

BEFORE THE
GOVERNING BOARD
MARIPOSA COUNTY UNIFIED SCHOOL DISTRICT
COUNTY OF MARIPOSA
STATE OF CALIFORNIA

In the Matter of the Layoff of:

Marita Dietz, Jennifer Housler, Christine
VanDenover, and Erin Vereschagin,

Respondents.

OAH Case No. 2010030033

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 20, 2010, in Mariposa, California.

James Scot Yarnell, Attorney at Law, represented Aaron Rosander (Rosander), Acting Superintendent of the Mariposa County Unified School District (District).

Ernest Tuttle, Attorney at Law, represented Marita Dietz (Dietz), Jennifer Housler (Housler), Christine VanDenover (VanDenover), and Erin Vereschagin (Vereschagin), collectively referred to as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2010-2011 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Acting Superintendent Rosander filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.

3. On March 4, 2010, the Governing Board of the District (Governing Board) adopted Resolution Number 10-05, reducing or discontinuing the following services for the 2010-2011 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
High School English	1.00
K-8 Multiple Subject Instruction	13.92
K-8 Principal (LDP)	1.00
K-8 Principal (MMS)	<u>1.00</u>
Total	16.92

4. On March 5, 2010, Acting Superintendent Rosander provided written notice to the Governing Board and to Respondents that he recommended the termination of Respondents' services for the 2010-2011 school year due to the reduction of particular kinds of services.

5. On March 9, 10, and 12, 2010, the District provided notice to Respondents that their services will not be required for the 2010-2011 school year due to the reduction of particular kinds of services. Respondents filed timely requests for hearing.

6. The District timely filed and served the Accusation and other required documents on Respondents. Respondents thereafter timely filed Notices of Defense, seeking a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

7. All prehearing jurisdictional requirements have been met.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.²

9. The Governing Board took action to reduce the services set forth in factual finding number 3 because of an anticipated decline in State funding. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

10. The reduction of services set forth in factual finding number 3, given the

¹ Full-time equivalent position.

² All further references are to the Education Code.

anticipated reduction in State funding, is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

11. a. In Resolution Number 10-05, the Governing Board created two new positions, described as “teaching principals.” The specific positions are, “K-8 Principal/Teacher (LDP)” and “K-8 Principal/Teacher (MMS),” which refer to teaching principals at Lake Don Pedro Elementary and Mariposa Middle School, respectively. The resolution provides that “the following particular kind of certificated administrative/teaching services shall be created not later than the beginning of the 2010-11 school year to form a single, indivisible position. . . .” (Exhibit 1, at p. 2.)

b. Bill Atwood’s position as K-8 Principal at Mariposa Middle School was eliminated, but he is scheduled to assume the newly-created principal/teacher position at the same school. Ron Henderson’s position as K-8 Principal at Lake Don Pedro Elementary was eliminated, but he is scheduled to assume the newly-created principal/teacher position at the same school. His teaching load is expected to be three hours per day.

12. a. The District has two existing teaching principal positions. These have been structured as single positions for operational considerations, including the small size of the schools and their geographic isolation.

b. One of the positions is at Spring Hill High School (Spring Hill), the continuation high school for students with behavior and/or academic deficits. The incumbent, Monty Thornburg, has a seniority date of October 15, 2002, and holds multiple subject and administrative services credentials. He spends a significant amount of his day providing instruction, although he also has administrative responsibility for all District alternative education programs.

c. The second teaching principal position is held by is Daniel Hoffman, who is the principal at Coulterville-Gridley Elementary School and who also has oversight over a small high school in Coulterville. He teaches for part of his day in grades Kindergarten to Eighth. His seniority date is August 1, 2008, and he holds a multiple subject credential, with supplemental authorizations in Social Sciences and in Civics/Government, and a pre-administration credential.

13. Respondents do not possess administrative credentials, but assert that they are certificated and competent to discharge the duties of the teaching portion of the assignments at issue. Respondent Vereschagin is working toward an administrative credential and, if selected by the District, could also discharge the administrative duties of the positions.

14. a. The Governing Board set forth in Resolution Number 10-05 its tie-

breaking criteria for employees with the same seniority date. Points were awarded for meeting one or more of the following criteria: possession of a valid preliminary or clear credential; possession of multiple credentials; highest current placement on the certificated salary schedule; possession of one or more English Language Learner certifications; possession of one or more post graduate degrees; possession of an undergraduate major or minor in math, science, or special education; overall excellence of most recent evaluation; “Current or prior [District] coaching experience with a certificate of completion of the California Intercollegiate Federation approved Fundamentals of Coaching in accordance with [District] policy;” and, if individuals were still tied, then the last four numbers in their social security number would be used. The criteria are reasonable as they relate to the skills and qualifications of certificated employees.

b. As pertinent to this matter, the tie-breaking criteria were applied to employees with a seniority date of August 20, 2002. As a result, Respondent Vereschagin was ranked ahead of Respondent VanDenover and another teacher who did not request a hearing.

c. Respondent VanDenover challenges application of the criteria because the District did not give her credit for coaching a middle school girls’ basketball team during the 2010 school year. The team competed at home and away, and was allowed to leave school early on some occasions to attend away games. Respondent did not receive a school stipend, and team expenses were paid by parent volunteers. While her site principal encouraged the team activities, the team was not sanctioned by the District. The District has discontinued athletics programs in all schools except for high school. Respondent VanDenover did not have a coaching certificate until on or about March 20, 2010. Respondent VanDenover did not meet the criteria set forth in factual finding number 14.a. to receive a point for her coaching experience because she did not have the required coaching certificate and because her experience was not in coaching a District team. Therefore, the District properly applied the tie-breaking criteria in her case. In any event, even if the point had been awarded it would not have affected the order of layoff.

15. Resolution Number 10-05 also contains the following language: “That ‘competency’ for the purposes of Education Code section 44955 shall be determined solely upon current possession of a preliminary or clear credential for the subject matter or grade level to which the employee will be assigned at the beginning of the 2010-11 school year and at least one year of experience within the preceding ten (10) years teaching the subject matter at the applicable elementary or middle school level. Further, that due to the specific need of the District to retain only highly qualified teachers in academic subject areas, ‘competency’ shall require current confirmation of qualification of academic subject competency (‘highly qualified’) in accordance with the [No Child Left Behind law], or verifiable eligibility for competency if not previously reviewed by the District, in all subjects of a proposed assignment, including assignments teaching multiple academic subjects, assignments in secondary alternative schools, and/or necessary small high schools.”

16. The District has several alternative education programs, in addition to Spring Hill: Sierra Home School (Sierra); Jesse B. Fremont Community Day School (Fremont); and

opportunity classroom programs at the various elementary school sites. In the opportunity classroom programs, students requiring special education or otherwise falling behind in their school work, as well as those not performing at grade level due to behavior problems, receive instruction in self-contained classrooms.

17. a. Sierra is an independent studies school that serves students in multiple grades. Students meet once a week with one of the five certificated employees employed at the site. During this weekly encounter, the certificated employees review the work performed, answer questions, provide instruction as needed, and assign material for the following week. Students are then expected to work on the assignment during the following week. Teachers provide instruction and supervision in multiple subjects, regardless of the teacher's specific credential.³

b. One of the certificated employees working at Sierra is Katie Pike (Pike). She has a seniority date of November 14, 2005, and holds a single subject (Social Science) credential.

18. a. Fremont is a community day school that serves at-risk youth primarily in high school grades, and, occasionally, eighth graders. At the time of the hearing, there were six students enrolled and they received instruction in all subject matters.

b. Travis Blagg (Blagg), who has a seniority date of January 5, 2005, is the only certificated employee regularly teaching at the school. He holds a single subject (social science) credential. He has been qualified under the No Child Left Behind (NCLB) federal law to provide instruction in English.

19. Respondent Housler has a seniority date of March 15, 2002. She holds a multiple subject credential, with supplemental authorizations in English, Business, and Home Economics. She teaches Kindergarten and First Grade at Coulterville-Gridley Elementary School.

20. Respondent Vereschagin teaches Sixth Grade at Mariposa Elementary School. She holds a multiple subject credential and a supplemental authorization in English.

21. a. Respondent VanDenover holds a multiple subject teaching credential, and has been qualified under NCLB to teach Algebra in Ninth Grade and lower. She teaches First Grade. She is working to complete a supplemental authorization in Mathematics. She has taught

³ This finding is based on the testimony of several witnesses familiar with the school. However, when in conflict, I have credited the testimony of the only witness who has actually worked at the school, Respondent Dietz.

Math, Pre-Algebra, and Algebra to seventh and eight graders, although it was not established if this was in a self-contained classroom or if it was done pursuant to Governing Board authorization.

b. Respondent VanDenover testified that she can teach the courses that a less senior employee was retained to teach. The employee, Robert Collins (Collins), whose seniority date is August 20, 2007, holds a single subject (Math) credential and teaches Math at Mariposa Middle School. However, Collins teaches in departmentalized Math classes, and Respondent VanDenover's credential only authorizes her to teach Algebra. Therefore, she is not certificated to teach Collins' assignment.

22. Respondent Dietz has a seniority date of December 2, 2004, and holds a multiple subject credential. She teaches in the educational opportunity program at Woodland Elementary. She has also taught, as a substitute, at Sierra.

23. All respondents are certificated to teach at the alternative schools, as they meet the requirements of section 44865. Although not previously asked by the District, all testified at the hearing that they would consent to employment in these schools if offered a position in lieu of being laid off. However, they have not actually taught for at least one year of experience within the preceding ten in alternative education. While Respondent Dietz has the experience at the elementary school level, the positions presently occupied by the two more junior individuals, Blagg and Pike, are in the upper grades; her substitute experience was not shown to have been for a full year.

24. The District did not retain any certificated employee junior to any Respondent to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 24.

4. Section 44955, subdivision (b), provides, in pertinent part: "[t]he 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.” (Emphasis added.) “Certificated” is defined by the provisions of the Education Code pertaining to credentials, but “competent” is not specifically defined. In *Forker v. Board of Trustees* (1994) 160 Cal.App.3d 13, 19, the Court defined the term in a reemployment proceeding under section 44956, in terms of the teachers’ skills and qualifications, specifically, as “relating to special qualifications for a vacant position, rather than relating to the on-the-job performance of the laid-off permanent employee.” In doing so, the Court noted that courts in reduction in force cases, namely *Brough v. Governing Board* (1981) 118 Cal.App.3d 702, 714-15, and *Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 654-55, had interpreted the term in a similar manner.

Courts in analogous layoff and reemployment contexts, construing provisions similar to section 44955, have recognized that school districts have discretion to establish rules to define teacher competency. Thus, after reviewing earlier cases, the Court in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565 (*Duax*), wrote: “Hence, from these authorities we conclude that a board’s definition of competency is reasonable when it considers the skills and qualifications of the teacher threatened with layoff.” (See also: *Martin v. Kentfield School District* (1983) 35 Cal.3d 294, 299-300; *Forker v. Board of Trustees*, *supra*.)

In *Duax*, the governing board had established a standard of competency that required one year of full-time teaching in the subject area within the last ten years. The Court found such standard “clearly related to skills and qualifications to teach” and therefore a reasonable one. (*Duax*, *supra*, 196 Cal. App.3d 555, at p. 567.) The Court also concluded that the standard did not define competency too narrowly. Consistent with the foregoing authorities, part of the District’s competency rule relates to the skills and qualifications of its certificated employees, and may be used by the District in implementing the layoffs. Its requirement that a teacher have taught one year in the past ten in the subject matter in question is in fact the rule upheld in *Duax*.

However, the remainder of the District’s competency rule does not relate to the skills and qualifications of a certificated employee in the same manner as the rule in *Duax* and the other cited cases does. Rather than defining skills and qualifications in terms of past experience, the District’s rule relies exclusively on teacher certification or other credential authorizations. And while such certificate-based qualifications may indeed bear on competency, section 44955 precludes its use to define competency.

