

BEFORE THE
BOARD OF TRUSTEES
MONTECITO UNION SCHOOL DISTRICT
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving:

RONALD ZECHER
Certificated Employee of the Montecito Union
School District,

Respondent.

Case No. 2018040060

PROPOSED DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 23, 2018, in Montecito, California.

Elizabeth B. Mori, Attorney at Law, represented Anthony Ranii, Superintendent (Superintendent) and Montecito Union School District (District).

Robert A. Bartosh, Attorney at Law, represented Ronald Zecher (Respondent), who was present.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing, and the matter was submitted for decision on April 24, 2018.

SUMMARY

The Board of Trustees of the Montecito Union School District (Board) has decided to reduce or discontinue particular kinds of services (PKS) and has given Respondent and others notice of its intent not to reemploy them for the 2018-2019 school year as certificated employees. Respondent is a music teacher and music services have been reduced by .55 Full-Time Equivalent (FTE) thereby displacing Respondent. Respondent claims he met the competency criteria set forth by the District and as, such, he was wrongfully laid off instead of more junior certificated elementary school teachers. The sole issue in dispute is whether Respondent meets the competency criteria established by the Board based upon his one year of teaching in a special program. The weight of the evidence established that the Superintendent properly accounted for

Respondent's experience, he did not meet the Board's competency criteria and, therefore, is subject to layoff pursuant to the Board's Resolution.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Superintendent filed the Statement of Reduction in Force in his official capacity. The District is an elementary school district located in Santa Barbara County.
2. Respondent is a certificated employee of the District.
3. On April 3, 2018, the Superintendent issued the District Statement of Reduction in Force and served it and other required documents on Respondent.
4. Respondent timely submitted a Request for Hearing/Notice of Participation in Reduction in Force Hearing Form, requesting a hearing to determine if there is cause for not reemploying him for the 2018-2019 school year.
5. All prehearing jurisdictional requirements have been met.

Reduction of Particular Kinds of Services (PKS)

6. (a) On February 20, 2018, at a regular meeting of the Board of Trustees of the District (the Governing Board), upon recommendation of the Superintendent, the Governing Board adopted Resolution No. 2017/2018-12 (Resolution-12), entitled "Establishment of Criteria for Order of Layoff and Reemployment Following Layoff of Certified Employees with Same First Date of Paid Service in a Probationary Position." Resolution-12 provides for the order of termination where two or more certificated employees first rendered paid, probationary service to the District on the same date (tie-breaking criteria). (Ex. 6.) The Board set the following tie-breaking criteria:

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CRITERIA	POINTS
Active Credentials	2 points per clear credential 1 point per preliminary credential 1 point per supplementary credential
Possession of BCLAD, CLAD, SDIE, or EL Certification	1 point
Prior K-12 Public School Teaching Experience	1 point per year (5 points maximum)
Master's Degree	2 points
Doctorate Degree	1 point
National Board Certificate	5 points

(*Ibid.*)

(b) In the event of a tie after the points are applied, the District will use a lottery system with low lottery numbers indicating low seniority. (*Id.*)

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

7. (a) On March 5, 2018, at a regular meeting of the Governing Board, upon recommendation of the Superintendent, the Governing Board adopted Resolution No. 2017/2018-15, entitled “Resolution to Decrease the Number of Certificated Employees Due to a Reduction or Elimination of Particular Kinds of Services” (Resolution-15), to reduce or discontinue continue the following PKS for the 2018-2019 school year:

PKS	FTE ¹
K-6 Elementary Teacher	4.0
Music	.55
Art	.33
Physical Education	.25
Spanish	.30
Librarian	.20
Total FTE	5.63

(Ex. 1.)

(b) The services which the District seeks to discontinue or reduce are PKS that may be reduced or discontinued within the meaning of Education Code² section 44955.

¹ Full time equivalent.

² All further statutory references are to the Education Code.

8. On March 5, 2018, at a regular meeting of the Governing Board, upon recommendation of the Superintendent, the Governing Board also adopted Resolution No. 2017/2018-13 (Resolution-13), entitled "Resolution to Establish Competency Criteria Due to a Reduction in Particular Kinds of Certificated Services," which further established competency rules when a less senior employee possesses competency "in those areas of service in which the Board has determined not to reduce services." (Ex. 7.) The Board established the following criteria:

[¶] [a]s to any certificated employee who seeks to move into a position requiring certification qualifications held by a less senior certificated employee, the employee who seeks to move into a position requiring certification held by a less senior certificated employee, the employee must have teaching experience in the subject area and/or elementary grade level for at least one (1) year within the last (10) years.

(Ex. 7.)

9. (a) On March 9, 2018, the Superintendent provided notice to Respondent, via personal delivery, that .55 of a FTE of his services will not be required for the 2018-2019 school year due to the reduction of PKS in the area of Music. (Ex. 4.) Another music teacher, more senior than Respondent, did not receive a layoff notice. Respondent is the most junior music teacher.

(b) The Superintendent also provided timely and proper notice of layoff to six other certificated employees. (Ex. 3.) No other certificated employee requested a hearing.³ There were no challenges to the service, timeliness or comprehensiveness of the notice.

(c) The layoff notice to HN, a certificated employee, was rescinded.

(d) Three teachers who received layoff notices, PM, KL, and LM have less seniority than Respondent.

10. (a) The reduction of services set forth in factual finding number 7 is related to the welfare of the District's schools and its pupils, in the context of the loss of revenue and the need to continue providing services to students served by the District, and it has become necessary to decrease the number of certificated employees as determined by the Board.

(b) The Governing Board took action to reduce or discontinue the services set forth in finding 7 at the request of the Superintendent because of the anticipated reduction of funding and the anticipated decline in student enrollment. The District is part of a community that

³ To protect their privacy the names of the other certificated employees, who did not request a hearing, are represented by initials.

has been seriously impacted by extreme flooding, but projected student enrollment for the 2018-2019 school year is not based solely upon temporary circumstances, but on historical trends. Student enrollment is declining and is anticipated to decline to 390 students from 420 students during the 2018-2019 school year. The number of classrooms will be reduced from 26 to 22.

(c) The evidence confirms that the decision to reduce the PKS is neither arbitrary nor capricious but is rather a proper exercise of the Governing Board and Superintendent's discretion. The decision involved extensive discussions with administrators and District leadership and was due to budgetary constraints and decreased enrollment. The decision for layoffs was made in a manner that would cause the least disruption in services to students.

(b) The District was able to lower the number of layoffs by accounting for attrition by granting the request of two teachers to job share one teaching position, and one teacher's decision to retire. As a result of its accounting, the District was able to reduce the number of classroom teachers receiving notices.⁴

11. (a) The District provided foundation for the resolutions and other exhibits, and the rationale for the layoffs from the testimony of two credible and well-qualified witnesses directly involved in the reduction in force for the 2018-2019 school year: Virginia Alvarez, Chief Business Official and Human Resources, and Superintendent Anthony Ranii. Ms. Alvarez developed the resolutions with the Superintendent and both were present at the Board meetings where they were introduced and passed.

(b) Ms. Alvarez conducted careful and extensive due diligence to confirm the accuracy of the seniority list and respondent's competency before determining the layoffs. She audited teachers' personnel files for their credentials, checked the California Commission on Teacher Credentialing's public records to make sure all the teachers' credentials were accounted for, and e-mailed the list to the teachers for their review. No challenges were raised regarding the accuracy of the seniority list and the evidence established that it is accurate and correct. (Ex. 8.)

(c) Having no record of respondent's employment in the District as a K-6 classroom teacher, Ms. Alvarez also contacted respondent's previous employer, the Santa Barbara School Districts to ascertain whether Respondent fulfilled the competency requirements within the last ten years for his work in the Santa Barbara School Districts. The response she received from

⁴ Respondent is teacher number 30 of 41 teachers with seniority with number one being the highest and number 41, the lowest. Respondent started the same date as teacher number 31, RM. Respondent is also more senior than teacher number 33, AC, who started on August 26, 2014, and is also a fourth-grade teacher. Whether Respondent met the tie-breaking criteria with RM, or is entitled to "bump" AC, is not reached in this decision because Respondent does not meet the District's competency criteria to "bump" into the positions held by either teacher.

that school district, did not put Ms. Alvarez on notice that Respondent had fulfilled the competency criteria needed to avoid a layoff.⁵ That school district reported to Ms. Alvarez that Respondent worked from January 2, 2001 through August 4, 2012, as a child development and music teacher.

Evidence of Respondent's Competency

12. Respondent has worked for the District for under five years, and has a start date of August 26, 2013. He is a full-time certificated employee currently assigned as the music teacher (80 percent) and an English-learner (EL) teacher (20 percent). Respondent possesses multiple subject and single subject teaching credentials, a cross-cultural language and academic development (CLAD) certificate, a Master of Arts degree, an administrative services credential and a child development program director permit.

13. Respondent has been an employee of Santa Barbara schools, either with the Santa Barbara School Districts or the District, for many years. He began as a custodian in 1987. For many years he worked half-time for both the Santa Barbara School Districts and the District as a contract employee. At the Santa Barbara School Districts he worked in an administrative position responsible for home instruction for parents with preschool or pre-kindergarten (Pre-K)⁶ school children and worked in the child development program as a teacher in the Pre-K /family literacy program. After he worked in the Pre-K program he worked as a music teacher.

14. Respondent provided credible and sincere testimony about his work for the District and for Santa Barbara School Districts. Respondent challenges the Superintendent and Ms. Villegas's conclusion that he does not meet the competency requirements set by Resolution-13 to

⁵ Respondent objected to the admissibility of the e-mail communication with the Santa Barbara School Districts. (Ex. 9.) Over respondent's objection it was admitted as administrative hearsay pursuant to Government Code section 11514, to the extent that the e-mail supports and explains the testimony of Ms. Alvarez and Respondent, who also testified about his prior work experience at the Santa Barbara School Districts, which it did. In addition, whether or not the e-mail is direct evidence of Respondent's competency under the reduction in force criteria, it is direct evidence of Ms. Alvarez's due diligence and good faith when she determined Respondent did not meet the competency criteria for retention. Admissibility under the Administrative Procedure Act, which governs this action, is broader than that of proceedings governed strictly by the California Evidence Code. However, when an appropriate hearsay objection is raised, pursuant to Government Code 11514, as it was here, the e-mail can come in only as administrative hearsay, unless, there is another basis for admission. The ALJ considered whether the e-mail constituted a business record pursuant to Evidence Code section 1271, and determined that it did not meet the required criteria.

⁶ Pre-K and preschool are used interchangeably and refer to the same program in this decision.

teach a multi-subject, K-6 classroom. Respondent does not challenge the District's reduction of music services. Respondent maintains that he meets the competency requirements when he purportedly performed one year in the last 10 in the elementary grade level, and therefore should have been retained over other certificated staff who teach self-contained multi-subject elementary school classes. Respondent asserts that he was competent to teach a multi-subject elementary school class and as a result, he should have been retained instead of teacher RM, based upon his credentials under the tie-breaking criteria for teachers starting the same date, or AC, a more junior certificated multi-subject elementary school teacher. (Ex. 8.) AC and RM teach fourth grade and were not subject to the reduction in force notification. Respondent has not taught one FTE year at the fourth-grade level. He has been a substitute teacher for undisclosed grade-levels but there is no evidence that he has taught for a FTE of one year as a substitute elementary school teacher.

15. (a) The parties do not dispute that if Respondent had taught one FTE year of transitional kindergarten he would have satisfied the competency criteria. Transitional kindergarten (T-K) is essentially a two-year kindergarten. It follows the curriculum of a one-year kindergarten program and uses the curriculum, grading and any common core requirements attendant to a kindergarten program. A T-K is considered "elementary grade level"; Pre-K is not.

(b) Respondent maintains that he fulfilled the competency requirements when he taught a 24-child class during the 2009-2010 school year in the Santa Barbara School Districts identified as a Pre-K family literacy program. During the 2009-2010 school year he was asked to teach a Pre-K Family Literacy Program (PKFL), which would become the model for that school district's T-K. Respondent testified that he taught the full range of subjects, including, language arts, math, science, in addition to physical education and music.

(c) Jennie A. Martinez, the retired child development teacher and child development coordinator of that school district, wrote a letter which supported and explained Respondent's testimony. (Ex. C.) Ms. Martinez hired Respondent as the "ideal teacher candidate" who met the school district's goal of hiring a multi-subject credentialed teacher with experience in "curriculum development, knowledge of the California Teaching Standards and Preschool Learning Foundations, familiarity [with] working with 2nd language learners, confidence with working with families, and knowledge of the community." (*Ibid.*) Ms. Martinez expressed enthusiasm for Respondent's work and accomplishments, including his application of his multi-subject credential to "prepare the children for the transition to a rigorous kindergarten experience." (*Id.*) The students scored well on a measure called the "Kindergarten Student Entrance Profile" developed by the University of California, Santa Barbara, and Respondent created "meaningful activities for parent engagement, and " mentored a second teacher." (*Id.*)

16. Respondent's claim that he taught a class substantively similar to a T-K was not sufficiently supported by the evidence. Respondent admits that he taught in a pilot program and that the T-K program was not technically a required program or introduced in the Santa Barbara School Districts until after the 2010-2011 school year. Respondent's participation ended with his participation in the development of the program as part of his Pre-K assignment during the 2009-

2010 school year. During cross-examination, Respondent candidly stated he used a progress report or rubric used for Pre-K pupils. Significantly, Ms. Martinez did not use language that confirmed that Respondent's class substantively met the requirements of a T-K, and aside from Respondent's testimony and Ms. Martinez's letter there was no supporting documentation of the curriculum. Ms. Martinez wrote that after the 2009-2010 school year "[t]he intention was he would transition to a T-K classroom that would serve as a model for the district." (Ex. C.) Ms. Martinez does not distinguish between a Pre-K and T-K curriculum. She identifies the classroom that he worked to design as continuing today as a "quality Pre-K and T-K experience." (*Ibid.*) Accordingly, it is unclear what proportion of time was spent on Pre-K, or what part of the curriculum was considered T-K.

17. The Superintendent provided competent testimony that rebutted Respondent's claim that he served one FTE year in a T-K class. Prior to his tenure with the District, the Superintendent worked in a previous school district where he oversaw three preschools and kindergarten programs. He was familiar with T-K as a two-year kindergarten for those children who do not meet the cut-off to begin kindergarten. A T-K is different than preschool as it applies the state standards required for kindergarten, but over the course of two years, instead of one. In contrast, preschool is not driven by state standards and focuses on preacademic skills such as sound-letter correspondence, play-based exercises and skills such as cutting.

18. The weight of the evidence established that Respondent does not meet the Board's competency criteria to "bump" into another certificated position. Accordingly, the District met its burden of proof that no certificated employee junior to Respondent has been retained to render a service which Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) As no other law or statute requires otherwise, the standard of proof in this case requires proof by a preponderance of the evidence. (Evid. Code, § 115.) Therefore, the District bears the burden of establishing cause to affirm the proposed layoff decisions by a preponderance of the evidence.

2. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to Respondent by reason of findings 1-5.

3. The District proved by a preponderance of the evidence that it fulfilled the requirements of Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services by reason of findings 6-11. The Board's decision to reduce or eliminate the identified services set forth in

finding 7 was neither arbitrary nor capricious in that the decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949, by reason of Findings 6-11. Boards of Education hold significant discretion in determining the need to reduce or discontinue particular kinds of services, which is not open to second-guessing in this proceeding. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167.) Such policy-making decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and action must be reasonable under the circumstances, with the understanding that "such a standard may permit a difference of opinion." (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) School districts have discretion to define positions in the manner which they will be taught as long as it is done in good faith. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334.)

4. Pursuant to Education Code sections 44845 and 87414 every probationary or permanent employee is deemed to have been employed on the date upon which he or she first rendered paid service in a probationary position.

5. (a) The District met its burden of proof that Respondent did not meet the competency requirements to teach a multi-subject elementary grade class by reason of findings 6-18. The weight of the evidence established that no competent permanent or probationary employee with less seniority is being retained to render a service for which Respondent is certificated and competent to teach pursuant to Education Code section 44955, subdivision (a). There was insufficient evidence that Respondent had one year of experience as a transitional kindergarten teacher or elementary school teacher. Respondent relies on *Bledsoe v. Biggs Unified Sch. Dist* (*Bledsoe*) (2009) 170 Cal.App.4th 127, 136-137, where the court determined that the teacher was qualified to teach under the broader qualifications applicable to a community day school. However, the facts in *Bledsoe* are distinct from the circumstances here where, despite Respondent's credentials, he has not met the reasonable criteria of "teaching experience in the subject area and/or elementary grade level for at least one (1) year within the last (10) years," by reason of findings 6-18.

(b) The District met its burden of proof that it made the appropriate "correlation between the applicant's specific training and experience and the duties of the available position." (*King v. Berkeley Unified Sch. Dist.* (1979) 89 Cal.App.3d 1016, 1019.) The Governing Board's adoption of competency criteria by Resolution-13 was reasonable. (*Daux v. Kern Community College Dist.* (1987) 196 Cal.App.3d. 555, 565.)


6. By reason of the findings herein, the District met its burden of proof and may notify the Respondent that his services will not be required for the 2018/2019 school year by reason of the whole of the findings herein.

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ORDER

1. The Statement of Reduction in Force is sustained.
2. The Superintendent may notify Respondent Ronald Zelcher that his services will not be required for the 2018-2019 school year due to the reduction of particular kinds of services

DATED: May 1, 2018

DocuSigned by:

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings