

BEFORE THE  
GOVERNING BOARD OF THE  
EL CENTRO ELEMENTARY SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of  
Certain Employees of the El Centro  
Elementary School District Identified in  
Appendix A.

OAH No. 2011030909

**PROPOSED DECISION**

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in El Centro, California, on April 13, 2011.

Joseph R. Sanchez, Best, Best & Krieger, Attorneys at Law, represented the El Centro Elementary School District ("District").

John Breeze, Attorney at Law, represented 24 of the respondents listed in Appendix A, attached hereto. Each respondent is a certificated employee of the district. Before the hearing, 19 of the 24 respondents Mr. Breeze represented entered into a Certificated Layoff Agreement ("Agreement") with the District, withdrawing their requests for hearing and notices of defense. The five remaining respondents Mr. Breeze represented did not appear at this hearing.

Respondent Brenna Rafferty appeared and represented herself.

No appearance was made by or on behalf of Respondents Maria Ambriz, Evelia Castro, Darren Diehl, Francisca Gomez, Richard Hill, or Terri Shiffer, although Ms. Shiffer signed the Agreement.

Before the hearing, the Accusations served on Veronica Bielma, Walter Brieze, Madeline Contreras, Norma Cruz, Raquel Evangelist, Nancy Guerra-Castaneda, Yvette Hope, Alma Rizo, Maribel Salazae, Eipifano Torres, Silda Valdez, and Norma Villicana were withdrawn and the layoff notices issued to those Respondents were rescinded.

The matter was submitted on April 13, 2011.

## FACTUAL FINDINGS

1. Robert Pletka, Superintendent, El Centro Elementary School District, made and filed the accusation in his official capacity.

2. Respondents are identified in Appendix A, attached hereto and by this reference are incorporated herein. Each respondent is a certificated employee of the District.

3. On February 8, 2011, the Governing Board of the El Centro Elementary School District (Board) adopted Resolution No. 020811-909, reducing particular kinds of services and directing the Superintendent to give appropriate notices to those certificated employees whose positions would be affected by that resolution. The resolution identified 14.4 FTEs to be reduced.

3. On March 8, 2011, the Governing Board of the El Centro Elementary School District (Board) adopted Resolution No. 030811-914, reducing particular kinds of services and directing the Superintendent to give appropriate notices to those certificated employees whose positions would be affected by that resolution. The resolution identified an additional 15.0 FTEs to be reduced.

4. The two resolutions contained a skipping provision that stated:

“The Board has determined that there exists specific needs for personnel and that there are certificated employees who have special training and experience necessary to teach particular courses of study and/or to provide particular services, as provided in Education Code 44955...which others with more seniority do not possess. Therefore, it is the opinion of this Governing Board that it is in the best interests of this District, the students thereof, and the District’s programs for special education and for middle school mathematics and science to skip and retain employees who possess special education credentials and who are serving in special education positions; and to skip and retain employees who possess credentials and special training and experience to teach middle school science and mathematics, including algebra.”<sup>1</sup>

5. Consistent with the Governing Board’s resolutions, the District identified certificated employees for layoff. The Governing Board’s decision to reduce or discontinue a particular kind of service was a discretionary matter that 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.)

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<sup>1</sup> There is no legal requirement mandating that skipping criteria be contained in a governing board’s resolution.

6. The District implemented a bump analysis to determine which senior employees could bump into a position being held by a junior employee as authorized by statute.<sup>2</sup> No evidence was introduced that the District had improperly “bumped” any junior employees.

7. The District considered positive attrition, including resignations, retirements and requests for transfer, in determining the actual number of layoff notices that were required to be delivered to its employees. No evidence was presented that any known positively assured attrition was not considered.

8. On or before March 15, 2011, the District timely served on each respondent to this proceeding a written notice stating that the Superintendent had recommended that the employee’s services would be terminated at the close of the current school year and would not be required in the 2011-2012 school year. The reasons for the recommendation were set forth in the preliminary layoff notices.

9. An accusation was served on each respondent. All prehearing jurisdictional requirements were met.

10. No evidence was introduced that the layoffs will reduce any of the District’s offerings below the level required by law.

#### *Brenna Rafferty Issue*

11. Under Education Code section 44955, subdivision (d)(1), the District was entitled to skip a junior teacher and retain that junior teacher over a more senior employee for specified reasons. (*Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, 131.) It is well settled that junior teachers may be given retention priority over senior teachers only 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) and that a junior employee possessing special competence can be retained over a senior employee lacking such competence. (*Alexander v. Delano Joint Union High School District* (1983) 139 Cal.App.3d 567.) A school district’s decision to exercise its skipping rights under Education Code section 44955, subdivision (d)(1) is discretionary with the district.

12. Ruth Montenegro, assistant superintendent for human resources and administrative services, testified that Respondent Brenna Rafferty was the most junior

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<sup>2</sup> Under the Education Code section 44955, subdivision (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, 473-474.)

general sciences teacher who had no bumping rights. Ms. Montenegro testified that in accordance with the Education Code, the District's layoffs were based on District-wide employee seniority and not upon seniority at a particular school site. Ms. Montenegro testified that the resolutions authorizing the District to skip employees were intended to enable the District to retain junior employees teaching the core subjects, math and science, at De Anza Middle School, an assignment that requires a multi-subject credential, a credential that Ms. Rafferty does not possess. Ms. Montenegro testified that ultimately the District decided not to skip any teacher, which is the District's prerogative. Ms. Montenegro testified that there is no science teacher employed by the district who is junior to Rafferty.

13. Brenna Rafferty challenged the District's decision not to skip her based upon her experience and training. She offered evidence regarding her extensive science background and coursework taken over the past five years teaching. Ms. Rafferty possesses a Bachelor of Science in Marine Biology, a Masters in Education in Cross-Cultural teaching, and holds a single subject teaching credential in Biological Sciences. Ms. Rafferty attended two California science teacher conferences (2006 and 2008), she participated in district wide, countywide, and statewide trainings for science teachers. She has been involved in the California science project, force and motion through WestEd, various trainings through VIPs, and the AVID Summer Institute for science teachers in 2007. Ms. Rafferty served on the AVID site team for five years, served on the Leadership Team for two years, was a MESA advisor for two years, and a Connect a Million Minds advisor for one year. Her CST scores have consistently been the highest in the District. In 2009, the District scores were 69 percent, the school scores were 75 percent, and Ms. Rafferty's class scores were 82.8 percent; in 2010, the District scores were 65 percent, the school scores were 65 percent, and Ms. Rafferty's class scores were 74.1 percent. The majority of Ms. Rafferty's students score in the advanced and proficient levels. Ms. Rafferty has introduced technology into her school with Interwrite pads and personal response systems.

14. Ms. Rafferty's testimony and evidence demonstrated all too well the sad nature of these cases. Ms. Rafferty is a dedicated, skilled, and passionate teacher. She has been a leader at her school and within the District. Her students obtain high scores on standardized tests. She has attended numerous training courses to better educate her students. As is the case in this layoff proceeding and in layoff proceedings throughout California, it is a great loss to sacrifice such a wonderful teacher for purely economic reasons. Unfortunately, the decision to skip teachers is discretionary; this District chose not to skip any teachers in this proceeding; and in a system based on seniority, the sad result is that many very talented junior teachers, such as Ms. Rafferty, must be laid off.

15. No certificated employee junior to any respondent in this proceeding was retained to perform any services which a respondent was certificated and competent to render.

## LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955. 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. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to each respondent identified herein that his or her services will not be required for the 2010-2011 school year. The District properly identified the certificated employees who are providing the particular kinds of services that the Governing Board directed be reduced or discontinued. The cause for termination relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949. It is recommended that the Governing Board give each respondent identified herein notice before May 15, 2011, that his or her services will not be required by the District for the 2011-2012 school year.

4. A preponderance of the evidence sustained the charges set forth in the accusation.

#### RECOMMENDATION

It is recommended that the Governing Board give notice to the respondents whose names are set forth in Appendix A below that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2011-2012 school year.

DATED: \_\_\_\_\_

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MARY AGNES MATYSZEWSKI  
Administrative Law Judge  
Office of Administrative Hearings

## Appendix A

AMBRIZ	MARIA
ARELLANO	ANNETTE
ARGUELLES	ILIANA
AUBREY	MARY
BEJARANO	DEBORAH
CABRERA	CHRISTINA
CASTRO	EVELIA
CHAPARRO-GALINDO	ALEJANDRA
DIEHL	DARREN
EDWARDS	CARMEL
GARCIA	LOUIS
GOMEZ	FRANCISCA
GONZALEZ	JORGE
HARDING	KRISTEE
HERAZ	SUMMER
HERNANDEZ	VERONICA
HILL	RICHARD
LARIOS	PATRICIA
MASCARENO	MARTHA
MORENO-PESQUEIRA	EVA
OBESO	LORI
RAFFERTY	BRENNA
RIOS	GABRIELA
RUIZ	HERLINDA
SANTANA	ADAM
SANTOYO	ARTURO
SHIFFER	TERRI
SILVA	OLIVIA
WELLS	KRISTEN
WHIPPLE	SHARON
WILLIAMS	JEFFREY