

**BEFORE THE GOVERNING BOARD  
OF THE FIELDBROOK ELEMENTARY SCHOOL DISTRICT  
HUMBOLDT COUNTY, STATE OF CALIFORNIA**

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

**SANDRA POSTON, Respondent,**

**OAH No. 2020030777**

**PROPOSED DECISION**

Tiffany L. King, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on April 30, 2020, in Sacramento, California.

Damara L. Moore, Attorney at Law, represented the Fieldbrook Elementary School District (District).

Respondent Sandra Poston represented herself.

Testimony and documentary evidence were received, and oral arguments were made. The record was closed and the matter was submitted for decision on April 30, 2020.

**FACTUAL FINDINGS**

1. Justin Wallace is the District Superintendent and Principal of Fieldbrook Elementary School. He is the sole administrator for the District. The actions of

Superintendent Wallace, and those of the District's staff and Governing Board (Board), were taken solely in their official capacities.

2. Ms. Poston is a certificated permanent employee of the District.

3. On March 9, 2020, based on Superintendent Wallace's recommendation, the Board passed Resolution No. 2020-0002 (Resolution). The Resolution reduced the District's certificated staff by 1.6333 full-time equivalent (FTE) positions for the 2020-2021 school year. It also established the following criteria to deviate from terminating certificated employees in order of seniority (skipping) who:

(1) By March 1, 2020, possess credentials or certifications authorizing single subject instruction in the subjects of English and/or Mathematics; and

(2) In 2020-2021, are assigned within the scope of any one or more of the credentials or certifications authorizing instruction or services in the areas of English and/or Mathematics, including self-contained classrooms where English and/or Mathematics are part of the curriculum; and

(3) Have experience teaching for at least five (5) years of instruction in the areas of English and/or Mathematics, including self-contained classrooms where English and/or Mathematics are part of the curriculum ....

4. Superintendent Wallace prepared a seniority list of certificated employees. He skipped one certificated employee junior to Ms. Poston in determining to serve Ms. Poston with a Notice of Layoff. The certificated employee who was

skipped, Elizabeth Kadle, meets the skipping criteria in that she possessed a certification or credential in English as of March 1, 2020, and has at least five years' experience in teaching the same. Ms. Poston does not possess a certification or credential in English or Mathematics.

5. On March 10, 2020, Superintendent Wallace caused Ms. Poston to be timely served with a written Notice of Layoff. The Notice of Layoff advised Ms. Poston that her services would not be required for the 2020-2021 school year because of the discontinuance or reduction of particular kinds of services (PKS), as set forth in the Resolution, a copy of which was attached. Pursuant to Education Code section 44949, subdivision (b), Ms. Poston timely requested a hearing to determine if there is cause for not reemploying her for the ensuing school year. This hearing followed.

6. The District is located in Humboldt County. It consists of one school, Fieldbrook Elementary, and employs eight certificated teachers on a full or part-time basis. Over the last three years, the District has suffered reduced funding based on a 20 percent reduction in average daily attendance over the same period. Additionally, from 2015 to 2018, the District's performance on state CAASPP<sup>1</sup> testing has declined in the areas of English Language Arts (from 74 percent to 61 percent), and Mathematics (from 58 percent to 48 percent).

7. CAASPP scores are reviewed annually by the California Department of Education (CDE) and are publically available. A school district's performance on state measures, using comparable statewide data, is represented by one of five colors on the CDE's California School Dashboard (Dashboard).<sup>2</sup> A red, orange, or yellow rating

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<sup>1</sup> California Assessment of Student Performance and Progress.

<sup>2</sup> <https://www.caschooldashboard.org/about/accountability>

indicates low performance and an area of concern; a green or blue rating indicates satisfactory performance. Where a school district has an area of concern, the CDE can require the school district to show improvement in those areas, limiting a district's flexibility and autonomy in where to direct financial resources.

8. The District's 48 percent score in Mathematics earned a yellow rating on the Dashboard, making it an area of concern. Although the District's performance in English Language Arts earned a green rating, the District nevertheless determined it an area of concern due to the 13-point drop in scores over a three-year span (2015-2018). Additionally, the percentage of the student population rated as "not meeting standards" in this area jumped from two percent to 11 percent.

9. Every spring, the District sends a survey to student families, District staff, and community members requesting feedback regarding their perception of the school and any concerns these stakeholders may have. Superintendent Wallace personally reviews the survey answers. He noted that recent surveys reflect stakeholder concern regarding declining CAASPP scores and academic rigor, and a desire to see improvement in those areas. This stakeholder feedback is incorporated into the District's annual local control and accountability plan, which helps the Board determine areas of need and where to direct funding and professional development for staff.

10. For all of these reasons, Superintendent Wallace recommended the Board adopt the "skipping" criteria set forth in Factual Finding 3, above. At hearing, he explained that teachers with a single subject credential or certification are able to teach that lone subject in a classroom or small group setting, whereas teachers with a multiple-subject credential only cannot. While the District did not have intervention programs that focused solely on English Language Arts or Mathematics for the 2019-2020 school year, the District is considering implementing such measures for the

2020-2021 school year. To do so, the District must have certificated teachers certified or credentialed in English or Mathematics to provide the specialized instruction. The five-year experience requirement is meant to identify those teachers who have demonstrated knowledge in teaching those subject areas while also honoring their seniority.

11. At hearing, Ms. Poston asserted that the “skipping” criteria were invalid and inapplicable to her position. She also argued that the reasons proffered by Superintendent Wallace in support of the criteria were mere pretext for his favoring of Ms. Kadle over Ms. Poston.

12. Ms. Poston argued that the “skipping” criteria were invalid because the “general concept of improving CAASPP scores” does not constitute “a specific need for personnel to teach a specific course or course of study” as required by Education Code section 44955, subdivision (d). Certification or credentialing in English Language Arts or Mathematics is not required to teach in an elementary school classroom. Ms. Poston is certified and competent to render any services in a self-contained elementary school classroom and there is no cause to displace her with a junior teacher.

13. Regarding pretext, Ms. Poston contended that Superintendent Wallace and Ms. Kadle were “cohorts,” and that retaining Ms. Kadle over Ms. Poston would reduce Superintendent Wallace’s overall duties and responsibilities. Specifically, Ms. Kadle serves as the Athletic Director for the District, attending to a myriad of duties including: attending meetings, setting game and practice schedules, acquiring referees, and staying late on game nights. Ms. Poston posited these duties are typically the responsibility of the school administrator, and the retention of the junior teacher will reduce Superintendent Wallace’s workload as well as give him more freedom to

leave campus. Additionally, for the last two years, both Superintendent Wallace and Ms. Kadle have served as members of the District's Multi-Tiered System of Support (MTSS) group,<sup>3</sup> a program designed to address the social, emotional, academic, and community needs of children entering the public school system. As members of the MTSS group, Superintendent Wallace and Ms. Kadle have spent time together attending out-of-town trainings, conferences, and school site meetings. Ms. Poston also witnessed Superintendent Wallace interact with Ms. Kadle on campus, and perceived his favoritism toward her. In sum, Ms. Poston argued that the "skipping" criteria, recommended by Superintendent Wallace and adopted by the Board, had more to do with the welfare of the administrator than that of the welfare of the school or its students.

## **Analysis**

14. To deviate from the order of seniority and retain a junior teacher, the District must satisfy the requirements of Education Code section 44955, subdivision (d). That section provides a district may deviate from the seniority list for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, ... and that the certificated employee has special training and experience necessary to teach that course or course of study ... which others with more seniority do not possess.

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<sup>3</sup> <https://www.cde.ca.gov/ci/cr/ri/mtsscomprti2.asp>

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

15. The reduction or discontinuation of PKS set forth in the Resolution are related to the welfare of the District and its students within the meaning of Education Code sections 44949 and 44955. There was no competent evidence the Board's decision to reduce or discontinue the identified services was arbitrary or capricious. Rather, the decision to reduce or discontinue these services was a proper exercise of the Board's discretion.

16. School districts have broad discretion in defining positions within the district and establishing requirements for employment. This discretion encompasses determining the training and experience necessary for particular positions. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.) Here, the Board properly exercised its discretion in creating "skipping" criteria for the purpose of improving its students CAASPP scores after experiencing a drastic decline in those scores over a three-year span. Based on the skipping criteria set forth in the Resolution, the District properly skipped Ms. Kadle as Ms. Poston does not possess a credential or certification in English Language Arts or Mathematics.

## **LEGAL CONCLUSIONS**

1. An employee served with a notice of layoff may request a hearing to determine if there is cause for not reemploying her for the ensuing year. (Ed. Code, § 44949, subd. (b).) Education Code section 44949, subdivision (c), provides, in relevant part:

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils of the schools. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. . . .

2. All notice and jurisdictional requirements set forth in sections 44949 and 44955 were met. The Notice of Layoff sent to Ms. Poston indicated the statutory basis for the reduction of services and, therefore, was sufficiently detailed to afford her due process. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Bd.* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Resolution and in the Notice, adequately describes particular kinds of services. (*Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838. See also, *Degener v. Governing Bd.* (1977) 67 Cal.App.3d 689.)

3. The Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Bd. of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Assn. v. Bd. of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district



employees who perform such services. (*Rutherford v. Bd. of Trustees of Bellflower Unified School Dist.* (1976) 64 Cal.App.3d 167.)

4. 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 exists to reduce the number of the District's certificated employees due to the reduction and discontinuation of particular kinds of services. Cause for reduction or discontinuation of services relates solely to the welfare of the District and students therein within the meaning of Education Code section 44949.

5. Education Code section 44955, subdivision (b), provides in part:

Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while . . . any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

6. Subdivision (d)(1) of section 44955 provides an exception to subdivision (b) where a district demonstrates specific need for personnel to teach a specific course of study and establishes that a junior certificated employee has special training and experience necessary to teach that course that the senior certificated employee does not possess. (*Bledsoe v. Biggs Unified School Dist.*, 170 Cal.App.4th 127, 134-135.) Nothing in the statute requires such special needs be evidenced by formal, written policies, course or job descriptions, or program requirements. (*Id.*, at p. 138.)


7. As set forth in the Factual Findings as a whole, the Board properly exercised its discretion in creating "skipping" criteria. Pursuant to Education Code section 44955, subdivision (d), and based on the skipping criteria set forth in the Resolution, the District properly skipped Ms. Kadle for layoff.

8. Based on the above, it is recommended the District issue a final layoff notice to respondent Sandra Poston.

## **RECOMMENDATION**

The Fieldbrook Elementary School District shall issue a final layoff notice to respondent Sandra Poston.

DATE: May 6, 2020

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TIFFANY L. KING

Administrative Law Judge

Office of Administrative Hearings