

BEFORE THE
GOVERNING BOARD
PASO ROBLES JOINT UNIFIED SCHOOL DISTRICT
COUNTY OF SAN LUIS OBISPO
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Stephen W. Arnette and Other
Certificated Employees of the Paso
Robles Joint Unified School District,

Respondents.

Case No. 2012030913

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 2, 2012, in Paso Robles, California.¹

Roman J. Muñoz and Chelsea R. Olson, Attorneys at Law, represented Ruben Canales, Ed.D., Assistant Superintendent (Canales), Paso Robles Joint Unified School District (District).

John F. Sachs, Attorney at Law, represented Respondents Stephen W. Arnette (Arnette), Jennifer Bedrosian (Bedrosian), Audra Carr (Carr), Shannon Gidcumb (Gidcumb), Jillian Jaeger (Jaeger), Caramé Kroener (Kroener), Cynthia McGuffin (McGuffin), and Kiley Wilson (Wilson), who are collectively referred to as Respondents.

Respondent Mark Clement (Clement), who is included in collective references to Respondents, represented himself.

The District has decided to reduce or discontinue certain educational services and has given Respondents and other certificated employees of the District notice of its intent not to reemploy them for the 2012-2013 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2012-2013 school year.

¹ The hearing in this matter was continued from its previously-scheduled date, April 25, 2012, and the deadlines set forth in Education Code sections 44949, subdivision (c), and 44955, subdivision (c), have been extended in accordance with Education Code section 44949, subdivision (e).

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing. The record was left open for the submission of written closing argument. The District and Respondents filed initial argument on May 4 and 7, 2012, respectively, and their submissions have been marked as Exhibits 18 and I. The parties filed reply arguments on May 9, 2012, which documents have been marked for identification as Exhibits 19 and J. The matter was submitted for decision on May 9, 2012.

FACTUAL FINDINGS

1. Assistant Superintendent Canales filed the Accusation and First Amended Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. a. On February 28, 2012, the Governing Board of the District (Governing Board) adopted Resolution number 12-16, reducing or discontinuing the following services for the 2012-2013 school year:

<u>Service</u>	<u>FTE² Positions</u>
Grades K-5 Multiple Subjects Instruction	8.00
Grades K-5 Multiple Subjects BCLAD Instruction	1.00
Grades K-8 Multiple Subjects Alternative Education Instruction	1.20
Grades K-8 Multiple Teacher on Special Assignment	1.00
Grades K-12 Special Education Mild/Moderate Services	3.00
Grades 9-12 Alternative Education Instruction	2.00
Grades 9-12 American Sign Language Instruction	1.00
Grades 9-12 Math Language Instruction	1.00
Grades 9-12 Visual and Performing Arts Instruction	1.00
Grades 9-12 Physical Education Instruction	1.00
Grades 9-12 English Instruction	1.00
Grades 9-12 Agriculture Instruction	0.50
Grades 9-12 Social Studies Instruction	1.00
Grades 9-12 General Subjects Instruction	0.50
Grades K-12 Counselors	3.70
Adult Severely Handicap	<u>1.00</u>
 Total	 28.35

² Full-time equivalent position.

b On March 13, 2012, the Governing Board adopted Resolution number 12-22, reducing Grades 9-12 Progress Academic Intervention Class services by one FTE position for the 2012-2013 school year.

4. Before March 15, 2012, the District provided notice to Respondents that their services will not be required for the 2012-2013 school year due to the reduction of particular kinds of services. Respondents thereafter filed timely requests for hearing.

5. Assistant Superintendent Canales notified the Governing Board that he had recommended that notice be provided to Respondents that their services will not be required for the 2012-2013 school year due to the reduction of particular kinds of services.

6. On or about April 16, 2012, Assistant Superintendent Canales issued the Accusation, the Notice of Hearing, and other required documents, and served them on Respondents. On or about April 25, 2012, Assistant Superintendent Canales issued the First Amended Accusation, the Notice of Hearing, and other required documents, and served them on Respondents. Respondents thereafter filed Notices of Defense.

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 Code³ section 44955.

9. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of the District's precarious financial situation and anticipated further declines 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 or discontinuance of services set forth in factual finding number 3, in the context of the financial difficulties and anticipated decline in revenue and the need to continue to provide services to its students, 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. On February 28, 2012, the Governing Board adopted Resolution No. 12-19, setting forth the criteria to determine seniority among employees who first rendered paid service in a probationary position on the same date (tie-breaking criteria). The specific criteria was listed, not necessarily in order of importance as: credentialing; certificates (BCLAD [Bilingual Crosscultural, Language, and Academic Development]/CLAD [Crosscultural,

³ All further statutory references are to the Education Code.

Language/EL [English Learner] Authorization/Bilingual Credential Needs); experience; district approved training; district approved special education training; competence (has at least one complete school year actual District teaching experience in the assignment she/he intends to displace another employee within the last five years as per the Board adopted Resolution No. #12-3 Competency Standard Criteria); evaluations; NCLB [No Child Left Behind] Highly Qualified status; and extracurricular activities-service/participation in a contracted stipend position (i.e., SST Coordinator). No testimony was provided regarding the relative importance of the criteria for the 2012-2013 school year, and no point system was employed to rank individuals.

b. The criteria are reasonable as they relate to the skills and qualifications of certificated employees.

c. The District did not need to apply the criteria to determine the order of termination of any Respondent.

12. On February 28, 2012, the Governing Board adopted Resolution 12-8, which contains the following competency criteria.

“WHEREAS, the Governing Board of the Paso Robles Joint Unified School District anticipates that it will be necessary to reduce the services of certain certificated employees within the District commencing with the 2012-13 school year; and

“WHEREAS, it is necessary for the Governing Board of the Paso Robles Joint Unified School District to determine the criteria for the qualification of individual certificated employees affected by program reduction for layoffs for the 2012-13 school year; and

“WHEREAS, the Paso Robles Joint Unified School District is required to provide instruction to students who have limited English Language Proficiency; and

“WHEREAS, the Paso Robles Joint Unified School District has been subsequently able to hire fully credentialed teachers who are less senior than some individuals holding emergency credentials and authorization; and

“WHEREAS, the Paso Robles Joint Unified School District is required to provide instruction to students by Highly Qualified Teachers as defined by No Child Left Behind.

“NOW, THEREFORE BE IT HEREBY FOUND, RESOLVED AND ORDERED by the Paso Robles Joint Unified School District as follows:

“1. Each of the foregoing recitals is true and correct.

“2. For the purposes of making assignments and reassignments of certificated employees in order for the District to meet its obligations under Education Code section 44955, a certificated employee shall be deemed competent to perform certificated services if he/she:

“a. has a preliminary, clear, professional clear, lifetime, or other full credential for the subject matter he/she is serving and the subject matter in which he/she intends to displace another employee, has at least one complete school year actual District teaching experience in the assignment within the past five school years.

“b. currently possesses a non-temporary/non-emergency CLAD/BCLAD/EL Authorization.

“c. is NCLB compliant in the subject area he/she is serving and in the subject area he/she intends to displace another employee.

“3. In making the assignments and reassignments required by Education Code section 44955, the Superintendent and/or Director for Personnel Services shall use the criteria set forth above for determining qualifications and competence.”

13. The District has a significant number of students who are not proficient in the English language, and the District wants to ensure that these students are taught by employees who possess certificates that allow them to properly teach these English learners. In addition it wants to ensure that all its certificated employees are Highly Qualified within the meaning of the No Child Left Behind federal law to prevent loss of federal funding.

14. a. Respondents Arnette, Clement, and Gidcumb are affected by application of the competency criteria. They are senior employees in the District, having first rendered service in a probationary capacity on September 3, 1996, August 31, 1978, and August 26, 1996, respectively. They were all selected for layoff because they do not possess non-temporary/non-emergency CLAD, BCLAD, or EL Authorizations. Clement’s position is expected to be reduced by .5 FTE.

b. Respondent Arnette holds a single subject, English, credential, and teaches high school English. He holds an emergency CLAD authorization, which expires September 1, 2012. He is expected to complete a course at the University of Phoenix in June 2012, which will result in a regular, nonemergency EL Authorization issued by the State of California Commission on Teacher Credentialing.

c. Respondent Clement holds a clear single subject credential in Life Sciences, with supplemental authorizations in Agriculture, Biology, Geology, Astronomy, Anatomy, and Environmental Sciences. He teaches Agriculture, Earth Sciences, and Biology courses. He has received training and has employed techniques designed to teach students who

are not proficient in the English language. He holds an emergency CLAD certification, which is effective until January 1, 2013. He is expected to complete a course at the University of Phoenix in June 2012, which will result in a regular, nonemergency EL Authorization.

d. Respondent Gidcumb holds a single subject, Physical Education, credential and teaches elementary school physical education. She holds an emergency CLAD authorization, which expires September 1, 2012. She is also expected to complete the University of Phoenix program in June 2012, which will result in a regular, nonemergency EL Authorization.

15. Mark Rose, who has a seniority date of August 25, 1993, and who holds single subject, Physical Education and Biology, credentials was retained despite having only an emergency English Learner authorization. He coaches student athletes and teaches weight conditioning physical education classes.

16. No certificated employee junior to Respondents Bedrosian, Carr, Jaeger, Kroener, McGuffin, or Wilson was retained to render a service which any of these Respondents is certificated and competent to render.

LEGAL CONCLUSIONS

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

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

3. Cause exists under Education Code sections 44949 and 44955 for the District to reduce or discontinue 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 10.

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, a statute that contains the same “certificated and competent” requirement, 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, and had interpreted the term in a similar manner.

As the *Forker* court recognized, school districts have the discretion to define competency, as had been permitted in earlier reemployment cases, *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016 (*King*) and *Martin v. Kentfield School District* (1983) 35 Cal.3d. 294 (*Martin*). In *King*, the court upheld a district’s requirement that laid off teachers have prior teaching experience in the open jobs in which they claimed competency, namely, mathematics and physical education. In *Martin*, a district was permitted to require prior teaching experience in middle school before deeming laid off elementary school teachers competent to teach in middle school, if such requirement was equally applied to all certificated employees, not just those on a preferential rehire list.

In *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565 (*Duax*), a case arising under the community college reduction in force statute, now section 87743, 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. After acknowledging the discretion afforded to school districts, and set forth in *King* and *Martin*, the court stated: “While these decisions stress the discretion reposed in a school board in defining the term ‘competent,’ the court in *Forker* . . . added further assistance in stating, ‘[a]s interpreted by the *Martin* court, the term ‘competent’ as used in section 44956 relates to specific skills or qualifications required of the applicant. Decisions prior to *Martin* have interpreted that term in a similar manner.” (*Id.* at p. 9. See also *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal. App.3d 648, 654-655; Ozsogomonyan, *Teacher layoffs in California: An Update* (1979) 30 Hastings L.J. 1727, 1749-1751). 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.” The *Duax* court upheld the governing board’s definition of competence as a reasonable exercise of its discretion.

The law review article relied upon by the *Duax* court stated that “Incompetency may be shown by lack of teaching experience or recent academic training in the fields.” (Ozsogomonyan, *Teacher layoffs in California: An Update* (1979) 30 Hastings L.J. 1727, 1750-1751).

Therefore, as the foregoing authorities demonstrate, competence, in the context of teacher layoff and reinstatement, has been defined in terms of the skills and qualifications of the certificated employee, particularly those pertaining to training and experience. Part of the District’s competency rule relates to the skills and qualifications of its certificated employees in terms of training and experience, and may be used by the District in implementing the layoffs. The District requires that teachers seeking to bump into a position have at least one complete

school year actual District teaching experience in the assignment within the past five school years. Respondents have not established that this part of the competency rule is unreasonable in the existing circumstances.

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 training or 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 their 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's 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 a 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 of competency as well as certification. Such additions to, and subtractions from, statutory the language are inconsistent with established rules of statutory construction and are contrary to expressed legislative intent.

Bledsoe v. Biggs Unified School District (2009) 170 Cal.App.4th 127 (*Bledsoe*) does not require a contrary result. In *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.

By reason of the foregoing, the District cannot not validly apply the competency criteria to layoff Respondents Arnette, Clement, or Gidcumb.

5. Even if the District were able to define competency in terms of certification, it may not rely on its competency criteria to lay off Respondents Arnette, Clement, or Gidcumb. As the Supreme Court held in *Martin*, supra, 35 Cal.3d. 294, the District must apply the same competency criteria to all employees. However, the District chose not to apply the criteria to Mark Rose, and provided no persuasive reason for its exception. It appears that Mark Rose was retained because of his coaching position, but the District presented no evidence to justify the exception in one area of instruction and not in those areas in which Respondents Arnette, Clement, or Gidcumb provide services.

6. Districts are permitted to disregard seniority, and “skip” junior employees, in accordance with Education Code section 44955, subdivision (d), which provides, in pertinent part: “Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons: (1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course of study or to provide those services, which others with more seniority do not possess. . . .” However, the District did not establish that it skipped junior employees because of a specific need for services which the junior employees possessed and Respondents Arnette, Clement, or Gidcumb did not possess. Rather, the District concluded that Respondents were not competent to perform their current assignments.

7. Respondents Arnette, Clement, and Gidcumb are certificated and competent to continue to perform their assignments, and cause does not exist to terminate their services for the 2012-2013 school year, by reason of factual finding numbers 1 through 16, and legal conclusion numbers 1 through 6.

8. Cause exists to terminate the services of Respondents Bedrosian, Carr, Jaeger, Kroener, McGuffin, and Wilson, by reason of factual finding numbers 1 through 10, and 16, and legal conclusion numbers 1 through 3.

ORDER

1. The Accusation is sustained and the District may notify Respondents Bedrosian, Carr, Jaeger, Kroener, McGuffin, and Wilson that their services will not be needed during the 2012-2013 school year due to the reduction of particular kinds of services.

2. The Accusation is dismissed against Respondents Arnette, Clement, and Gidcumb.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings