

BEFORE THE  
GOVERNING BOARD OF  
ALPAUGH UNIFIED SCHOOL DISTRICT  
COUNTY OF TULARE  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

SHERRI SOUSA,

Respondent.

OAH No. 2018020815

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge John E. DeCure, State of California, Office of Administrative Hearings on April 18, 2018, in Alpaugh, California.

Roberta Rowe, Attorney at Law, appeared on behalf of the Alpaugh Unified School District (District).

Ernest H. Tuttle, III, Attorney at Law, appeared on behalf of respondent Sherri Sousa.

Testimony was taken, evidence was submitted, and argument was heard. The record was held open for the District to submit a written closing argument by April 25, 2018; respondent was provided the same option. The District submitted a written closing argument on April 24, 2018, which was marked for identification as Exhibit 9. Respondent declined to submit a written closing argument. The case was submitted for decision on April 25, 2018.

**FACTUAL FINDINGS**

*Jurisdiction*

1. Dr. Gary Mekeel is the Interim Superintendent of the District. He made and filed the District Statement of Reduction in Force (Statement) in his official capacity.

2. Respondent is a permanent certificated employee of the District. On or about January 12, 2018, the District served on respondent a written notice that it had been recommended that notice be given to respondent pursuant to Education Code sections 44949 and 44955 that her services would be reduced or would not be required for the 2018-2019 school year. The written notice set forth the reasons for the recommendation and noted that

the District's Governing Board had passed a Resolution reducing the certificated staff by 3.0 full-time equivalent (FTE) positions. Respondent timely requested in writing a hearing to determine if there is cause for not reemploying her for the ensuing school year.

3. The Interim Superintendent made and filed a Statement against respondent. The Statement with required accompanying documents and a blank Notice of Participation was timely served on respondent. Respondent timely filed a Notice of Participation in response to the Statement. All pre-hearing jurisdictional requirements were met. The District served a Notice of Hearing on respondent on March 9, 2018.

#### *Reduction in Force*

4. On January 11, 2018, at a regular meeting, the District's Governing Board was given notice of the Interim Superintendent's recommendation that certificated employees holding 3.0 FTE positions be given notice that their services would be reduced or not required for the next school year, and stating the reasons for that recommendation.

5. On February 8, 2018, the District's Governing Board determined that due to an anticipated budget shortfall brought on by declining enrollment, it was necessary to decrease programs and services and thus it was necessary to reduce teaching and other certificated services affecting employment of 3.0 FTE positions. The District's Governing Board adopted a resolution providing for the reduction or elimination of the following particular kinds of services (PKS):

<u>Services</u>	<u>FTE</u>
1. High School Business Subjects (Computer Lit., Art, Psychology, Marketing/Advert. (intro to business), Yearbook)	1.0
2. K-8 Multiple Subject Teachers	<u>2.0</u>
Total Full-Time Equivalent Reduction	3.0

In determining the extent by which to reduce or discontinue particular kinds of services, the District's Governing Board considered all positively assured attrition up to and including the date of the resolution. The total number of positions to be reduced or discontinued under this resolution is 3.0 FTE certificated positions. The Governing Board determined that the services of a corresponding number of certificated employees would be terminated at the close of the current 2017-2018 school year.

#### *Assignment and Reassignment of Certificated Employees*

6. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of paid service), credentials and authorizations. The list was sent to union representatives and presumably all certificated employees were provided access to this

list and asked to correct their seniority date and any information related to their credentials/authorizations. The District also went to the online site maintained by the Commission on Teacher Credentialing (CTC) to verify the information on the seniority list. The District used the seniority list to develop a proposed layoff list of the least senior employees assigned in the various services being reduced.

7. Dr. Mekeel testified that in early 2018, before the District issued layoff notices, he spoke with Deborah Lewis, a credentialed teacher who taught several courses in the District's continuation high school. Ms. Lewis, who had the most seniority in the District, informed him she was planning to retire very soon. In March 2018, after the layoff notices were issued, Ms. Lewis notified the District that she was retiring from service at the end of the 2017-2018 school year. Ms. Lewis's retirement had the effect of lowering the reduction-of-force number in this matter from 3.0 positions to 2.0 positions.

8. Ms. Lewis's pending retirement required Dr. Mekeel to fill her position. As a possible replacement he considered Rosa Diaz, a certificated teacher in Single Subject Spanish with a master's degree in education. Rosa Diaz had seniority over respondent and was not subject to the layoff. Rosa Diaz indicated she was willing to assume Ms. Lewis's teaching responsibilities in the continuation high school, and Dr. Mekeel agreed to reassign Rosa Diaz's teaching responsibilities to that end. This reduced the District's reduction-of-force number in this matter from 2.0 positions to 1.0 position.

9. The remaining teachers subject to being laid off were respondent, Kenia Arreguin, and Carmen Diaz (no relation to Rosa Diaz).

10. Respondent has a seniority date of August 5, 2013. She holds a Clear Single Subject Teaching Credential in business, and a master's degree in education. She currently teaches courses in computers, art, psychology, business, math, and yearbook to students in grades six, seven, and eight.

11. Ms. Arreguin has a seniority date of February 21, 2017. She holds a Provisional Internship Permit (PIP).<sup>1</sup> She is currently teaching multiple subjects to a sixth grade class.

12. Carmen Diaz has a seniority date of August 1, 2017. She holds a District Intern Credential<sup>2</sup> in multiple subjects. She is currently teaching multiple subjects to a combination of seventh and eighth grade students.

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<sup>1</sup> A PIP is a temporary teaching permit issued by the CTC. A PIP may be requested by districts when an anticipated staff need exists and the district conducts a diligent search for a credentialed teacher, but is unable to recruit one. The expectations of the district and the employee are that the individual issued a PIP will be the teacher of record and should be on a credential track.

13. In the course of the reduction in force process, the District created a seniority list. That seniority list took into account a number of factors, including first date of paid service, credentials, and current teaching assignments.

14. Economic layoffs are generally to be carried out on the basis of seniority. A teacher with more seniority typically has greater rights to retain employment than a junior teacher. A senior teacher whose position is discontinued has the right to a position held by a junior teacher if the senior teacher is properly credentialed and competent. (Ed. Code, § 44955, subd. (b).) That displacement of a junior teacher is known as “bumping.” In general, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers if the senior teacher has both the credentials and competence to occupy such positions. (Ed. Code, § 44955, subd. (c).)

15. At the time of the layoff, the District attempted to determine whether respondent, with her credential, could “bump” into a position held by a teacher with less seniority, but it found that no such bumping option would apply to respondent. That finding led to a substantially contested issue at hearing as follows.

16. Dr. Mekeel testified that with the anticipated reduction in force, the District’s need for teachers who could teach multiple subjects was enhanced. The District determined that two teachers less senior than respondent – Ms. Arreguin and Carmen Diaz – possessed superior skills, training, certifications, or capabilities which respondent did not possess. Specifically, Ms. Arreguin and Carmen Diaz could both teach multiple subjects; whereas respondent was not authorized to teach multiple subjects, but was limited to teaching elective, business-related courses the District would no longer be offering students in the upcoming 2018-2019 school year. The District therefore determined it could allow the two more junior teachers to be exempted from layoff. These two teachers were needed by the District to teach particular courses in light of their credentials and qualifications, and for which respondent was not certificated or competent to teach. As a result, the District rescinded the layoff notices that were sent to Ms. Arreguin and Carmen Diaz.

17. Dr. Mekeel met with respondent shortly after respondent received her layoff notice. The discussion focused on what respondent could do to minimize her vulnerability as a teacher in future layoffs. Dr. Mekeel suggested that respondent consider obtaining additional teaching credentials in order to make her more versatile and, hence, more

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<sup>2</sup> A District Intern Credential authorizes the holder to teach in a self-contained classroom such as the classrooms found in most elementary schools. The district must have developed and implemented a “Professional Development Plan” in consultation with a CTC-approved program of teacher preparation, and the intern must be assisted and guided throughout the training program by a mentor teacher or other qualified supervisor. When the district intern has successfully completed the Professional Development Plan and other requirements set forth by the CTC, the district’s governing board will recommend the district intern for an appropriate credential.

desirable, to school districts. Respondent decided to seek additional credentials “to make myself more marketable.”

18. Respondent testified that she is currently in the process of obtaining English and social studies supplemental teaching credentials through the Los Angeles County Office of Education, and has earned certificates for completing the first half of her coursework in these two subjects. She expected to finish the second half of her coursework by April 20, 2018, just two days after the hearing date in this matter. She is willing to teach any of the courses Ms. Arreguin or Carmen Diaz would be assigned to teach in the 2018-2019 school year. Respondent was “shocked” when she learned that despite her seniority over those two teachers, they had been retained, which, in turn, left her still subject to a layoff notice. She opined that the District has treated her unfairly, since her new credentials would qualify her to teach the classes Ms. Arreguin and Carmen Diaz will be teaching in the fall.

19. Respondent further contended that as a result of Ms. Lewis’s retirement from service, the District should have allowed respondent - not Rosa Diaz - to assume Ms. Lewis’s position in the high school continuation program. Respondent argued she should be allowed to assume this teaching assignment because any credential effectively qualifies a teacher for a high school continuation assignment.

#### *Analysis*

20. As set forth in Finding 16, the District has retained two junior teachers, both holding multiple subject credentials, and such credentials are necessary to teach in their assignments. Furthermore, at the time the layoff notices were issued, respondent did not possess the same credentials as those junior teachers.

21. By attempting to obtain supplemental authorization to teach English and social studies, respondent raised an issue as to what effect, if any, her obtaining those authorizations would have on the District’s decision that two junior teachers be retained. Notably, respondent did not apply for the supplemental authorizations until after the layoff notices were issued, and had yet to obtain the authorizations at time of hearing.

22. When a district prepares its layoff notices, it must carefully consider the number of people to be laid off, the seniority status of employees, and their credentials and qualifications. A district can only authorize a teacher to teach within the authorization of his or her credential. The evidence established that at the time the layoff notices were issued, the District was relying on the best, most complete information it had regarding teacher seniority, credentials, and qualifications. It is undisputed that when the District issued its layoff notice to respondent, it had no information regarding respondent seeking supplemental authorizations. Consequently, the District was not required to consider the supplemental authorizations for purposes of its lay-off determinations. (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board of Wiseburn School District* (1977) 67 Cal.App.3d 689, 698-699.)

23. Respondent's contention that the District should have reassigned her to fill Ms. Lewis's continuation high school position - and that Rosa Diaz effectively must now be reassigned out of that position - is without merit. The District has broad discretion to assign and reassign employees as it deems appropriate. It has discretion as to whether additional assignments and reassignments should be made to save other junior teachers. Here, Rosa Diaz is the senior teacher, and respondent the junior teacher. While the District has an affirmative obligation to reassign senior teachers who are losing their positions, it does not have the same obligation to reassign senior teachers who are not losing their position in an effort to save junior teachers. In other words, the District is not compelled to reassign Rosa Diaz from the continuation high school position in order to make room for respondent. "Inverse bumping rights" are not contemplated in the process by which Districts exercise discretion as to which assignments and reassignments are made. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 568.)

24. Except as provided by statute, no permanent or probationary certificated employee with less seniority is being retained to render a service which respondent is certificated and competent to render. The District was not required to apply tie-break criteria as part of the layoff process.

25. The reduction or discontinuation of the particular kinds of services set forth in the Governing Board's resolution are related to the welfare of the schools and the students thereof within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue these services is neither arbitrary nor capricious, but rather a proper exercise of discretion of the District.

## LEGAL CONCLUSIONS

1. Respondent, as the District employee receiving notice that her services will not be required next year, has rendered valuable services to the District.

2. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. The notice sent to respondent indicated the statutory basis for the reduction of services and, therefore, was sufficiently detailed to provide her due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Governing Board resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board*, *supra*, 67 Cal.App.3d 689.)

3. The services identified in the Governing Board resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

4. Cause exists to reduce the number of certificated employees of the Alpaugh Unified School District due to the reduction and discontinuation of particular kinds of services. Cause for reduction or discontinuation of services relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

5. As set forth in Factual Finding 16, the District rescinded the layoff notices of two certificated employees with less seniority than respondent. However, respondent is not certificated and competent to render services in the positions to which the less senior employees were assigned.

### ORDER

Notice shall be given to respondent occupying up to 1.00 FTE that her services will not be required for the 2018-2019 school year because of the reduction or discontinuation of particular kinds of services.

DATED: May 1, 2018

DocuSigned by:  
*John DeCure*  
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JOHN E. DeCURE  
Administrative Law Judge  
Office of Administrative Hearings