

**BEFORE THE  
GOVERNING BOARD OF THE  
ALVORD UNIFIED SCHOOL DISTRICT**

**In the Matter of the Reduction in Force of Certain  
Certificated Employees of the Alvord Unified School District.**

**Respondents.**

**OAH No. 2024030568**

**PROPOSED DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 23, 2024, in Corona, California.

Kerrie McNally, Attorney at Law, Adams, Silva & McNally LLP, represented the Alvord Unified School District (district).

Carlos R. Perez, Attorney at Law, Law Office of Carlos R. Perez, represented respondents David Moreno, Kristal Pomerville, and Philip Ugalde.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on April 23, 2024.

## FACTUAL FINDINGS

1. Nicholas Hilton, 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 February 15, 2024, the Governing Board of the Alvord Unified School District adopted Resolution No. 39, 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 45 full-time equivalent (FTE) positions in 18 different categories, and impacted employees across the district. The resolution referenced applicable provisions of the Education Code pertaining to competency and displacement rights (a.k.a. bumping) and indicated that any tie-breaking for individuals who have the same seniority dates would occur pursuant to board-adopted criteria set forth in a separate attachment to the resolution.

4. The reason that necessitated the reduction in particular kinds of services (according to Mr. Hilton) was because the district is currently deficit spending and projections show continued deficit spending for at least the next two years. The

budget is expected to get worse through the 2026-2027 school year. The one-time COVID funds provided by the federal government are now running out, and staffing costs constitute about 85 percent of the district's budget. Thus, in order to remain fiscally solvent, not reduce any mandated services, and meet minimum staffing requirements for kindergarten through twelfth grade, a reduction in force was warranted.

5. The district took steps to verify the accuracy of the seniority dates of each employee. Notifications were sent to each employee advising them to let the district know if there were any issues with the accuracy of the seniority dates, and any concerns raised by employees were addressed. There are no issues concerning the district's seniority list. There were no issues relating to the use of tie-breaking criteria.

6. Notice regarding the reduction in force was timely served on affected employees. Thirty-three affected employees filed a request for hearing and notice of participation. All prehearing jurisdictional requirements were met.

7. Following service of the reduction in force documents, the district rescinded a number of layoff notices. The district and some remaining employees also entered into a memorandum of understanding resulting in a number of employees withdrawing their request for hearing and consenting to the reduction in force. Documents provided by the district also showed a number of employees bumped junior employees to avoid the layoff.

8. The only employees who remain as respondents are David Moreno, Kristal Pomerville, and Philip Ugalde, all of whom render certificated services affected by the reduction in force.

9. 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.

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

11. 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 Governing Board of the Alvord Unified School District give notice to the individuals identified in Appendix 1 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 09:37 PDT)

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

## **Appendix 1<sup>1</sup>**

1. Kevin Brooks
2. David Moreno
3. Steven Sofka<sup>2</sup>
4. Jason Webb
5. Jennifer Ramirez
6. Kristal Pomerville
7. Brittaney Andrews
8. Sophia Wayne
9. Sierra Deap

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<sup>1</sup> The employees identified in this list include not only the three respondents in this hearing, but also respondents who rescinded their request for hearing and who did not bump any junior employees to avoid layoff. Pursuant to Education Code section 44949, subdivision (b), these certificated employees waived their right to a hearing, and the matter proceeded as a default against them.

<sup>2</sup> Evidence presented at hearing indicated Mr. Sofka has already resigned from employment.

10. Jesse Diaz
11. Rachel Robbins
12. Savahna Cornett
13. Christopher Palomo
14. Erica Garcia
15. Paul Stotts
16. Philip Ugalde
17. Alexis Guzman
18. Anna Loomis