Statutes must be interpreted in such a manner as to ascertain and effectuate the legislative intent. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775; *California Teachers Assn. v. Governing Bd. of Rialto Unified School District* (1997) 14 Cal.4th 627, 632; *People v. Hull* (1991) 1 Cal.4th 266, 271; *Steketee v. Lintz, Williams & Rothberg* (1985) 38 Cal.3d 46, 51-52.) The first step in determining legislative intent is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning. (*Hughes v. Board of Architectural Examiners*, *supra* at p. 775; *California Teachers Assn. v. Governing Bd. of Rialto Unified School District*, *supra* at p. 633; *Steketee v. Lintz, Williams*

& *Rothberg*, supra at p. 51.) “Ordinarily, if the statutory language is clear and unambiguous, there is no need for judicial construction.” (*Hughes v. Board of Architectural Examiners*, supra at 775, citing *California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340.) In addition, each and every word in the statute must be given meaning to accomplish a result consistent with the legislative purpose. (*Hughes v. Board of Architectural Examiners* supra at 775; *California Teachers Assn. v. Governing Bd. of Rialto Unified School District*, supra at 634.) “A statute must be construed in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts [Citations].” (*People v. Hull*, supra at p. 272.) Further, a construction that renders language of the enactment superfluous must be avoided. (*California Teachers Assn. v. Governing BB. of Rialto Unified School District*, supra at pp. 633-34; *Shoemaker v. Myer* (1990) 52 Cal.3d 1, 22 .)

Sections 44949 and 44955 set forth the process through which certificated employees may be laid off following reduction or discontinuation of particular kinds of services. The statutes embody a legislative choice for seniority-based layoffs, subject to specific limitations set forth in the statutes. Section 44955 plainly requires examination of both certification and competence in reduction in force decisions. The District competency rule blurs the distinction between the two requirements and makes possession of certain credentials the basis to also establish competency.

There are two problems with such competency rule. First, the District modifies “certificated” in a manner not authorized by 44955 or any other statute, in effect imposing a “super certificated” criteria for more senior employees to meet before they are retained. Second, it renders the “competent” requirement partially superfluous, as credentials become determinative. Such additions to, and subtractions from, statutory the language are inconsistent with established rules of statutory construction and are contrary to expressed legislative intent.

In *Bledsoe v. Biggs Unified School District* (2009) 170 Cal.App.4th 127 (*Bledsoe*), the court was faced with a competency rule that defined competency as, “at a minimum, possession of a preliminary, clear, professional clear, lifetime, or other full credential, or at least one semester actual teaching experience in alternative education within the last five years.” *Bledsoe*, supra, 170 Cal.App.4th 125, at 135. The court did not need to address, and did not specifically address, the foregoing issues of statutory construction. In *Bledsoe*, unlike here, a certificated employee could establish competence either in terms of credentials-based or experience-based criteria. Therefore, the disjunctive criteria in the rule were consistent with the legislative intent, and the district’s rule in that case did not modify or render superfluous key words of section 44955.

Applying the foregoing to the instant case does not result in any changes in the individuals selected for layoff. While all Respondents are more senior than Blagg and Pike, they are not competent to teach their assignments because Respondents have not taught one year of the last ten in alternative education.

5. The teaching principal assignments are integrated positions that the District is not required to break up to enable Respondents to bump the incumbents from part of their positions. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334; *Murray v. Sonoma County Office of Education* (1989) 208 Cal.App.3d 456; *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016.) Nor do Respondents possess the certification or competence to bump the current occupants from of any of the four full time positions.

6. Cause exists to terminate the services of Respondents Marita Dietz, Jennifer Housler, Christine VanDenover, and Erin Vereschagin, by reason of factual finding numbers 1 through 24, and legal conclusion numbers 1 through 5.

ORDER

The Accusations against Respondents Marita Dietz, Jennifer Housler, Christine VanDenover, and Erin Vereschagin are sustained, and the District may notify them that their services will not be needed during the 2010-2011 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings