

**BEFORE THE
GOVERNING BOARD OF THE
YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT**

**In the Matter of the Reduction in Force of Certain
Certificated Employees of the Yucaipa-Calimesa Joint Unified
School District, Respondents.**

OAH No. 2024030557

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 22, 2024, in Yucaipa, California.

Mark W. Thompson, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo APC, represented the Yucaipa-Calimesa Joint Unified School District (district).

Carlos R. Perez, Attorney at Law, Law Office of Carlos R. Perez, represented respondents Darah Cleary and Gina Mairena.

Respondent Taylor Brand represented herself.

Kelli Garcia Ochoa was listed in the district's final layoff list but did not request a hearing. However, the district did not object to her being included as a respondent.

Several other employees who were provided a layoff notice or precautionary layoff notice (Shane Beuchler, Daniel Bobrink, Tiffany Scott, and Eric Wilke) had those

notices rescinded by the district prior to hearing, and therefore are not included as respondents.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on April 22, 2024.

FACTUAL FINDINGS

1. Jim Stolze, the Assistant Superintendent of Human Resources, testified on behalf of the district. The following factual findings are derived from his testimony and documentary evidence admitted at hearing.

2. On January 30, 2024, the Board of Education for the district adopted Resolution R-11/2023-24, reducing particular kinds of certificated services and directing the Superintendent or his designee to give appropriate notices to certificated employees whose positions would be affected by the reduction. The decision to reduce or discontinue a particular kind of service is a matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) A school district's decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

3. The resolution called for the reduction or discontinuation of 36 full-time equivalent (FTE) positions in 16 different categories impacting employees from elementary schools to high schools. The resolution referenced applicable provisions of the Education Code pertaining to competency and displacement rights (aka bumping)

and indicated that any tie-breaking for individuals who have the same seniority dates would occur pursuant to board-adopted criteria.¹

4. The reasons that necessitated the reduction in particular kinds of services (according to Mr. Stolze) were the end of elementary school emergency relief funds, the state's overall budget, and a decline in student enrollment.

5. The district took steps to verify seniority dates. Copies of the seniority list were given to the teacher's union leadership, as well as to each employee. Some employees had concerns about their seniority dates, and the district addressed each concern. There are no issues concerning the district's seniority list.

6. The district utilized its tie-breaking criteria to break ties between employees who had the same seniority dates. There were no issues raised concerning how the district employed tie-breaking criteria.

7. Following the resolution, the district was able to eliminate many positions that were vacant. As such, only eight respondents remained that could potentially be laid off. The district timely provided notice to eight affected employees that their services would not be required for the 2024-2025 school year.

8. All prehearing jurisdictional requirements were met.

9. A senior employee whose position is discontinued has the right to transfer to a continuing position, which he or she is certificated and competent to fill.

¹ Tie-breaking criteria were set forth in Resolution Number R-10/2023-24, effective November 14, 2023.

In doing so, the senior employee is entitled to displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 473-474.) Several employees elected to utilize their bumping rights, and their layoff notices or precautionary layoff notices were rescinded. Both Ms. Garcia Ochoa and Ms. Cleary could have bumped a more junior employee but elected layoff in lieu of exercising their displacement rights.

10. The only employees who remain as respondents subject to the reduction in force are Darah Cleary, Gina Mairena, Taylor Brand, and Kelli Garcia Ochoa.

11. The services identified in the resolution are the particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The board's decision to reduce or discontinue those services was neither arbitrary nor capricious. It was a proper exercise of the board's discretion. The reduction and discontinuation of services was related to the welfare of the district and its pupils, and it became necessary to decrease the number of certificated employees as determined by the board. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

12. Positively assured attrition was considered in the layoff decisions and will be used in making future rehire decisions.

13. No less senior teachers are being retained while more senior teachers credentialed to perform the same service are being laid off.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections were provided as required.

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

3. A preponderance of the evidence sustained the statements set forth in the district's statements of reduction in force served on respondents concerning the services that will not be required.

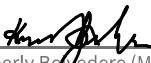
4. The district identified the certificated employees who are providing the particular kinds of services that the board directed be reduced or discontinued. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2024-2025 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

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.

RECOMMENDATION

It is recommended that before May 15, 2024, the Board of Education for the Yucaipa-Calimesa Joint Unified School District give notice to Darah Cleary, Gina Mairena, Taylor Brand, and Kelli Garcia Ochoa, that their employment will be terminated at the close of the current school year, and that their services will not be needed for the 2024-2025 school year. This recommendation reflects nothing more than the number of respondents being laid off and has no bearing on rehire or recall rights.

DATE: May 6, 2024


Kimberly Belvedere (May 6, 2024 09:30 PDT)

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings