

BEFORE THE
GOVERNING BOARD OF THE
COACHELLA VALLEY UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force of
Certain Certificated Employees of Coachella
Valley Unified School District.

OAH No. 2019030673

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Thermal, California, on April 8, 2019.

Margaret A. Chidester and Leslie J. Kim, Attorneys at Law, Law Offices of Margaret A. Chidester & Associates, represented the Coachella Valley Unified School District.

Jon Y. Vanderpool, Attorney at Law, Smith, Steiner, Vanderpool & Wax, represented respondents identified in Appendix 1, attached hereto.

There was no appearance by or on behalf of Ricky Anderson, Mia Frimtzis, Patricia Larios, Edward McLachlan, Yvette Ossinalde, Anna Rodriguez, and Sarit Saig.¹ Mr. Vanderpool did not represent these seven individuals.

The district rescinded the layoff notices issued to Kenneth Draper, Rachel Flores, Jennifer Floryan, Marisa Gaytan, Rebecca Kay, Courtney KorenKiewicz, Jean Christina Martinez, Greg Nishimoto, Lisa Presley, Margaret Quigley, Judith Rodenbeck, and Alicia Serrano. The reduction in forces filed against these individuals are dismissed.

The matter was submitted on April 8, 2019.

¹ Mr. Anderson resigned from the district. Dr. Frimtzis withdrew her Request for Hearing prior to this hearing. Despite being properly served, Ms. Larios, Dr. McLachlan, Ms. Ossinalde, Ms. Rodriguez, and Mr. Saig did not file requests for hearing and the matter proceeded as a default pursuant to Government Code section 11520 as to these five individuals.

FACTUAL FINDINGS

1. On March 7, 2019, the Board of Education adopted Resolution Number 2019-#37, 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 resolution called for the reduction or discontinuation of 46 full-time equivalent (FTE) positions. The resolution referenced Exhibit “A,” which noted those positions that would be exempt from layoff (skipped), and Exhibit “B,” which established the tie-breaking criteria for employees who first rendered paid probationary service to the district on the same date.

2. 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. Maria Gandera, Ed.D., Assistant Superintendent Human Resources and Risk Management, Coachella Valley Unified School District, testified in this proceeding. She explained that financial considerations were the primary rationale behind the district’s layoff decision including a decline in average daily attendance of approximately 300 students per year for the last several years and deficit spending. Dr. Gandera testified about the January 14, 2019, letter the district received from the Riverside County Office of Education (RCOE) advising it that after RCOE reviewed the district’s First Interim Financial Report for the period ending October 31, 2018, RCOE “made a qualified certification that the district may not be able to meet its financial obligations for the current and two subsequent fiscal years. A qualified financial certification may be considered a material event requiring disclosure to bondholders.” (Emphasis included.) The RCOE letter identified the district information it had analyzed to reach that conclusion and highlighted “several areas of concern” it had with the district’s interim financial report. Dr. Gandera explained that a “qualified” status could have negative consequences, including the district entering receivership. Dr. Gandera testified that another factor used in the layoff determination was the decline in the number of students enrolled in physics due to the increased popularity of anatomy classes offered as part of the Health Academy which prepares students to become emergency medical technicians.

4. Exhibit A of the resolution exempted (skipped) from the order of certificated layoff those employees with “special training, experience, or credentials that others with more seniority do not possess” who were (1) certificated personnel who possess administrative credentials who are currently assigned to administrative positions and who will be assigned to administrative positions for the 2019-2020 school year; (2) certificated personnel who possess a credential authorizing service in the following special education job descriptions all except mild moderate [*sic*] who are presently assigned within the scope of that credential and who will be assigned within the scope of that credential for the 2019-2020

school year; and (3) dual immersion teachers who possess a valid Bilingual Cross-Cultural Language and Academic Development Authorization (BCLAD), Bilingual Certificate of Competence, or Bilingual Authorization in Spanish, who are presently assigned to teach dual immersion instruction, and who will be assigned to teach in a district dual immersion program in 2019-2020.

5. The seminal case for the retention of less senior employees (skipping), *Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, requires a district to not only establish a specific need for personnel to teach a specific course of study, but to also establish that the certificated employee it proposes to retain has special training and experience necessary to teach that course or course of study or to provide those services. (*Id.* at p.138.)

6. Dr. Gandera explained the district's rationale for skipping dual immersion employees. She described the district's dual immersion program which results in students being bilingual and biliterate in both English and Spanish by the time they graduate. Dr. Gandera's testimony established that there was a specific need for these employees to teach the specific courses of study and that they possessed the special training and experience necessary to provide these services. Although she did not testify about the district's rationale for skipping administrators or special education teachers, no evidence established that the district's skip of these two positions was arbitrary or capricious. The evidence also did not demonstrate that any administrators identified for layoff had been improperly identified.

7. Consistent with the board's resolution, Dr. Gandera identified those teachers subject to layoff using the district's seniority list of probationary or permanent certificated staff that included, among other matters, the name of the certificated employee, seniority date, status, assignment, credential(s) and authorization(s). The seniority date was based on the first date of paid service rendered.² Dr. Gandera used the seniority list to develop a proposed order of layoff to determine the least senior employees currently assigned to provide the service being reduced. Dr. Gandera also determined whether any administrators could have their seniority dates adjusted because of prior service in the district as a school site administrator or teacher pursuant to Education Code section 44956.5. At this hearing Dr. Gandera illustrated how she conducted her analysis, specifically referencing the seniority list.

8. Dr. Gandera also determined whether the employees identified for layoff held any other credentials that would entitle them to "bump" into a position being held by a junior employee. 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. 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.) No evidence was introduced that the district improperly "bumped" any employees.

² Education Code section 44845.

9. Exhibit B of the district's resolution established criteria for resolving ties in seniority pursuant to Education Code section 44955, subdivision (b), for those employees who share the same seniority dates. There were 12 criteria identified to be used to break ties.

10. Dr. Gandra testified that the district's tie-breaking criteria was used in making layoff decisions, including criteria L, which called for breaking the tie by use of a lottery which Dr. Gandra testified was a bingo game. Exhibit 15 documented that the tie existing between respondent Blume and respondent De La Cruz was decided by lottery and Ms. Blume prevailed. Dr. Gandra acknowledged that if certain respondents had their BCLAD or other credentials, they could have "bumped" into other positions thereby avoiding layoff. She acknowledged that if individuals complete the BCLAD, are eligible to teach a dual immersion class, and there is an opening, they might be hired by the district for the dual immersion program in the future.

11. On March 22, 2019, Dr. Gandra, in her official capacity, sent Statements of Reduction in Force to 59 employees advising them that their services would not be required for the 2019-2020 school year. The reasons for the recommendation were set forth in the notice. On March 25, 2019, the district identified all respondents who requested a hearing in its jurisdictional documents. Dr. Gandra explained that although the resolution sought the reduction of 46 FTEs, 59 employees were noticed out of an abundance of caution in the event the district's determinations were not upheld and some of the notices were rescinded, as noted above, prior to the hearing.

12. Respondents are identified in Appendix 1. Each respondent is a certificated employee of the district.

13. All prehearing jurisdictional requirements were met.

14. The services identified in Resolution 2019-#37 are 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.

15. Dr. Gandra testified that positively assured attrition was considered in the layoff decisions and will be used in making future rehire decisions. She explained that after considering attrition, and those employees who did not request a hearing, the district proposed to reduce or eliminate 34 FTE positions.

16. With the exception of the employees being exempted (skipped) by Exhibit A of the resolution, no less senior teachers are being retained while more senior teachers

credentialed to perform the same service are being laid off. Dr. Gandra also noted that assignments for next year have not yet been determined.

Physics Teacher Issue

17. Respondent Fred von Preissig Ph.D., has been a physics teacher in the district since 2011. He is the chairman of the science department at his high school. He holds a material science and engineering doctorate and a clear single subject physics (specialized) credential. This credential only authorizes him to teach physics and is no longer issued because of recent changes in science credentialing, including implementation of Next Generation Science Standards (NGSS).

18. Dr. Gandra testified about the decrease in student enrollment in physics at the high school where Dr. von Preissig teaches, with 28 students enrolled for the 2018-2019 school year and 12 students enrolled for the 2019-2020 school year. These enrollments are below the district's 32:1 student: teacher ratio. Dr. Gandra explained that teachers typically teach 5 to 6 classes and there are not even enough students enrolled to fill one class of physics. She further explained that physics is not a requirement for graduation, describing it as an elective science course.

19. Dr. von Preissig testified about NGSS, the course curriculum he created at his high school, the tremendous increase in scores students achieved, the highest standardized test score increases ever observed in the district. Dr. von Preissig explained that documents the district entered regarding his course were either outdated, not used, or he had never seen them before. He also took issue with the district's assertion that physics is an elective, because NGSS is moving towards implementation of combining biology, chemistry and physics in the high school science curriculum. He has attended several conferences where the changes in the science curriculum and NGSS implementation have been studied and/or discussed. Dr. von Preissig provided a letter from a student praising his teaching, explaining that this was one of many such letters he has received from students during his career. In rebuttal, Dr. Gandra testified that these are just discussions and the district has not yet adopted the NGSS standards.

20. Dr. von Preissig's testimony established that he is a caring, dedicated science teacher, who is extremely passionate about his profession. However, he acknowledged the district's declining enrollment in physics, even testifying that for the current school year he had hoped that the 47 students who initially indicated they would enroll in physics plus the 55 additional students he "recruited" after making math class presentations would all be in physics classes, but only 28 students ended up taking physics this school year. This was only enough for one physics class which he described as "disappointing." To combat his lack of classes, Dr. von Preissig has been teaching online courses. His testimony about the number of students enrolled and teaching online courses supported the district's position regarding the decline in enrollment of students taking physics.

Seniority Date Issue

21. Respondent Mary Bakal questioned her seniority date of October 7, 2015, arguing that her seniority date should be changed to August 29, 2014.

22. Dr. Gandera explained that Ms. Bakal retired, returned within 39 months, and her rights, benefits and burdens as a permanent employee were restored, but, for seniority purposes, her hiring date became her date of reemployment per Education Code section 44848 and *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 630-631.

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 2019-2020 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.

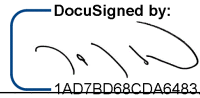
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RECOMMENDATION

It is recommended that before May 15, 2019, the Board of Education give notice to the respondents whose names are set forth below 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 2019-2020 school year.

DATED: April 23, 2019

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MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix 1³

1. Aispuro, Inez
2. Allen, Mark
3. Bakal, Mary, De Luca
4. Bauman, Patricia
5. Blume, Shelley
6. Camacho, Lisa
7. Carrasco-Lau, Eduardo
8. Cervantes, Elizabeth
9. Cota, Roxanne
10. Damian-Romo, Virginia
11. De La Cruz, Cesar
12. Frimtzis, Mia
13. Fu, Shan
14. Garcia, Adalila
15. Larios, Patricia
16. Leon III, Arthur
17. Magalong, Arnold
18. Marquez-Trujillo Luz, Maria
19. Martinez, Alejandra
20. Martinez, Maribel
21. McLachlan, Edward
22. Milton, Stephanie
23. Moser, Elyse
24. Ossinalde, Yvette
25. Quintero, Rigoberto
26. Rodriguez, Anna
27. Rodriguez, Lucia
28. Saenz, Analilia
29. Saig, Sarit
30. Serrato, Daisy
31. Stein, Emily
32. Steele, Ericka, L.
33. Von Preissig Fred J.
34. Wang Qimin

³ The numbers used in this Appendix reflect nothing more than the number of respondents being laid off, these numbers have no bearing on rehire or recall rights.