two District certificated employees met the requirements of the District's "more relaxed standard." Adam Jennings (Seniority #49), who resigned from the District, and Jennette Reynolds (Seniority #142), whose layoff notice the District announced was rescinded at the outset of this hearing. Ms. Reynolds has an undergraduate degree in psychology and a master's degree in educational and clinical counseling. She has a PPS credential. She has accrued 800 clinical hours and she is registered with the Board of Behavioral Science as an APCC.

17. Assistant Superintendent Stevenson and Ms. Nowakowski determined Hallie Bodner, Bridgette Martinez, Tamie Martinez, and Christina Godinez are not Licensed Clinical Social Workers, Licensed Marriage and Family Therapists, or Licensed Professional Clinical Counselors. None satisfies the District's "more relaxed standard."

18. Hallie Bodner (Seniority #85) has an undergraduate degree in women's studies and a master's degree in counseling and pupil personnel services. She holds a PPS credential. As a District Elementary Counselor, she has, among other things,

provided social-emotional based interventions to target executive functioning skills, social awareness, anti-bullying, anxiety, depression, self-esteem, impulsivity, anger, self-awareness, and coping skills. She did not testify at hearing. No evidence establishing she completed at least 600 clinical hours or is registered with the Board of Behavioral Sciences was offered at hearing.

19. Bridgette Martinez (Seniority #143) has an undergraduate degree in social work and a master's degree in educational counseling. She holds a PPS credential. As a District Elementary Counselor, among other things, she has performed small group and individual counseling, administered assessment protocols for individualized educational plans, and conducted suicide assessments. At hearing, she testified, "My first career, from 1988 to 1997, was a social worker." She worked at the Department of Children and Family Services, and her experience there includes conducting home visits and investigating child abuse cases. She has "never completed any clinical hours." She is not registered with the Board of Behavioral Sciences.

20. Tamie Martinez (Seniority #193) has an undergraduate degree in management and human resources and a master's degree in school counseling. She holds a PPS credential. As a District Elementary Counselor, among other things, she has performed social and emotional health counseling, implemented behavioral interventions, and conducted suicide assessments. At hearing, she testified she accrued 900 clinical hours eight years ago. Those 900 clinical hours are expired. She is not registered with the Board of Behavioral Sciences.

21. Christina Godinez (Seniority #145) holds a PPS credential. She did not testify at hearing. No evidence establishing her education and experience was offered at hearing. No evidence establishing she completed at least 600 clinical hours or is registered with the Board of Behavioral Sciences was offered at hearing.

22. At hearing, respondents' counsel challenged application of the District's "more relaxed standard" to respondents contending its origins were not clearly established by the evidence, it is "not written anywhere," it has not been formally adopted by the Governing Board, and respondents "would have behaved otherwise" if they had known about the it. Citing to *Krausen v. Solano County Junior College District* (1974) 42 Cal.App.3d 394, respondents' counsel argued the Governing Board's decision to reduce or discontinue Elementary School Counselors positions in the District should be set aside and the notices informing respondents they are to be laid off for the 2022/2022 school year should be rescinded. Respondents' counsel's contentions are rejected.

23. The *Krausen* case does not support any of respondents' counsel's contentions. *Krausen* stands for the proposition teachers are not entitled to a hearing challenging a governing board's decision not to reemploy them due to reduction or discontinuation of a particular kind of service. Such teachers are, however, entitled to a hearing on the question of their competency or qualification to render service in another position.

24. In this case, the Governing Board proceeded in a manner required by the Education Code. (See Legal Conclusions 1 through 5.) Resolution number 2021-22 #47 (To Decrease the Number of Certificated Employees Due to a Reduction in Particular Kinds of Services) provides for reduction or discontinuation of seven full time equivalent Elementary School Counselors positions. The District properly identified Hallie Bodner, Bridgette Martinez, Tamie Martinez, and Christina Godinez as certificated employees providing the particular kind of service the Governing Board directed should be reduced or discontinued. The Governing Board's decision to reduce or discontinue Elementary School Counselors services is not related to their

capabilities and dedication. The reduction or discontinuation of the services is related to the welfare of the District and its pupils, and it has become necessary for the Governing Board to decrease the number of certificated employees. Thus, respondents are not entitled to a hearing challenging the Governing Board's decision not to reemploy them due to discontinuation of its Elementary School Counselors services.

25. This proceeding is the hearing to which respondents are entitled. In teacher layoff proceedings, governing boards are required to make assignments and reassignments in a manner such that employees are retained to render any service which their seniority and qualifications entitle them to render. (See Legal Conclusion 2.) As recognized by the court in *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016, 1023, "these determinations necessarily involve 'discretionary decisions' by a school district's responsible officials because they 'have a special competence' to make them."

26. In this case, Assistant Superintendent Stevenson and Ms. Nowakowski are the responsible officials who exercised their discretion applying the District's "more relaxed standard." The indeterminate origins of the "more relaxed standard," the fact that it is "not written anywhere," and that fact that it has not been formally adopted by the Governing Board are of no consequence. School districts have discretion to determine the criteria employing its certificated personnel. Importantly, such criteria are to be equally applied. (See *Martin v. Kentfield School District* (1983) 35 Cal.3d 294, 300.) There is no evidence Assistant Superintendent Stevenson and Ms. Nowakowski exercised their discretion in a discriminatory manner. They evenhandedly applied the "more relaxed standard" to determine Hallie Bodner, Bridgette Martinez, Tamie Martinez, and Christina Godinez, all of whom are District certificated employees in Elementary School Counselor positions, do not possess the qualifications which would

entitle them to bumping privileges or reassignment to a Social Worker position with the District.

27. No junior certificated employee is scheduled to be retained to perform Elementary School Counselors services which a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. Section 44949 provides in pertinent part the following:
 - (a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefore.
2. Section 44955 provides in pertinent part the following:
 - (a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year the average daily attendance in all of the schools district for the first six months in which school is in session shall have declined[,] whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certified and competent to render. [¶ . . . ¶]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of the needs of the district and the students thereof.

Upon the request of any employee whose order of termination is so determined, the governing board shall furnish . . . a statement of the specific criteria used in

determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group

(c) [S]ervices of such employees shall be terminated in the inverse of the order in which they are employed, as determined by the board in accordance with Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrated 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.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

3. The service set forth in Resolution number 2021-22 #47, Elementary School Counselors, is a particular kind of service which may be reduced or discontinued within the meaning of Education Code section 44955. The Governing Board's decision to reduce or discontinue that service was neither arbitrary nor capricious. The decision was a proper exercise of the Governing Board's discretion. The reduction or discontinuation of that service relates solely to the welfare of the 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 service' 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. The District properly identified the certificated employees providing the particular kind of service the Governing Board directed should be reduced or discontinued.

6. Cause exists pursuant to Education Code sections 44949 and 44945 to reduce or discontinue the Elementary School Counselor services Hallie Bodner, Bridgette Martinez, Tamie Martinez, and Christina Godinez provide the District.

ORDER

The Saugus Union School District may give notice to Hallie Bodner, Bridgette Martinez, Tamie Martinez, and Christina Godinez that their services will not be required for the 2022/2023 school year due to the reduction or discontinuation of Elementary School Counselors services.

DATE: 05/02/2022

Jennifer Russell

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings