

**BEFORE THE
GOVERNING BOARD OF THE
PASADENA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

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

**Certain Certificated Employees of the
Pasadena Unified School District,**

Respondents.

OAH No. 2021030752

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on April 15, 2021, by videoconference.

Jeff C. Marderosian, Esq., of the Law Offices of Jeff C. Marderosian, represented the Pasadena Unified School District (District).

Carlos R. Perez, Esq., and Alejandra Gonzalez-Bedoy, Esq., of the Law Office of Carlos R. Perez, represented respondents Kevin Bice, Martin Dorado, Andrea Flores, Katherine Gilbreath, Elizabeth Korman, Veronica Martinez, Katherine Mickelson, Karla Orellana-Beltran, Felipe Perez, Alexandra Rozario, Sandra Salgado, Olivia Tu, and Samantha Woog.

Eli Naduris-Weissman, Esq., of the law firm Rothner, Segall & Greenstone, represented respondents Anthony Bonoli and Sara Dave.

Respondent Billie Johnson represented herself.

Christian Lozano of the California Teachers Association, and Allison Steppes, President of the United Teachers of Pasadena, were present during the hearing.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on April 15, 2021.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Brian McDonald, Ed.D., made and filed the District Statement of Reduction in Force in his official capacity as the District's Superintendent.
2. Steven Miller, Ed.D., the District's Chief Human Resources Officer, and Sarah Rudchenko, Ed.D., the District's Director of Human Resources, acting in their respective official capacities, were responsible for the implementation of the technical aspects of the layoff.
3. On February 25, 2021, the Governing Board of the District (Board) adopted Resolution No. 2593 (Resolution), which proposes to reduce or discontinue the particular kinds of services encompassing 18.6 full-time equivalent (FTE) positions by the close of the 2020-2021 school year.
4. Before March 15, 2021, the District served 23 certificated employees with preliminary notice that their services would not be required for the next school year

pursuant to Education Code sections 44949 and 44955. Of the certificated employees given preliminary layoff notices, four of them, i.e., Anthony Bonoli, Sara Dave, Billie Johnson, and Stephanie Norton, were given what is referred to as a precautionary notice, because the employees who received them are subject to the Board's skipping decisions, described in more detail below, and therefore would not be laid off if the skipping decisions pertaining to them are upheld.

5. Six certificated employees did not request a hearing and thereby waived their right to a hearing and cannot contest the recommendation of their non-reemployment by the District. (Ed. Code., § 44949, subd. (b).) The six certificated employees are: Maricruz Castillo, Nancy Cruzat, Topaze Fraser-Lake, Barbara Ishida, Stephanie Norton, and Nidia Salazar.

6. Seventeen certificated employees, collectively referred to as Respondents, timely requested a hearing to determine if there is cause for not reemploying them for the 2021-2022 school year. Respondents were thereafter served with a District Statement of Reduction in Force and other related documents. Respondents timely filed Notices of Participation.

7. Respondents were at all times mentioned certificated employees of the District. They are: Kevin Bice, Anthony Bonoli, Sara Dave, Joyce Din, Martin Dorado, Andrea Flores, Katherine Gilbreath, Billie Johnson, Elizabeth Korman, Veronica Martinez, Katherine Mickelson, Karla Orellana-Beltran, Felipe Perez, Alexandra Rozario, Sandra Salgado, Olivia Tu, and Samantha Woog.

8. All prehearing jurisdictional requirements were met.

9. Prior to the hearing, the District rescinded the layoff notice to respondent Joyce Din (#846),¹ a math teacher, as a result of a known vacancy.

The Board's Resolution

10. The Resolution provides for the reduction or discontinuance of the following particular kinds of services corresponding to a total of 18.6 FTE positions:

Elementary/Middle School (Multiple Subject): 13.0 FTE

High School (Spanish): 2.0 FTE

High School (Social Science): 1.0 FTE

High School (English): 0.60 FTE

High School (Chemistry): 1.0 FTE

High School (Math): 1.0 FTE

TOTAL FTE TO BE REDUCED: 18.6 FTE

11. The decision to reduce or discontinue 18.6 FTE positions was due to the District's budgetary situation, which has forced it to make cuts in several areas, and declining student enrollment.

12. Exhibit A to the Resolution sets forth tie-breaking criteria to determine the relative seniority of certificated employees who first rendered paid probationary

¹ At times, Respondents and other certificated employees are identified by their number on the seniority list (Exhibit 9).

service on the same date. The tie-breaking criteria provide for points to be awarded for years of experience, credentials, authorizations, and college degrees. The more points awarded to a teacher, the higher their seniority within the shared first date of paid service. In the event of a tie after applying the tie-breaking criteria, the District would hold a random lottery. The tie-breaking criteria were used to resolve ties in seniority amongst certificated personnel. The validity of the tie-breaking process is not in dispute.

13. Exhibit B to the Resolution defines competency for purposes of determining a certificated employee's competency to perform a service in accordance with Education Code section 44955, as when the employee subject to layoff has, under the appropriate credential, performed the service for one complete school year within the last 10 years. One complete school year is defined as actual service of at least 75 percent of the number of days the regular schools of the District are in session. The validity of the competency criteria is not in dispute.

Skiping Criteria

14. Education Code section 44955, subdivision (d)(1), permits a school district to deviate from the order of seniority in teacher layoffs when "the district demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the employee [who is retained] has special training and experience necessary to teach that course or course of study . . . which others with more seniority do not possess."

15. Pursuant to the Resolution, the Board determined it was necessary to retain certificated employees for the following school year regardless of seniority

(skipping) to teach a specific course or courses of study who possess the types of special training and experience that others with more seniority do not possess.

16. The Resolution provides that the course or courses of study subject to skipping are those taught by certificated employees as follows:

A. Currently assigned to at least four periods in an International Baccalaureate (IB) position and both (1) the District intends to assign the teacher to an IB position in the 2021-2022 school year; and (2) in the last 10 years the teacher participated in a minimum of 18 hours of IB training (hereinafter, IB skip).

B. Currently assigned to a teaching position at the International Student Academy (ISA) at Blair Middle and High School and the District intends to continue the assignment in the 2021-2022 school year (hereinafter, ISA skip).

C. Currently assigned to a teaching position at Altadena Arts Magnet Elementary, Eliot Arts Magnet Academy, Jackson STEM Dual Language Magnet Academy, John Muir High School Early College Magnet, Washington Elementary STEM Magnet School, or Washington STEAM Magnet Academy and both (1) the District intends to assign the teacher to a Magnet School in the 2021-2022 school year; and (2) in the last ten years the teacher participated in a minimum of 24 hours of training for the position (hereinafter, Magnet skip).

D. Current, valid Multiple Subject or Single Subject credential and possession of a current valid BCLAD in Mandarin, French and/or Spanish and both (1) is currently assigned to teach in a District dual immersion program and (2) the District intends to assign the teacher to a dual immersion program in the 2021-2022 school year (hereinafter, BCLAD skip).

E. Currently assigned to a teaching position in the Vanguard Program at McKinley Middle School and both (1) the District intends to assign the teacher to a teaching position in the Vanguard Program in the 2021-2022 school year; and (2) in the last three years the teacher participated in a minimum of 24 hours of training for the position (hereinafter, Vanguard skip).

17. The criteria of the IB skip, ISA skip, Magnet skip, and BCLAD skip, respectively, have been used in the District's prior layoff proceedings and have been upheld. The District has a specific need for employees with the requisite special training and experience to provide instruction in these programs. These skips are valid under Education Code section 44955, subdivision (d)(1).

18. The Vanguard skip was included in the District's layoff proceeding last year but its validity was not litigated because all respondents in that proceeding waived their right to a hearing as part of a settlement of the matter.

19. (A) Merian Stewart, Ed.D., is the Principal at McKinley Middle School (McKinley). Dr. Stewart testified the Vanguard Program is the "signature program" at McKinley for grades 6, 7, and 8. The Vanguard Program began as a pilot program in 2016 and reached full implementation this year. All students in grades 6, 7, and 8 at McKinley are now taught using the Vanguard Program. The Vanguard Program is a completely online curriculum that involves direct teaching and project-based learning. Teachers must also provide weekly one-to-one mentoring for students.

(B) Dr. Stewart testified that teachers in the Vanguard Program receive extensive training. They are required to complete an initial 40-hour, five-day training program over the summer before they can teach in the program. Thereafter, they receive annual formal training in the spring and summer from The Summit Learning

Program (Summit), which is the actual name of the program McKinley uses and refers to as the Vanguard Program. Teachers have bi-weekly meetings to work with Summit coaches. The District's internal records show that, over the past two school years, Vanguard teachers completed approximately 40 to 60 hours of training. The specialized training received by Vanguard teachers enables them to access the textbooks and materials, which are all online, through the Summit platform.

(C) Based on the foregoing, it was established the District has a specific need for employees with the requisite special training and experience to provide instruction in the Vanguard Program. The Vanguard skip is valid under Education Code section 44955, subdivision (d)(1).

20. Respondents Anthony Bonoli, Sara Dave, and Billie Johnson, are teachers in the Vanguard Program at McKinley. Dr. Stewart verified that they each satisfy the training criterion of the Vanguard skip stated in the Resolution. Respondent Bonoli received 60 hours of training this year, and 48 to 54 hours of training in the two years preceding that. Respondent Sara Dave received 40 to 54 hours of training over the past three years. Respondent Billie Johnson, who started in the Vanguard Program in 2019, has received 40 to 52 hours over the past two years.

21. Since the Vanguard skip set forth in the Resolution is valid, the precautionary layoff notices given to respondents Anthony Bonoli, Sara Dave, and Billie Johnson, should be rescinded and these respondents should not be laid off. The precautionary layoff notice given to certificated employee Stephanie Norton, who waived her right to a hearing, shall likewise be rescinded.

The Seniority List

22. The District maintains a seniority list that contains employees' seniority dates (first date of paid service), credential information, and current assignments. Dr. Rudchenko testified to the accuracy of the seniority list and how it was compiled. In January 2021, certificated employees were notified in writing of the District's records regarding their employment history with the District, and they were allowed to confirm or challenge the accuracy of that information. The seniority list was updated based on information obtained from certificated employees that was verified.

23. The District used the seniority list to implement and determine the proposed layoffs. The District developed staff reduction worksheets of the least senior certificated employees currently assigned in the particular kinds of services to be reduced. The District then determined how many certificated employees assigned in the particular kinds of services are retiring or resigning; whether the least senior certificated employees in these particular kinds of services hold other credentials, can perform in other service areas, and are entitled to bump other more junior certificated employees; whether certain certificated employees should be skipped and retained; and how many certificated employees in each service area must be reassigned or laid off.

24. The District used information from the seniority list to apply the tie-breaking criteria to determine the relative seniority among three Spanish teachers and among two English teachers, respectively, who shared the same seniority date within their subject area. The teachers were re-ranked on the seniority list after application of the tie-breaking criteria. Respondent Samantha Woog (#816) was properly identified for layoff to account for the 0.60 FTE reduction in high school English. Respondent Felipe Perez was properly identified for layoff to account for a 1.0 FTE reduction in

high school Spanish. (The remaining 1.0 FTE reduction in high school Spanish was accounted for by the layoff notice to Employee Nidia Salazar, who waived her right to contest her non-reemployment by the District.)

25. The District properly considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be given.

26. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

Individual Contentions

27. (A) Respondent Kevin Bice (#725) is a teacher at Blair High School. He holds single subject credentials in Chemistry, Geosciences, and Biology. His seniority date is August 24, 2018, which he does not dispute. Bice was identified for layoff to account for the 1.0 FTE reduction in high school Chemistry.

(B) A senior teacher 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 may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

(C) Bice contends he is entitled to bump into the current assignment of Employee #842, who teaches middle school science. Employee #842 has a seniority date of October 12, 2020, and holds a single subject credential in Biology. Bice testified that middle school science has been redefined to require only a secondary science credential, which he has. Bice testified he has taught one section of middle school science every year he has been at Blair. After Bice's testimony and further consideration, the District agreed to rescind the layoff notice given to respondent Bice.

28. (A) Respondent Martin Dorado (#632) has a seniority date of October 20, 2016, which he does not dispute. He holds a multiple subject teaching credential. He is currently assigned as a teacher at Madison Elementary School. Dorado was identified for layoff to account for a 1.0 FTE reduction in Elementary/Middle School (Multiple Subject) teaching.

(B) Dorado contends he should be skipped from layoff because he is a teacher in the AVID program, which serves students of disadvantaged socio-economic backgrounds and promotes college readiness and community building. He testified the AVID program requires teachers to complete 24 hours (three full days) of training. Dorado testified he is one of two teachers at his school who have received AVID training. He contends he should be skipped from layoff to ensure continuity of the AVID program at his school. The AVID program, however, is not one of the programs identified for skipping in the Resolution. Therefore, Dorado remains a teacher subject to layoff.

29. (A) Respondent Veronica Martinez (#845) has a seniority date of January 4, 2021, which she does not dispute. She holds a multiple subject teaching credential. She is currently assigned as a teacher at Altadena Arts Magnet Elementary, one of the schools included in the Magnet skip. Dr. Rudchenko testified that, although Martinez meets the training criteria for the Magnet skip, she does not qualify for skipping because the District intends to reassign Martinez and not assign her to a magnet school in the upcoming school year.

(B) Martinez testified she was not made aware of the District's intent to reassign her until she heard Dr. Rudchenko's testimony in this proceeding. Martinez feels she should have been notified of the reassignment at the start of this year. However, she did acknowledge that notice of reassignments is typically given at the

end of the school year. The Magnet skip criteria does not specify any timing for the District to notify the employee of its intent to assign or not assign to a magnet school. Because Martinez does not meet both criteria under the Magnet skip, she is subject to layoff to account for a 1.0 FTE reduction in Elementary/Middle School (Multiple Subject) teaching.

30. (A) Respondent Katherine Mickelson (#625) has a seniority date of September 19, 2016, which she does not dispute. Mickelson holds a multiple subject teaching credential, a BCLAD (Spanish), and a specialist instruction credential (reading). She is currently assigned as a teacher at Washington Elementary STEM Magnet School, which has a Language Arts program and STEM program.

(B) Mickelson testified she was hired in 2016 as a Language Arts teacher at Washington Elementary STEM Magnet School. She testified STEM training is available only for the school's math and science teachers. She has been unable to access STEM training offered in the summer because she was laid off at the end of the preceding school year. She feels it is unfair that the training needed to meet the criteria of the Magnet skip is not available to all teachers. No evidence was presented that Mickelson has the requisite training to qualify for the Magnet skip. Consequently, Mickelson remains a teacher subject to layoff to account for a 1.0 FTE reduction in Elementary/Middle School (Multiple Subject) teaching.

31. (A) Respondent Andrea Flores (#687) is currently assigned as a Social Science teacher at Marshall Fundamental Secondary School, which serves students in grades 6 to 12. Flores was identified as an employee subject to layoff to account for the 1.0 FTE reduction in high school Social Science.

(B) Flores is shown on the seniority list with an assigned seniority date of August 7, 2018. Dr. Rudchenko testified that, based on new information showing that Flores worked as a long-term substitute teacher prior to August 7, 2018, the District has agreed to change her seniority date to October 10, 2017, going forward. Flores agrees with the revised seniority date.

(C) Even with a revised seniority date, Flores remains subject to layoff. Four Social Science teachers with less seniority than Flores, i.e., Employees #812, #762, #713, and #685, are skipped from layoff under the Magnet skip. With her revised seniority date of October 10, 2017, Flores still has less seniority than the next two Social Science teachers on the seniority list, i.e. Employee #664 with a seniority date of August 9, 2017, and Employee #649 with a seniority date of August 8, 2017.

(D) Flores contends she should be skipped from layoff because she is the only teacher at her school site who is trained and qualified to teach Advanced Placement (AP) U.S. History. If she is laid off, the school will lose its only teacher with AP training. However, AP courses are not one of the courses of study identified for skipping in the Resolution. Therefore, Flores remains a teacher subject to layoff.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1-8.)

2. The services identified in the Resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. 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

discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. A school 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.)

4. Cause exists to reduce the number of certificated employees of the District due to the reduction or discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

5. A senior teacher 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 may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Under Education Code section 44955, subdivision (d)(1), junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

6. A school district has discretion in determining whether an employee is certified and competent, as provided by Education Code section 44955, subdivision (b), to be reassigned and, as a result, displace a junior employee, as provided by

subdivision (c). (See *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 565.) The criteria used to determine a teacher's competence must be reasonable. (*Id.* at p. 566.) Competency criteria that consider the skills and qualifications required of the teacher are reasonable. (*Id.* at pp. 565-566.) It was established that the competency criteria adopted in the Resolution are reasonable.

7. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

8. The District Statement of Reduction in Force shall be dismissed and the layoff notices rescinded as to respondents Kevin Bice, Anthony Bonoli, Sara Dave, Joyce Din, Billie Johnson, and Stephanie Norton, based on Factual Findings 4, 9, 18-21, and 27.

ORDER

1. Notice may be given to employees occupying 18.6 full-time equivalent certificated positions that their services will not be required for the 2021-2022 school year because of the reduction and discontinuance of particular kinds of services. Notice shall be given in inverse order of seniority. Except as provided in paragraph 2 of this Order, such notice may be given to the Respondents listed in Factual Finding 7 and to the certificated employees who did not request a hearing listed in Factual Finding 5.

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2. The notice provided in paragraph 1 of this Order may not be given to Kevin Bice, Anthony Bonoli, Sara Dave, Joyce Din, Billie Johnson, and Stephanie Norton. The District shall rescind the layoff notices and/or dismiss the District Statement of Reduction in Force as to these individuals.

DATE: 05/04/2021

Erlinda Shrenger
Erlinda Shrenger (May 4, 2021 10:28 PDT)

ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings