

BOARD OF TRUSTEES
SAN BRUNO PARK SCHOOL DISTRICT
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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

KELSEY BAXTER, ET AL,

Respondent.

OAH No. 2015040026

PROPOSED DECISION

This matter was heard before Administrative Law Judge Ruth Astle, Office of Administrative Hearings, State of California, on April 23, 2015, in San Bruno, California.

Elizabeth Mori, Attorney at Law, represented the San Bruno Park School District.

Christopher E. Schumb, Attorney at Law, represented respondent teachers.

Testimony and documentary evidence were received, and oral closing arguments were made. The record was closed, and the matter was submitted for decision on April 23, 2015.

FACTUAL FINDINGS

1. David E. Hutt, Ed.D., is the Superintendent of the San Bruno Park School District (District). The actions of Superintendent Hutt, and those of the District's staff and Governing Board (Board), were taken solely in their official capacities.

2. Kelsey Baxter, Jennifer Carrade, Laura Gianino, Amanda Hall, Sara-Maria Menendez, Kimberly O'Brien, Rebeca Schurr, Erin Soltis, Olivia Taylor, Brigit Tuxen and Kendra Weldin (respondents) are all certificated permanent employees of the District. Four notices were rescinded at the beginning of the hearing: Margarita Gibson, Amanda Hession, Ashley Timmington, and Diana Yu.

3. On March 12, 2015, Superintendent Hutt recommended to the Board, pursuant to Education Code sections 44949, 44955, and other applicable provisions of law, that notice

be given to respondents that the teachers' services will not be required for the ensuing 2015-2016 school year, and stating the reasons therefor.

4. On February 11, 2015, the Board adopted Resolution No. 15-03-01, reducing or eliminating particular kinds of services (PKS) of the District, and affecting 17 Full Time Equivalent (FTE) certificated positions.

5. The Resolution states that it will be necessary to reduce 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 2015-2016 school year:

| SERVICE | FTE |
|-------------------------------------|-------------|
| Elementary School Teaching | 11.0 |
| Reading Intervention Teacher (CAT) | 1.0 |
| Middle School 6th Grade Core | 1.0 |
| Middle School Technology | 1.0 |
| Special Education Day Class Teacher | 1.0 |
| Resource Specialist Teacher | 2.0 |
| Total | 17.0 |

6. The services set forth in the PKS Resolution 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 elimination of the services set forth in the PKS Resolution constituted a proper exercise of the Board's discretion, within the meaning of section 44955.

7. As a result of the above PKS reductions and/or eliminations, the Board determined that it was necessary to decrease 17.0 FTE positions of certificated employees in the District at the close of the 2014-2015 school year, in accordance with Education Code section 44955.

8. On March 12, 2015, Superintendent Hutt gave respondents written notice, pursuant to Education Code sections 44949 and 44955 of the recommendation to the Board that respondents' services would be reduced for the ensuing school year, and the reasons therefor.

9. Respondents timely filed a Request for Hearing to determine whether there was cause for not reemploying each of them full-time for the 2015-2016 school year.

10. On April 1, 2015, Superintendent Hutt made and filed the District's Statement of Reduction in Force, and caused it to be served on respondents. Each respondent timely filed a Notice of Participation requesting a hearing in this matter. Two teachers, Sandra Handly and Kristina Renda did not request a hearing.

11. Jurisdiction for the subject proceedings exists pursuant to Education Code sections 44949 and 44955.

Respondents' Contentions

TIE BREAKING CRITERIA

12. On February 2, 2009, the District adopted Criteria to Determine the Order of Termination Among Certificated Employees with the Same First Date of Paid Service. The tie breaking criteria was applied to teachers hired August 26, 2013: Amanda Hession, Ashley Timmington and Diana Yu. Each of these teachers will be retained.

The tie breaking criteria was applied to teachers hired August 25, 2014. Six of the multiple subject preliminary teaching credentialed teachers (Baxter, Taylor, Menendez, O'Brien, Renda, and Schurr) had three points. A lottery was held to determine further order of seniority. Two of the multiple subject preliminary teaching credentialed teachers (Hall and Carrade) had two points each. A lottery was held to determine the order of seniority for these two teachers. No evidence was presented to show that the tie breaking criteria was applied incorrectly.

MANDATED SERVICES

13. Special Education Services are mandated services. It was established through the testimony of Superintendent Hutt that the mandated services would not go below those required by law. A final plan is not in place to show how the assignments will be made, but a preliminary plan including increasing class size to legally allowed limits and consolidating sites where the services will be delivered is being considered to accomplish the delivery of mandated special education services.

14. Education Code section 44955, subdivision (b), provides: "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."

Education Code section 44955, subdivision (c), further provides: "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."

The District has complied with this provision of the law.

Welfare of the District and Its Students

15. The cause for not re-employing certificated employees relates solely to the welfare of the District's schools, programs and the pupils thereof within the meaning of Education Code section 44949. The Superintendent and his staff correctly identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

Any further attrition experience by the District must result in retention of certificated employees in order of seniority.

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

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955. All notices and other jurisdictional requirements of sections 44949 and 44955 were met.

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.) The burden is on the District to demonstrate that the reduction or elimination of the particular kinds of services is reasonable and that the District carefully considered its needs before laying off any certificated employee. (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 807-808.)

3. The services identified in PKS Resolution No. 15-03-01 are particular kinds of services that may be reduced or discontinued pursuant to sections 44949 and 44955. The description of services to be reduced, both in the Board's Resolution and in the notice, adequately described particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838; see, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

4. Legal cause exists to reduce or eliminate 17.0 FTE of particular kinds of services offered by the District as set forth in detail in the Factual Findings. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

5. Cause exists for the reduction of the particular kinds of services and for the reduction of full-time equivalent certificated positions at the end of the 2014-2015 school year pursuant to Education Code sections 44949 and 44955. No employee with less seniority than respondents is being retained to render a service which respondents are certificated and competent to render. The District's Board of Trustees may give final notice to respondents, that each teacher's services will be reduced up to 1.0 FTE for the ensuing school year, 2015-2016.

RECOMMENDATION

Cause exists for the reduction of 17.0 full-time equivalent certificated positions at the end of the 2014-2015 school year. Notice shall be given to respondents that each teacher's services will be reduced up to 1.0 FTE for the ensuing school year, 2015-2016, because of the reduction and discontinuance of particular kinds of services. Notices shall be given in inverse order of seniority.

DATED: April 28, 2015

/s/
RUTH S.ASTLE
Administrative Law Judge
Office of Administrative Hearings