

BEFORE THE
GOVERNING BOARD OF THE
SAN JUAN UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Statement of
Reduction in Force Against:

Case No. 2014020840

CELINA ADAMS
JULIANE AMERINE
MIHAELA BADILA
JOHN CALDWELL
GAIL DUNHAM
CRYSTAL JOHNSON
ROSALIE LUTTRELL
MEGHAN MCFADYEN
DOMINIKA MICHELL
JENNIFER ROUNSAVILLE
L. LYNN STARKS

Respondents.

PROPOSED DECISION

This matter was heard by Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, on April 8 and 9, 2014, in Carmichael, California.

Attorney Linda C. T. Simlick represented the San Juan Unified School District (District). Paul Oropallo, Director of Human Resources for Certificated Employees, and Deann Carlson, Human Resources Analyst, also appeared on behalf of the District.

Attorney Michael N. McCallum of the Law Office of Michael N. McCallum represented all respondents.

Evidence was received, and the record was left open for the parties to submit written closing arguments. On April 15, 2014, the parties submitted their respective written closing arguments, which are marked as Exhibits 26 (the District's) and L (respondents'). The record was closed and the matter was submitted for decision on April 15, 2014.

FACTUAL FINDINGS

1. Paul Oropallo is the Director of Human Resources for Certificated Employees for the District. The District employs more than 2,000 certificated employees, and has between 60 and 70 schools. The District is responsible for educating approximately 40,000 students.

2. The District's curriculum includes an Adult Education program, which is offered at Sunrise Tech Center. The program offers courses in English as a Second Language, High School Completion, General Educational Development, Adult Basic Education, Career Technical Education, and Active Adult.

3. The actions of Mr. Oropallo, as well as those of the District's Governing Board (Board) and staff, were taken solely in their official capacities.

4. The District is facing a potential reduction in federal funding for some of its programs. Additionally, the California Legislature recently changed the manner in which school districts receive funding from the State of California. Furthermore, the District anticipates a reduced demand for certain classes and changes in its curriculum. One possible change is the elimination of the Literacy Support program.¹ Consequently, the District believes it is necessary to reduce or eliminate a corresponding number of certificated positions to address these possibilities.

Board Action

5. On February 11, 2014, the Board discussed the possibility of reducing or discontinuing particular kinds of services (PKS) in the District's K-12 and Adult Education programs.

6. On February 25, 2014, the Board adopted Resolution No. 2704 authorizing the reduction or discontinuance of PKS in the District's K-12 program and affecting 37.50 Full Time Equivalent (FTE) certificated positions.

7. Resolution No. 2704 states that it will be necessary to reduce or discontinue the following PKS of the District, and to decrease a corresponding number of certificated employees in the District no later than the beginning of the 2014-2015 school year:

¹ Elementary school teachers are entitled to 150 minutes of preparatory time each week. Currently, 120 minutes of that time is covered by "prep" teachers, while the remaining 30 minutes is covered by literacy support teachers. The Literacy Support program was created by a previous superintendent, and is currently being reviewed for possible elimination.

PKS	FTE
Administrators, Central Office Support	
Safe Schools, Central Review Administrator	1.00
Vice Principal K-6	1.00
Subtotal	2.00
K-12 Certificated, Non-Administrative Positions	
Computer Exploration/Computer Graphics/CADD	1.20
Counselor K/6* ²	1.40
Counselor 9/12	0.50
Counselor-Special Programs, Indian Ed/Refugee*	1.00
English Language Development (ELD)*	0.60
English Learner Instructional Specialist-Elementary*	2.00
English as a Second Language (ESL)*	0.20
French	0.40
Health*	0.40
Literacy Support Teacher	21.60
Multiple Subject/Self Contained*	2.00
Site Resource Elem/Title 1 Intervention Teacher*	3.00
Teacher-Children's Receiving Home	1.00
Web Page Design	0.20
Subtotal	35.50
Total	37.50

8. On February 25, 2014, the Board also adopted Resolution No. 2706 authorizing the reduction or discontinuance of PKS in the District's Adult Education program and affecting 11.10 FTE certificated positions.

9. Resolution No. 2706 states that it will be necessary to reduce or discontinue the following PKS of the District, and to decrease a corresponding number of certificated employees in the District no later than the beginning of the 2014-2015 school year:

² Mr. Oropallo explained at hearing that the asterisk indicates a change in the number of FTE affected for that particular PKS from that which the Board discussed on February 11, 2014, and that which the Board ultimately approved two weeks later.

PKS	FTE
Administrators, Schools	
Principal - Adult Education	1.00
Subtotal	1.00
Adult Education Certificated, Non-Administrative Positions	
Counselor	0.60
Teacher	9.50
Subtotal	10.10
Total	11.10

10. The services set forth in Resolution Nos. 2704 and 2706 are “particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. There was no evidence that the Board’s decision to reduce or discontinue the identified services was arbitrary or capricious. The reduction or discontinuance of the services set forth in Resolution Nos. 2704 and 2706 constitutes a proper exercise of the Board’s discretion within the meaning of Education Code section 44955.

11. As a result of the above PKS reductions and/or eliminations, the Board determined that it was necessary to decrease 37.50 FTE certificated positions in the District’s K-12 program and 11.10 FTE certificated positions in the District’s Adult Education program before the beginning of the 2014-2015 school year in accordance with Education Code section 44955.

Implementation of the Layoff Procedure

12. In anticipation of the District’s need to reduce or discontinue PKS, Mr. Oropallo and his staff, including Human Resources Analyst Deann Carlson, began the process of preparing the District’s seniority list for certificated employees employed in the District’s K-12 program at the beginning of the 2013-2014 school year.

13. The Human Resources Department sent each certificated employee in the K-12 program a contract earnings statement in September 2013, which included the credentialing information the District had on file for him or her. In December 2013, the Human Resources Department sent a second letter asking each certificated employee to verify his or her credentialing information, which was included in the letter. And after the District prepared its final seniority list, an e-mail containing a link to that list was sent to all principals and teachers in the District on March 6, 2014. The seniority list contained all credentialing information the District had on file for each certificated employee in the K-12 program.

14. The District maintains a separate seniority list for those certificated employees employed in the Adult Education program. The Human Resources Department engaged in the same process for updating the credentialing information it had on file for those employees that it did for the certificated employees employed in the District's K-12 program.

15. At no time during the 2013-2014 school year did any certificated employee employed anywhere in the District contact the Human Resources Department and provide updated credentialing information.

16. The District prepared the final versions of its seniority lists for the certificated employees employed in the K-12 and Adult Education programs on February 20, 2014.

17. Ms. Carlson explained at hearing that in addition to preparing the two seniority lists, she also "audited" the number of temporary certificated employees employed by the District pursuant to Education Code section 44920 in relation to the number of certificated employees currently on a leave of absence or absent from the District due to a long-term illness.³

18. Ms. Carlson ran her first audit for the 2013-2014 school year sometime in October 2013. She ran a second audit sometime in February prior to the completion of the two seniority lists on February 20, 2014. Both audits showed that the District had more temporary certificated employees than allowed under Education Code section 44920. Therefore, those additional employees had their status converted to "probationary" in order to bring the District into compliance with the statute.

19. After the Board adopted Resolution Nos. 2704 and 2706, Mr. Oropallo and his staff reviewed the District's two seniority lists to identify the most junior certificated

³ Education Code section 44920 provides, in relevant part:

Notwithstanding the provisions of Sections 44917 and 44919, the governing board of a school district may employ as a teacher, for a complete school year, but not less than one semester during a school year unless the date of rendering first paid service begins during the second semester and prior to March 15th, any person holding appropriate certification documents, and may classify such person as a temporary employee. The employment of such persons shall be based upon the need for additional certificated employees during a particular semester or year because a certificated employee has been granted leave for a semester or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

employee or employees currently performing each of the PKS identified for reduction or discontinuation.⁴

20. For each certificated employee identified, Mr. Oropallo and his staff then analyzed each of their seniority dates, credentialing information, and teaching experience to determine if any of them was eligible to “bump” into a position currently held by a more junior certificated employee who was not identified for layoff.⁵

21. On March 6, 2014, Annette Buckmaster, Assistant Superintendent for Human Resources, sent a Preliminary Notice of Recommendation That Service Will Not Be Required (Preliminary Notice) to 19 certificated employees of the District – nine of whom are employed in the District’s K-12 program and 10 of whom are employed in the Adult Education program.⁶

22. On March 20, 2014, Kent Kern, Interim Superintendent of Schools for the District, gave the Board written notice of his recommendation that notice be given to respondents that their services would be reduced or discontinued for the ensuing school year and the reasons therefor.

⁴ This process resulted in the identification of persons holding 10.00 FTE certificated positions in the K-12 program and 9.4237 certificated positions in the Adult Education program, less than the 37.50 FTE and 11.10 FTE positions, respectively, the Board identified for reduction or discontinuance. Known attrition accounts for the remaining FTE positions.

⁵ This process resulted in almost all of the persons originally identified as being affected by the Board’s decision to reduce or discontinue PKSs being able to “bump” into a position for which they were certificated and competent to fill that is currently filled by a more junior employee. Jennifer Towner, Lauri Hodge, Crystal Johnson, and Jennifer Rounsaville were the only ones who were not certificated and competent to fill a position currently held by a more junior employee. Ms. Towner resigned from the District, Ms. Hodge’s preliminary notice was subsequently rescinded due to the District’s receipt of additional funding, and Ms. Johnson and Ms. Rounsaville are respondents.

⁶ Respondents Celina Adams, Julianne Amerine, Mihaela Badila, Gail Dunham, Crystal Johnson, Rosalie Luttrell, Meghan McFadyen, and Jennifer Rounsaville are employed in the District’s K-12 program, while respondents John Caldwell, Dominika Michell, and L. Lynn Starks are employed in the Adult Education program. The remaining eight certificated employees who received a Preliminary Notice did not file a Notice of Participation in Reduction in Force Hearing.

Challenges to the Preliminary Notices

Celina Adams – Partial “Bump” by Matthew Collier

23. Ms. Adams is a probationary certificated employee of the District. She is employed in a 1.00 FTE counseling position at Encina High School in the District’s K-12 program. She holds a Pupil Personnel Services Credential, and her seniority date is July 31, 2013.

24. Ms. Adams was not one of the persons initially identified as being affected by the Board’s decision to reduce or discontinue PKS. However, Matthew Collier was identified as initially being affected by the decision to discontinue the Safe Schools, Central Review Administrator position, and was allowed to “bump” into one-half of Ms. Adams’s 1.00 FTE counseling position. Therefore, she received a Preliminary Notice, while he did not.

25. Mr. Collier has spent his entire career with the District working as an administrator in its administrative office. He has never worked as a site administrator, school counselor, or teacher in the District. The District concedes that he has “no seniority date,” but posits that he nonetheless is a “permanent” employee of the District. But as an administrator with the District, Mr. Collier has not acquired permanent status and remains an at-will employee of the District as a matter of law. (Ed. Code, § 44956.5 [a certificated employee who is initially hired by a school district as an administrator and subsequently transfers to the classroom receives no credit towards tenure for the years served as an administrator, except a site administrator may receive credit for a maximum of three years]; see, *Hentchke v. Sink* (1973) 34 Cal.App.3d 19, 22 [“We think it clear that, as opposed to classroom teachers, an administrator attains no tenure in his status as such. He serves as an administrator at the pleasure of the appointing power.”]) Therefore, Ms. Adams has more seniority than Mr. Collier, and he is not entitled to bump into one-half of Ms. Adams’s counseling position.

The District’s reliance on Education Code sections 44929.21 and 44897 to prove otherwise is misplaced. The former statute applies “only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter.” (Ed. Code, § 44929.21, subd. (b).) As an “at-will” employee, Mr. Collier never commenced a probationary period. And the latter statute specifically states that “[p]ersons classified pursuant to this section are subject to the limitations contained in Section 44956.5.” (Ed. Code, § 44897, subd. (b).)

Celina Adams – Violation of Rehire Rights

26. Ms. Adams was first employed by the District as a counselor during the 2008-2009 school year. She received a Preliminary Notice at the end of that school year.

27. Ms. Adams was rehired as a counselor by the District for the 2009-2010 school year. She received a Preliminary Notice at the end of that school year. The District did not rehire her for the 2010-2011 or 2011-2012 school years, and her statutory “rehire rights” expired June 30, 2012.

28. The District hired Ms. Adams for her current 1.00 FTE counseling position at the beginning of the 2013-2014 school year. In addition to the “partial bump” discussed in Factual Findings 23 through 25 above, Heather Berkness, the person holding the Counselor-Special Programs, Indian Ed/Refugee position identified for discontinuance, was allowed to bump into the other one-half of Ms. Adams’s counseling position, and Ms. Adams received a Preliminary Notice on that basis as well.

29. At hearing, Ms. Adams argued that a counseling position at Casa Roble High School to which she had “rehire rights” became available at the beginning of the 2012-2013 school year, and she should have been hired for that position. It is her understanding that the position was ultimately filled by a temporary employee of the District.

30. Ms. Adams admitted that she did not know when the counseling position at Casa Roble High School was actually filled, and that she had no right to it if it was filled after June 30, 2012.

31. Assuming, without deciding, that the District violated Ms. Adams’s rehire rights by not offering her the counseling position to which she was entitled, her argument is nonetheless not persuasive because she did not identify an employee with less seniority who is being retained by the District to perform a service for which she is certificated and competent to perform. While Sandra Galindo, Associate Executive Director of the San Juan Teachers Association, identified Dede James as the person the District hired to fill the counseling position at Casa Roble High School, no such employee is included on the District’s seniority list for either the K-12 program or Adult Education program.⁷

L. Lynn Starks – Entitlement to “Bump” into the K-12 Program

32. Ms. Starks was hired by the District on August 26, 1990, to teach in its Adult Education program. She holds a Single Subject Credential in English and in Art, and she is NCLB qualified in both subjects.

⁷ The District did not introduce its entire seniority list for the K-12 program. However, the portion of the list it did submit included those certificated employees hired between September 7, 1999, and December 18, 2013, and Ms. James presumably would have been included if still employed by the District. To the extent Ms. Adams wanted to rely on other portions of the list, she had the burden of producing them. (See, *Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 656 [the senior certificated employee has the burden of proving that a junior employee is being retained to perform a service for which she is certificated and competent to perform].) She did not.

33. Ms. Starks currently teaches classes in the High School Completion curriculum to mainly high school seniors who are just short of the credits necessary to obtain a high school diploma. That curriculum includes the same core subjects taught in the high school curriculum in the K-12 program. She also teaches classes in the General Educational Development curriculum to adults who are working toward either a General Educational Development certificate or a high school diploma.

34. Ms. Starks has never taught in the District's K-12 program.

35. As noted in Factual Finding 14, the District maintains separate seniority lists for certificated employees employed in the K-12 program and those employed in the Adult Education program. Ms. Starks, an employee in the Adult Education program, seeks to "cross-bump" from one list to the other. Although Education Code section 44955 does not draw a distinction between certificated employees in the two programs, that distinction is made elsewhere in the Education Code. Thus, "service in the evening school [adult education program] shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee in the day school [K-12 program]." (Ed. Code, § 44926.26.) Since service in the Adult Education program and K-12 program is not interchangeable for purposes of counting service in one program toward permanent status in the other, it follows that a certificated employee in one program should not be able to assert seniority rights over a certificated employee in the other. Employees in one program should not be allowed to bump into positions in the other.

36. Seniority defines the relationship of certificated employees to each other, and employees with greater seniority generally have more secure rights to employment. When, as here, employees must choose between attaining permanent status in either the Adult Education program or the K-12 program, the seniority attained in one program cannot be transferred from one program to the other. Under these circumstances, bumping between the two programs cannot be countenanced. In order to achieve the result sought by Ms. Starks, there would need to be a single District seniority date for all purposes, and such simply does not exist here.

For these reasons, Ms. Starks is not entitled to displace any teacher in the K-12 program because she has no seniority in that program. Her claim to a position in the District's K-12 program is therefore rejected.

The District's Purported Violation of Education Code Section 44920

37. As previously discussed, a school district is permitted to hire as many teachers on a temporary basis as it has teachers on leaves of absence or absent for long-term illnesses. (Ed. Code, § 44920.) "[A]ll that is required under section 44920 is that 'the number of temporary teachers not exceed the total number of probationary and permanent employees on leave at any one time.' [Citation.]" (*McIntyre v. Sonoma Valley Unified School District* (2012) 206 Cal.App.4th 170, 181.) The teacher challenging her "temporary" status pursuant to Education Code section 44920 has the burden of proving that the school district has more

temporary teachers than there are teachers on leaves of absence or out for long-term illnesses and that she should therefore be reclassified as a “probationary” employee. (*Ibid.*)

38. Here, none of the respondents is classified as a temporary employee of the District. Furthermore, none of the certificated employees whom the District classified as “temporary” pursuant to Education Code section 44920 filed a Request for Hearing or appeared at hearing and argued that he or she should be part of the District’s layoff proceeding. Each of them has therefore waived the right to challenge his or her “temporary” status. (Ed. Code, § 44949, subd. (b).)

39. To the extent respondents are arguing that there is one or more “temporary” teacher who should be reclassified as “probationary” and that that employee is being retained by the District to render a service which one or more respondent “is certificated and competent to render,” respondents did not specifically identify any such teacher or teachers. (Ed. Code, § 44955, subd. (b); see, *Moreland Teachers Association v. Kurze*, *supra*, 109 Cal.App.3d 648, 656.)

40. Additionally, the persuasive evidence established that at all relevant times the District had more teachers absent due to a leave of absence or a long-term illness than it had in its employ on a temporary basis.⁸ While there is a discrepancy in the evidence about the number of teachers absent and the number of temporary employees replacing them, the persuasive evidence established that respondents under-calculated the total number of teachers on a leave of absence or absent due to a long-term illness. When adjusting respondents’ calculation of the number of those teachers by seven, the amount of their under-calculation, and subtracting their calculation of the number of temporary teachers in the District’s employ from that adjusted number, the District has .42 more employees absent from the district than it has temporary employees.⁹

⁸ While *McIntyre* provides that the number of temporary employees may not exceed the number of those on leave or absent due to a long-term illness “at any one time,” that case involved a teacher who was challenging his “temporary” classification under Education Code section 44920 and was seeking to compel the school district to reclassify him as a “probationary” employee. (*McIntyre v. Sonoma Valley Unified School District*, *supra*, 206 Cal.App.4th 170, 181; citation omitted; italics added.) Here, on the other hand, respondents are arguing that some or all of their Preliminary Notices should be rescinded because the District is retaining temporary teachers who should be reclassified as “probationary” and who are being retained “to render a service which [respondents are] certificated and competent to render.” (Ed. Code, § 44955, subd. (b).) Therefore, the relevant time period for comparing the number of certificated employees on a leave of absence or absent from the District due to a long-term illness and the number of temporary certificated employees hired to replace them is March 15, 2014, the date by which the District was required to issue Preliminary Notices pursuant to Education Code section 44949, subdivision (a)(1).

⁹ $73.81 - 73.39 = .42$. The total number of temporary employees used in this calculation gives respondents the benefit of including the 2.00 FTE positions occupied by

41. For the reasons discussed above, respondents' argument that the District violated Education Code section 44920 by having more "temporary" teachers in its employ than teachers on a leave of absence or absent from the District due to a long-term illness is not persuasive.

Welfare of the District and Its Students

42. The reduction or discontinuance of the particular kinds of services set forth in Resolution Nos. 2704 and 2706 are related to the welfare of the schools and the students thereof within the meaning of Education Code sections 44949 and 44955. The Board's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of its discretion.

43. After due consideration and adjustments made as discussed in Factual Findings 23 through 25, no permanent or probationary employee with less seniority is being retained to render a service for which a respondent is certificated and competent to perform.

44. Any other assertions raised by the parties at hearing which are not addressed above are found to be without merit.

LEGAL CONCLUSIONS

1. The appellate court in *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, said the following about the manner in which California's public school are funded in California:

Faced with significant difficulties since the passage of Proposition 13, school districts are placed in the uncomfortable position of having to terminate teachers before knowing what the district's financial circumstances will be for the ensuing school year. This cannot be ascertained until the state budget has been chaptered and the district knows what state funding it will receive.

Thus, the present process requires preliminary notices to be sent by March 15 to all certificated employees who may be terminated and requires the final notice to be given by May 15, even though the school board does not know until the state budget is chaptered late in June exactly what state funding will

Amanda Matthews and Adam Percy, each of whom respondents said were omitted from the calculation in Exhibit E. Using the District's calculation of 88.67 teachers absent from the District and 69.02 temporary teachers, it has 19.65 more teachers absent than it has in its employ on a temporary basis.

be available to the district for the ensuing school year. Clearly, the present statutory timetable is unrealistic; however, any changes in that timetable are the responsibility of the Legislature. Although a teacher who is terminated has preferential rights to reemployment under sections 44957 and 87745, this provides little solace to the understandably upset teacher who is given a needless preliminary (and perhaps final) notice because the school district cannot accurately ascertain its financial circumstances for the ensuing school year until the chaptering of the state budget.

(*Id.*, at pp. 632-633.)

2. The process for laying off certificated employees the appellate court referred to is codified in Education Code sections 44949 and 44955. The former statute provides the following with regard to a school district's jurisdiction to lay off certificated employees:

(a)(1) 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, or in the case of a school district that has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

(2) Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing. The

notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) If a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

(1) The respondent shall file his or her notice of participation, if any, within five days after service upon him or her of the District Statement of Reduction in Force and he or she shall be notified of this five-day period for filing in the District Statement of Reduction in Force.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the District Statement of Reduction in Force, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils of the schools. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(e) If after a request for hearing pursuant to subdivision (b) a continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) that occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 that occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

(f) The governing board may adopt from time to time rules and procedures not inconsistent with this section as may be necessary to effectuate this section.

(Ed. Code, § 44949.)

The District complied with all notice and jurisdictional requirements set forth above, and no respondent argued otherwise.

3. Education Code section 44955, subdivision (b), provides the following with regard to a school district's authority to lay off certificated employees:

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, 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 certificated and competent to render.

4. When a school district's governing board decides to reduce or discontinue particular kinds of services and a corresponding number of certificated employees, the general rule is that the order of layoffs must be determined by seniority. (Ed. Code, § 44955, subd. (b) ["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 certificated and competent to render."]; *Davis v. Gray* (1938) 29 Cal.App.2d 403, 406.) This general rule is applied equally to probationary certificated employees. (*Krausen v. Solano County Junior College District* (1974) 42 Cal.App.3d 394, 402.)

5. After a school district's governing board decides to reduce or discontinue services, the school district's first step is to identify those certificated employees providing the particular services to be reduced or discontinued. (Ed. Code, § 44955, subd. (b).) The district has a mandatory duty to make an initial determination whether those certificated employees who are performing the services to be reduced or discontinued are certificated and competent to perform the services of any certificated employee with less seniority who is being retained. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, 340.) But once the school district makes the initial determination, the burden shifts to the certificated employee asserting the right to bump the junior employee to prove that the former is certificated and competent to perform the service for which the latter is being retained. (*Moreland Teachers Association v. Kurze, supra*, 109 Cal.App.3d 648, 656.)

6. A school district "need not consider positively assured attrition occurring between the date of the preliminary notice and the final notice in determining the number of certificated employees to be terminated by reason of a reduction or discontinuation of a particular kind of service." (*San Jose Teachers Association v. Allen, supra*, 144 Cal.App.3d 627, 630.)

7. The services identified in Resolution Nos. 2704 and 2706 are particular kinds of services that may be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. (See, e.g., *San Jose Teachers Association v. Allen, supra*, 144 Cal.App.3d at p. 638-639) Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and their pupils within the meaning of Education Code section 44949.

8. For the reasons discussed in Factual Findings 23 through 25, no cause exists for reducing Celina Adams's certificated position by the equivalent of a .50 FTE position for the 2014-2015 school year based on the partial bump by William Collier, and the Board has no legal basis for issuing her a final layout notice for that reason.

9. For the reasons discussed in Factual Findings 26 through 31, cause exists for reducing Celina Adams's certificated position by the equivalent of a .50 FTE position for the 2014-2015 school year based on the partial bump by Heather Berkness, and the Board has a legal basis for issuing her a final layoff notice for that reason.

10. For the reasons discussed in Factual Findings 32 through 36, cause exists for not reemploying L. Lynn Starks during the 2014-2015 school year, and the Board has a legal basis for issuing her the final layoff notice.

11. For the reasons discussed in Factual Findings 37 through 41, cause exists for not reemploying Julianne Amerine, Mihaela Badila, John Caldwell, Gail Dunham, Crystal Johnson, Rosalie Luttrell, Meghan McFadyen, Dominika Michell, and Jennifer Rounsaville during the 2014-2015 school year, and the board has a legal basis for it issuing each of them a final layoff notice.

12. As discussed in Factual Finding 19, the District correctly identified the most junior certificated employees who are performing the PKS that the Board directed be reduced or discontinued in Resolution Nos. 2704 and 2706. Except as discussed in Factual Findings 23 through 25, the District then correctly determined each of those employee's respective bumping rights, if any, as discussed in Factual Finding 20.

13. After the adjustment discussed in Legal Conclusion 8 is made, no permanent or probationary teacher with less seniority is being retained to render a service for which any respondent is certificated and competent to perform.

14. Except as discussed in Legal Conclusion 8, cause exists to give notice to respondents that their services will be reduced or will not be required for the 2014-2015 school year because of the reduction or discontinuance of particular kinds of services.

RECOMMENDATIONS

1. Cause exists for the San Juan Unified School District to reduce or discontinue 37.50 full-time equivalent certificated positions in its K-12 program at the end of the 2013-2014 school year.

2. Cause exists for the San Juan Unified School District to reduce or discontinue 11.10 full-time equivalent certificated positions in its Adult Education program at the end of the 2013-2014 school year.

3. As set forth in Legal Conclusion 8, the San Juan Unified District shall rescind the Preliminary Notice issued to respondent Celina Adams based on the partial bump by William Collier by .50 FTE.

4. Other than as set forth in Recommendation No. 3, notice may be given to respondents that their services will be reduced or will not be required for the 2014-2015 school year. Notice shall be given in inverse order of seniority.

DATED: April 17, 2014

COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings