

BEFORE THE
GOVERNING BOARD
PASADENA UNIFIED SCHOOL DISTRICT

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

Certain Certificated Employees of the
Pasadena Unified School District,

Respondents.

OAH No. 2018030806

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 24-25, 2018, in Pasadena.

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

Respondents are the 80 individuals identified in exhibit 5 who were served with a District Statement of Reduction in Force. Maria Keegan Myers, Esq., Rothner, Segall & Greenstone, represented the 55 respondents identified in the amended exhibit A. Jean Shin, Staff Attorney, California Teachers Association, represented the 20 respondents identified in exhibit B. No appearance was made by or on behalf of any other respondent.

Mr. Marderosian and Ms. Shin requested, and were allowed, to provide verbal closing arguments at the conclusion of the hearing. The record thereafter was held open for parties to submit written closing briefs. Such briefs were timely received and marked as indicated from Mr. Marderosian (ex. 14) and Ms. Myers (ex. F). The record was closed and the matter submitted for decision upon receipt of the briefs on April 27, 2018.

The Governing Board (Board) of the District decided to reduce 103.2 full-time equivalent positions due to an anticipated \$14.1 million budget deficit. Despite several challenges by many respondents, the District established by a preponderance of the evidence that the Board's proposed layoff mostly meets the requirements of the Education Code and honors the seniority of its certificated staff. However, many respondents not performing services subject to reduction were apparently subjected to layoff based on their credentials. In addition, the District's Advanced Placement skipping category is invalid, creating an unanticipated ripple effect resulting in more senior respondents no longer being subject to layoff. Various stipulations also preclude many other respondents from layoff.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Dr. Brian McDonald made and filed the District Statement of Reduction in Force in his official capacity as the District's Superintendent.
2. Respondents were at all times mentioned certificated District employees.
3. On March 8, 2018, the Board adopted Resolution No. 2444, which proposed to reduce or discontinue the particular kinds of services encompassing 103.2 full-time equivalent (FTE) positions by the close of the 2017-2018 school year.
4. Before March 15, 2018, certificated employees of the District, including respondents, were given preliminary notice that their services would not be required for the following school year, pursuant to Education Code sections 44949 and 44955.¹ Of the certificated employees given preliminary layoff notices, 16 (those named in ex. 5A) 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 valid.
5. Respondents timely requested a hearing to determine if there is cause for terminating their services. Respondents were thereafter served with a District Statement of Reduction in Force. Respondents timely filed Notices of Participation, or were deemed by the District to have done so. In addition, it was determined during the hearing that respondents Joanna Lee and Daniel Jarashow could appear and participate in this matter, despite a dispute whether they had timely filed appropriate documentation, for the reasons explained on the record during the hearing.
6. A. Respondent Candace Kovacic testified she did not receive a preliminary layoff notice (layoff notice) until March 16, 2018, and, as a result, contends her layoff notice should be rescinded.

B. Respondent Kovacic testified her supervising principal told her before March 15, 2018, that she (Ms. Kovacic) was not on the layoff list the principal had seen. Respondent Kovacic further testified she received nothing from the District, until March 16, 2018, when she found a layoff notice in her mailbox. The layoff notice she received was sent by regular mail, not certified. Although the letter was addressed correctly, respondent Kovacic noticed her last name on the envelope was misspelled "Kovac."

C. As established by the credible testimony of Billie Johnson, an executive secretary with the District, the layoff notice in question was timely deposited in the US mail on March 13, 2018, by both regular mail and certified mail with return receipt requested,

¹ Further statutory references are to the Education Code unless otherwise specified.

addressed to respondent Kovacic at her address of record, but using the last name “Kovac.” Respondent Kovacic never received the layoff notice sent by certified mail, as established by her testimony and USPS tracking documents (ex. 13) showing the certified letter was never claimed and was returned to the District. What respondent Kovacic received on March 16, 2018, was the layoff notice sent by regular mail, which was identical to the notice sent by certified mail. She timely submitted a Notice of Participation, and was present at and participated in the hearing.

D. Under these circumstances, respondent Kovacic’s argument is rejected, because she was properly served with the layoff notice for purposes of the Education Code.² The District timely deposited the layoff notice in question in the mail before March 15th. Although the last three letters of respondent’s last name were omitted, the rest of her name and address were correct, and therefore the notice is deemed to have been addressed to respondent Kovacic’s last known address. One day after the March 15th deadline, respondent Kovacic received (by regular mail) the exact copy of what had been timely sent by certified mail. Respondent established no prejudice in being served with the notice in this way, and she readily participated in the hearing, as is discussed in more detail below.

7. During the hearing, the District withdrew the layoff notice and District Statement of Reduction in Force against the following respondents: (a) Maria Barajas, because she was given a new seniority date of August 23, 2013; (b) Jason Trapp, because he is being reassigned to a dual language immersion program (DLIP) position for the next school year; (c) Reyna Haro, because she is also being reassigned to a DLIP position for the next school year; and (d) Luis Rendon, for a reason not established.

The Board’s Resolution

8. Resolution No. 2444 specifically provides for the reduction or elimination of the following particular kinds of services:

<u>Particular Kinds of Services</u>	<u>Full-Time Equivalent (FTE) Positions</u>
Elementary Teacher (Multiple Subject)	52.4 FTE
Middle School Teacher (Mathematics)	0.50 FTE
Middle School Teacher (English)	3.00 FTE

² Section 44949, subdivision (d), provides that a layoff notice is properly served when deposited in United States registered mail and addressed to the last known address of the employee. Section 70 allows school districts to use certified mail in lieu of registered mail. Districts are only required to deposit the notice in the mail on or before March 15th; it need not be shown the notices are thereafter received by or before that date. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 633.) Under the Administrative Procedure Act, actual receipt of an item timely mailed and properly addressed is generally not mandatory to effectuate valid service. (*Miller Family Home, Inc. v. Department of Social Services* (1997) 57 Cal.App.4th 488, 492–493.)

Middle School Teacher (Social Studies)	2.00 FTE
Middle School Teacher (Health)	1.00 FTE
High School Teacher (Math)	3.00 FTE
High School Teacher (English)	3.00 FTE
High School Teacher (Health)	2.00 FTE
Middle School Teacher (Computer Science Teacher)	1.00 FTE
Middle School Teacher (Music)	0.40 FTE
Middle School Teacher (Art)	1.40 FTE
Permit Pre K Teacher	3.00 FTE
Early Transition Kinder (ETK)	3.00 FTE
Clinical Psychologist	4.00 FTE
Middle School Librarian	1.50 FTE
Counselor	2.00 FTE
Resource Teacher	8.00 FTE
Elementary Teacher (RTI)	1.00 FTE
High School Teacher (RTI)	1.00 FTE
TOSA I (STEAM Coach)	2.00 FTE
TOSA II (Gate)	1.00 FTE
TOSA II (College and Career)	1.00 FTE
TOSA II (Support Programs)	1.00 FTE
Coordinator III Ombudsman	1.00 FTE
District Athletic Director	1.00 FTE
Coordinator III Equity/Access	1.00 FTE
High School Assistant Principal	2.00 FTE
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Total positions to be reduced or eliminated:	103.2 FTE

9. The decision to reduce or eliminate 103.2 FTE positions was the result of the District's financial difficulties, including an anticipated \$14.1 million budget deficit.

10. Prior to sending out the layoff notices described above, the Board considered all known assured attrition.

11. A. Pursuant to Resolution No. 2444, 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 which others more senior do not possess.

B. Resolution No. 2444 specified the course or courses of study subject to skipping as those taught by certificated employees.³

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³ Although the resolution also identified a sixth area of skipping concerning English Learners (EL) authorization, the Board and/or District decided to not implement that skip.

1. currently assigned two periods or more to an Advanced Placement (AP) program, who have participated in a minimum of 30 hours of training for teaching an AP program, and possess appropriate certification.

2. currently assigned to an International Baccalaureate (IB) position and in the last ten years participated in a minimum of 18 hours of IB training.

3. currently assigned to a teaching position at the International Student Academy (ISA) at Blair School.

4. currently assigned to a teaching position at Eliot Arts Magnet Academy, Jackson STEM Dual Language Magnet Academy, Washington Elementary STEM Magnet School, or Washington STEAM Magnet Academy, and in the last 10 years have participated in a minimum of 24 hours of training for the position.

5. holding a current, valid Multiple Subject or Single Subject credential and possess a current valid BCLAD in Mandarin and/or Spanish and either (a) currently assigned to teach in a District DLIP or (b) have taught in a District DLIP for one year in the last five years.

12. Exhibit A to Resolution No. 2444 established tie-breaking criteria to determine the relative seniority of certificated employees who first rendered paid probationary service on the same date. The tie-breaking criteria were used in this matter to resolve ties in seniority amongst certificated personnel. The validity of the tie-breaking process is not in dispute.

13. Exhibit B to Resolution No. 2444 defines competency for purposes of determining a certificated employee's competency to perform a service in accordance with section 44955 as when the employee 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.⁴ The validity of the competency criteria is not in dispute.

State-Mandated Levels of Services

14. A. The District issued layoff notices to all three of its high school health teachers, respondents Wendy Ramirez, Sean Mcneley, and Danny Montejano. Because health education services are mandated by state law, and part of the District's required curriculum, respondents argue these proposed layoffs will reduce services below state-mandated levels and therefore cannot be implemented.

⁴ The competency definition also included that the certificated employee possess a BCLAD, CLAD or other appropriate EL authorization. However, the Board and/or District decided to not implement that part of the definition.

B. The District's health education services are mandated by the Healthy Youth Act, codified at sections 51930-51939. The Healthy Youth Act requires school districts to provide integrated, comprehensive, accurate, and unbiased comprehensive sexual health and HIV prevention education at least once in middle school and once in high school. (§ 51930.) In addition to the state-mandated requirements under the Healthy Youth Act, the District's own graduation requirements include that all graduating seniors complete five units of health.

C. The District's Chief Human Resources Officer, Dr. Steven Miller, testified that although the District has no current plan in place to provide for delivery of these instructional services without certificated health teachers, next school year the District will be providing these services by properly qualified and certificated employees. Dr. Miller testified that before the three health teachers in question were hired, the District had provided the mandated health education services by properly qualified teachers other than those with a health credential. Dr. Miller also cited certain credentials related to Physical Education and Biology that allow instruction of the state-mandated services.

D. The fact that the District currently does not have a specific plan in place to offer these services does not invalidate this part of the proposed layoff, where the District has pledged that it will offer this service next school year by properly credentialed staff and has outlined a feasible plan that can do so. Respondents cite no case authority for the proposition that the District is required to have a final instructional plan in place to effect an economic layoff. On the contrary, the courts have recognized that a school district must make decisions on economic layoffs between March and May of each year, despite uncertainties regarding its finances and its enrollment for the next year. (*Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 807-808.) A governing board may take action to reduce services even if it has not yet decided how it will provide mandated services or who will provide them. (See *Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-854, and *Campbell Elementary Teachers Assn., Inc. v. Abbott, supra*, 76 Cal.App.3d at pp. 810-812.) In this case, respondents' argument that the District will not meet legally-mandated levels of service is premature and it is rejected.

15. Based on the above, the reduction or elimination of the FTE positions in question will not reduce services below mandated levels.

Particular Kinds of Services

16. A. The District based its layoff on a reduction in particular kinds of services (or PKS). However, respondents Yafeng Liao and Dr. Manuel Rustin argue they were improperly issued layoff notices based on their credential rather than the services they provide. There are several other respondents to whom this argument also applies.

B. Courts have held that a particular kind of service may be a certain subject, it may be the teaching of the subject for a particular purpose, or it may be a particular manner of teaching the subject. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571.) For

example, elementary teaching is a PKS. (*CTA v. California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.) Thus, it has been held in a prior layoff case such as this that in a PKS reduction, layoffs must be based on the services that a district intends to reduce, not the credential that a teacher holds. (See, e.g., *Santa Ana Unified School District* (2010, Formaker) OAH Case No. 2010011287 [ordering rescission of reductions that are based upon the type of credential held, rather than a PKS, thus focusing on who is performing the service rather than how the service will be performed].)

17. *Yafeng Liao*. Respondent Liao is a Mandarin teacher at Willard Elementary School who possesses a multiple subject credential and a BCLAD in Mandarin. Ms. Liao testified that her current assignment is solely as a Mandarin teacher; she does not deliver any other instructional services. When questioned about this on cross-examination, Dr. Miller could only surmise respondent Liao may be currently misassigned. Yet respondent Liao is listed on District exhibit 10J as being subject to layoff because of her multiple subject credential. The Board's resolution does not identify any reduction in Mandarin services. The practical effect of laying off respondent Liao would be retaining one more elementary school teacher (who requires a multiple subject credential) than the Board had anticipated and instead laying off a Mandarin teacher, which the Board had not anticipated. For this reason, respondent Liao should not be subject to layoff.

18. *Manual Rustin*. Respondent Rustin testified he teaches various social studies courses at John Muir High School (Muir). He has a social science credential. Thus, respondent Rustin's current assignment is solely as a high school social sciences teacher; he does not deliver any other instructional services. Yet respondent Rustin was listed on District exhibit 10M as being subject to layoff under the "Middle School Teacher (Social Studies)" service reduction. The Board's resolution does not identify any reduction in high school social studies.

19. *Russell Wong*. Although respondent Wong did not make this argument during the hearing, it is clear from his testimony and the District's various seniority charts that he is a high school social studies teacher also involved in the IB program at Blair School. Similar to respondent Rustin's situation, respondent Wong was listed on District exhibit 10M as being subject to layoff under the middle school social studies service reduction.

20. *Janet Ho & Kun Hee Lee*. Similar to respondent Wong's situation, respondents Janet Ho and Kun Hee Lee teach high school social studies at Muir and Marshall Fundamental (also a high school), respectively. Both are subject to layoff under the middle school social studies service reduction.

21. *Daniel Jarashow*. Respondent Jarashow teaches two periods of AP classes deemed to constitute social studies, which subjects him to layoff. But he also teaches three periods of science, which is not a PKS subject to reduction and therefore should not subject him to layoff for .60 of his 1.0 FTE position. As to the .40 FTE position in social studies, respondent Jarashow teaches at Marshall Fundamental, a high school. Thus, none of the services provided by respondent Jarashow are identified as being reduced.

22. The District's master seniority list and the seniority worksheet for the middle school social studies reduction clearly show there are a number of social science teachers assigned to the District's middle schools. For reasons that were not established, those employees were not selected for layoff. On the other hand, the District offered no evidence explaining why a high school social studies teacher should be subject to the middle school social studies service reduction. Therefore, the District has not met its burden of proving that respondents Rustin, Wong, Ho, Lee, or Jarashow are subject to the middle school social studies reduction. Their layoff notices must be rescinded.

Attacks on Skipping Categories

23. Respondents do not contest the skipping categories pertaining to the IB program or DLIP. However, a majority of respondents (those represented by Ms. Myers) argue the other three implemented skipping categories are invalid.

24. A. Permanent employees may not be terminated while an employee with less seniority is retained to render a service which the senior employees are "certificated and competent to render." (§ 44955, subd. (b).) A teacher is qualified to serve in a teaching position by possession of an appropriate credential plus completion of appropriate academic preparation or experience in the subject matter in which the vacant position occurs. (*Taylor v. Board of Trustees* (1984) 36 Cal.3d 500.)

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 in that position. (*Lacy v. Richmond Unified Sch. Dist.* (1975) 13 Cal.3d 469, 473–474.)

C. However, section 44955, subdivision (d)(1), permits a 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." These are factual questions, and the district seeking to skip junior teachers bears the burden of proving each element. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 138, as modified on denial of reh'g. (Jan. 12, 2009).)⁵

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⁵ Respondent Violeta Lerma is listed as one who received a precautionary notice (ex. 5A), indicating she is subject to a skip. However, one of the District's seniority worksheets (ex. 10A) shows she is subject to the remaining .40 FTE position layoff of the 1.40 FTE positions of middle school art service reduction; the worksheet does not indicate she is being skipped. Respondent Lerma did not appear at the hearing, and no further evidence was presented concerning her situation, other than Dr. Miller's testimony that respondent Lerma's layoff is only partial and that she retains a .60 FTE position with the District.

ADVANCED PLACEMENT

25. As discussed above, the District seeks to skip those currently assigned to two periods or more of an AP program, who have participated in a minimum of 30 hours of training for teaching an AP program and possess an appropriate credential.

26. Dr. Miller testified the AP skip is not an area in which the District has previously sought to exempt junior employees from layoff. Dr. Miller testified that training in AP courses is offered by the College Board, the organization that administers the AP exam and approves all AP curriculum. According to Dr. Miller, all teachers who teach an AP class are obligated to complete College Board-approved AP training. Dr. Miller further testified that the District pays for teachers assigned to teach AP to complete AP training. Dr. Miller emphasized that the District has spent significant time and money training its AP teachers, and to lay them off will result in a waste of that training, plus incurring more costs in the future to train new teachers to replace those laid off.

27. Dr. Miller's testimony on these points, however, was contradicted by several witnesses, including Dr. Mark Anderson, the principal of Marshall Fundamental School (Marshall). Dr. Anderson testified that AP training is highly encouraged or recommended, but is not required to teach AP courses, with the exception of one AP program called AP Capstone, which is comprised of two courses, AP Seminar and AP Research. Teachers in the AP Capstone program are required to complete a year-long training course. Marshall began offering the AP Capstone program in 2017. Only one of the teachers that the District seeks to skip, respondent Joshua Tornek, has completed the AP Capstone training.

28. Other witnesses confirmed that the District regularly assigns AP courses to teachers without any training. Daniel Harris, a teacher at Muir, convincingly testified he first taught AP Physics in the 2014/2015 school year and taught it for a second time during the 2016/2017 school year. Mr. Harris submitted his planned curriculum to the College Board, who certified his course. Mr. Harris was not offered the opportunity to attend any AP training before, during, or after he taught AP Physics. Allison Steppes, a counselor at Pasadena High School, credibly testified she is also aware that teachers have been assigned to teach AP courses with no prior training.

29. When the District has hired teachers from outside specifically to teach AP courses, the District has not made AP training a minimum qualification. Principal Anderson testified he conducted an external search to recruit a teacher for AP Psychology. The job posting for that position did not include any reference to AP training. (Ex. E.) The same is true of AP Calculus. (Ex. D.)

30. To successfully skip junior employees who have received AP training, the District must demonstrate that the junior teachers possess special training and experience necessary to teach that course of study. The District failed to prove this, with the exception of the AP Capstone program, because AP training is not necessary to teach an AP course. While the District may prefer to retain junior teachers based on training investments made in

some of them in the past, that preference does not meet the criteria of section 44955, subdivision (d)(1). If a school district's preference to retain certain junior teachers is enough to justify a skipping decision, the narrow exception provided by section 44955, subdivision (d)(1), would swallow or supplant the overall rule in favor of seniority.

31. A. According to District exhibits 10H and 10M, the District applied the AP skip to the following five respondents: Vickie Mach; Daniel Jarashow; Janet Ho; Kun Hee Lee; and Joshua Tornek. Because respondent Tornek is assigned to teach the AP Capstone program, which is a valid skip because it does require special training and experience necessary to teach the course, he was properly skipped. The other four AP respondents, who received precautionary notices, were not properly skipped.

B. Invalidating the AP skip has the following unanticipated ripple effect concerning those subject to the 2.0 FTE positions of middle school social studies service reduction (ex. 10M), especially considering the problem discussed above concerning respondents Rustin, Wong, Ho, Lee and Jarashow:

1. Carla Ayala is the least senior employee in this PKS reduction, but she is subject to the valid DLIP skip.

2. Respondents Jarashow and Janet Ho are the next more senior employees, but they were subject to the invalid AP skip. However, as discussed above, these respondents should not be subject to layoff due to the improper use of their credentials as the reason for subjecting them to the middle school social studies layoff.

3. Respondent Escalante is the next more senior employee, but, as discussed in more detail below, he is subject to the valid ISA skip.

4. Respondent Kun Hee Lee is the next more senior employee, but is in the same situation as respondents Jarashow and Ho, and therefore is not subject to layoff.

5. Respondent Joshua Tornek is the next more senior employee, but his AP skip is valid because it relates to the AP Capstone program.

6. The next two more senior employees are respondents Rustin and Wong, and they are the two employees selected to fulfill the 2.0 FTE positions of middle school social studies service reduction. However, they are in the same situation as respondents Jarashow, Ho, and Lee, and also should not be subject to layoff.

7. The next senior employees listed for the middle school social studies reduction were not selected for layoff, were not given layoff notices, and therefore cannot be subject to layoff. The practical effect of the above findings is that the District cannot effectuate any of the 2.0 FTE positions for service reduction of middle school social studies.

32. The invalid AP skip applied to respondent Mach for the high school math service reduction (3.50 FTE positions) means she is subject to layoff as a junior employee, as are two other non-respondent employees. (Ex. 10H.) Only a .50 FTE position remains to be fulfilled for this service reduction. Respondent Eric Glenn was initially selected for a 1.00 FTE layoff, and theoretically he would be a candidate to have his 1.00 FTE position layoff reduced to the remaining .50 FTE position reduction. But the remaining .50 FTE position needed for this service reduction was applied to Musaki Fukao, who is more senior to respondent Glenn. Since Musaki Fukao did not appeal his or her layoff notice, the District may lay off him or her. This means the District has the requisite 3.50 FTE positions subject to the high school math reduction, and that respondent Glenn is no longer subject to layoff.

MAGNET SCHOOLS

33. As discussed above, the District seeks to skip qualified junior employees currently assigned to a teaching position at one of the four following magnet schools: Eliot Arts Magnet Academy (Eliot Arts magnet); Jackson STEM Dual Language Magnet Academy (Jackson STEM magnet); Washington Elementary STEM Magnet School (Washington STEM magnet); or Washington STEAM Magnet Academy (Washington STEAM magnet). In addition, those to be skipped must have in the last 10 years participated in a minimum of 24 hours of magnet training.

34. As the names of the schools indicate and as the testimony established, unlike regular schools, there is a different focus or theme of education at each of these magnet schools. For Eliot Arts magnet, the theme is art. For Jackson and Washington Elementary STEM magnets, the theme is science, technology, engineering and math. For Washington STEAM magnet, the theme is science, technology, engineering, arts, and math.

35. The delivery of instruction at each magnet school is different in that the theme of each school is infused into each subject taught. For example, instruction for teachers at Eliot Arts magnet infuses art into primary core subject instruction. Thus, in language and sciences classes at Eliot Arts magnet, the curriculum is tied into arts, with lessons in all core subjects always relating to art. The same is true for the other four magnets. Dr. Miller, as well as the District's LCAP, Planning and Signature Programs Coordinator, Shannon Mumolo, credibly testified that it is this thematic approach which makes the magnet schools special from other regular classes throughout the District. Bethel Lira, a magnet school teacher, and past president of United Teachers of Pasadena (respondents' collective bargaining association), admitted in her testimony that training is necessary to learn how to build lessons or units that integrate a magnet's theme into the educational content. In fact, she believes training is not all that is necessary; one must learn how to integrate the requisite theme into the curriculum. Based on the above, it was established that both training and experience is necessary to teach in a magnet school, not just a particular credential.

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36. Some respondents argue the magnet schools do not constitute a specific course of study because teachers at magnet schools must still follow the same state standards and curriculum as teachers in other regular classes. While true, that argument does not account for the fact that the magnet teachers must take the additional step of integrating all that subject matter into the particular theme of their magnet school.

37. In 2013, the District received \$7.9 million in federal grant funds to pay for the conversion of the schools and fund the specialized training necessary to properly equip teachers to teach in the magnet schools based upon each school's particular theme. In 2017, the District again received a \$14.5 million federal grant to expand the program at Washington STEM magnet and to add magnet schools at Altadena Elementary and Muir. These grant funds have almost been fully exhausted, with the result being a cadre of teachers trained in developing themes for their courses. The federal government will audit the District to make sure the grant funds have been used properly, including staffing the magnets with appropriately trained teachers, and that the District will maintain the magnet models in future school years. The District's failure to do so will jeopardize its ability to receive this kind of significant magnet funding in the future.

38. As demonstrated by District exhibit 12, there are currently 106 teachers assigned to the four magnet schools in question. Some respondents argue seven of those 106 teachers do not have the requisite 24 hours of specialized magnet training, meaning the training is not necessary to teach at a magnet. However, as discussed below, it was determined during the hearing that four of those seven teachers in question actually have the requisite training hours. It is also abundantly clear that the rest of the 106 magnet teachers have at least that amount, if not substantially more. This shows the District makes specific magnet training a necessary component of teaching at a magnet school. The District's decision to not skip those magnet teachers who have failed to compile the requisite training hours shows the District's good faith. The fact there is a miniscule number of teachers who do not currently possess the required training hours is more consistent with normal patterns of attrition and personnel movement; it does not necessarily, on its face, show that magnet training is not a necessary component of the position.

39. According to the credible testimony of Dr. Miller and Ms. Mumolo, each teacher skipped has received the requisite hours of special training. If those teachers are not skipped, millions of dollars in special training will have been lost, which would be detrimental to the District, given its poor financial situation.

40. Based on the above, it was established that the magnet school skips are valid. The magnet schools' thematic approach constitute a specific need of the District to retain junior teachers to teach a specific course of study, and those being skipped have special training and experience that more senior employees do not possess. Invalidating the skip would result in the waste of millions of dollars of grant funds spent on training the involved individuals and could jeopardize the District's ability to attract future grant funds, facts which are further indicia of the special nature of this course of study.

41. The respondents given precautionary notices because they are being skipped due to teaching at one of these four magnet schools should not be laid off because this skipping category is valid. These respondents are Joanna Lee; Daniel Chua; Robert Ward; Oscar Manzanares; Alisha Marie Schloesser; Jacobo Coronel; Rosyln Crowder; and Micol Issa.⁶

INTERNATIONAL STUDENT ACADEMY

42. The District also seeks to skip one teacher currently assigned to the ISA, respondent Luis Escalante.

43. Respondent Escalante is part of a cohort of four teachers who have been trained to teach students new to this country. The ISA receives students from throughout the District. There are currently 160 students in this program. The students have varied fluency in English, from none to poor to good. But the ISA teachers focus not just on language, but also on the academic and cultural needs of these “newcomers” to this country. The ISA teachers try to help acclimate the newcomers to the District and their immediate communities. When students have completed 12 to 18 months at the ISA, they have the option to return to their school of residence. Blair principal David Ibarra credibly testified the four ISA teachers receive intensive specialized training in how to support immigrants at school and in the community. In light of these circumstances, the District established a specific need for personnel to teach the newcomer program at the ISA.

44. Some respondents argue the District has not established that a specific need exists for the ISA. They contend the District provided limited and insufficient evidence about the number of English Language Learners who are new to the District from other countries. Yet, it was established that 160 students are in the program and need assistance with bridging language barriers, to various degrees. Respondents also ignore the equally important component of helping the newcomers acculturate to school and community settings, a skill most of the other students in the District take for granted.

45. These respondents also cite several administrative layoff decisions from prior years concerning the invalidation of skips related to ELD teachers with a CLAD or BCLAD certification. Yet, those cases are not analogous, as they do not involve the type of special program provided by the ISA. More analogous is the *Bledsoe* case, in which a challenge to a community day school skip was rejected. The *Bledsoe* court determined the community day school served a distinct and difficult student population, i.e., those who had been expelled or who had extreme behavioral difficulties; to deal appropriately with such students, teachers needed specialized background, training and experience; and that therefore, a specific need by the school district for such teachers was established. (*Bledsoe v. Biggs Unified School*

⁶ Mallory White is designated in exhibit 5A as having been given a precautionary notice. According to exhibits 9 and 12, she was skipped because she teaches at Washington STEAM magnet. However, she did not request a hearing and is not one of the respondents listed in exhibit 5. Therefore, no findings are made as to her.

Dist., supra, 170 Cal.App.4th at p. 138.) Here, it is also worth noting that, unlike the other attacked skip categories, the involved respondents offered no evidence rebutting the District's showing that the ISA skip fulfills a specific need. Moreover, there were no respondents who testified they have the requisite training and experience to teach in the program next school year, indicating the ISA program constitutes a specific course of study necessarily taught by those who have special training and experience.

Overall Findings

46. The District maintains a seniority list containing employees' seniority dates, current assignments and locations, credentials and authorizations. Dr. Miller testified to the accuracy of the seniority list, and how it was compiled. In or about January of 2018, 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 new information obtained from certificated employees that was verified. It was established that the information on the seniority list is accurate, except for the changes noted in the remaining Factual Findings.

47. The District used the seniority list to implement and determine the proposed layoffs. The District then determined whether the least senior employees held other credentials entitling them to bump other more junior employees. In determining who would be subject to layoff for each kind of particular service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority.

48. The Board's decision to reduce or discontinue the above-described particular kinds of services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

49. The cause for reducing and/or eliminating the above-described particular kinds of services relates solely to the welfare of the schools in the District and its pupils.

50. Taking into account the findings and conclusions above and below, no permanent certificated employee with less seniority will be retained to render a service that the remaining respondents are certificated and competent to render.

Seniority Disputes

51. Absent unusual factual or legal circumstances, seniority is measured from the first date on which an employee renders paid service in a probationary position. (§§ 44845 and 87414.)

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52. *Sean Mcneley*. Respondent Mcneley challenges his seniority date of August 9, 2017, arguing it should be changed to an earlier date not established in August 2015, when he was first hired by the District as a CTE instructor. Respondent Mcneley was hired for the 2015/2016 school year under a temporary contract at Blair; released at the end of that school year; hired again at Blair under another temporary contract for the 2016/2017 school year; and released at the end of that school year. He was not hired under a probationary contract until August 9, 2017. In its closing brief, the District concedes respondent Mcneley's two consecutive years of past full-time temporary service entitles him to "tack-on" one year of additional probationary service credit, pursuant to section 44918. The added year of credit warrants adjusting respondent Mcneley's seniority date to the beginning of the school year predating his probationary contract. The District's master seniority list (ex. 9) indicates that date at Blair was August 9, 2016, which should be respondent Mcneley's correct seniority date. However, it was not established that this new seniority date would preclude respondent Mcneley from layoff; it may impact his recall status.

53. *Samantha Davidson*. Respondent Davidson seeks to change her seniority date from August 12, 2016, to August 10, 2016. It is true that respondent Davidson began working for the District on August 10, 2016, she did so as a substitute teacher, and she only possessed at that time a credential allowing her to teach as a substitute. She did not sign her probationary contract with the District until August 12, 2016, when she received her teaching credential and it was posted. Under these circumstances, cause was not established to adjust her seniority date. In any event, it was not established that the requested change in her seniority date would prevent respondent Davidson from layoff.

Individual Bumping and Skipping Challenges

54. *Jennifer Thompson, Laura MacDonald, Martin Dorado, Jr. & Karina Machuca-Evans*. The District agrees these four respondents, who are currently assigned to teach at one of the four magnet schools in question, have the requisite magnet training to qualify for the magnet school skip. Therefore, the layoff notices to these four respondents should be rescinded, and they are not subject to layoff.

55. *Janice Khorozian & Candace Kovacic*. These respondents have the type of credentials that would allow them to teach at one of the four magnet schools. However, neither respondent meets the magnet school skipping criteria, in that they are not currently assigned to a position at one of the magnet schools in question, and they do not have the requisite 24 hours of magnet school training. Their testimony to the contrary was not persuasive. Therefore, these two respondents are not qualified to be skipped.

56. *Ashley Webb*. Respondent Webb is currently assigned to the Altadena Arts Magnet Elementary School (Altadena Arts magnet), which recently became a magnet school. Teachers at that magnet are in the process of completing their magnet training, given the newness of the program. Between February 2018 and the date of the hearing, respondent Webb has attended 18 hours of magnet training. Aside from the question whether her current assignment to a magnet other than the four specified for skipping would qualify, respondent

Webb does not currently have the requisite 24 hours of magnet training. Her testimony that she expects to complete 59 total hours of magnet training by this August is not determinative, because districts cannot consider training and experience achieved after the March 15th layoff notice deadline.⁷

57. *Respondents Alves, Partma, Grimes, Cole, Raab, Pech & Synold.* The parties stipulated during the hearing that the following respondents have multiple subject credentials and believe to be qualified to teach in any assignment at one of the four magnet schools subject to skipping: Helena Alves; Lauren Partma; Sabrina Grimes; Julia Cole; Karen Raab; Marlene Pech; and Jennifer Synold. These respondents argue their layoff notices should be rescinded, based on their seniority, if the magnet school skip is invalid. Since that skip is valid, their argument is rejected. In addition, it was not established that any of these respondents are currently assigned to a magnet school or that any of them have the requisite 24 hours of magnet training. These respondents do not meet the magnet school skip criteria and therefore no cause was established to rescind their layoff notices.

58. A. *Katherine Mickelson.* Respondent Mickelson is currently assigned to teach a third grade class at the Washington STEM magnet. The District did not skip her because its internal training records indicate she has no hours of magnet training while employed at the District. Respondent Mickelson testified she has 24 hours or more of such training, comprised of 18 hours at the UCLA Center X during the 2016/2017 school year and at least six hours of magnet training during A Monday personal development days (A Monday training) at Washington STEM. However, Washington STEM principal Karrone Meeks convincingly testified the UCLA Center X training respondent Mickelson received in the prior school year was not magnet training, but rather was training with a literacy coach from UCLA, which is not magnet training. Principal Meeks also convincingly testified the A Monday training respondent Meeks received was similarly on reading and literacy, given her teaching assignment, and therefore did not constitute magnet training. Ms. Mumolo also credibly testified that the District's training spreadsheet for Washington STEM (ex. 12, p. 3) was accurate as to respondent Mickelson. Since respondent Mickelson does not have 24 hours of magnet training, she is not eligible for the magnet school skip.

B. Respondent Mickelson also contends she has the requisite special training and experience necessary to teach in a DLIP, and therefore should have been skipped under that category. She has a BCLAD and is fluent in Spanish. In 2005/2006, she taught in a Spanish kindergarten class for another school district, and in 2011 she taught in a Spanish/Mandarin dual program for another school district. However, respondent Mickelson is not eligible for a DLIP skip because she is not currently assigned to a District DLIP, and she has not taught such a course for the District within the past five years.

⁷ See, for example, *San Jose Teachers Association v. Allen*, *supra*, 144 Cal.App.3d at p. 635 [districts do not consider assured attrition after the deadline] and *Degener v. Governing Board* (1977) 67 Cal.App.3d 689 [districts do not consider a credential obtained after the deadline].

C. Based on the above, cause does not exist to skip respondent Mickelson and she is therefore subject to layoff.

59. *Luis Escalante*. As found above, respondent Escalante is not subject to layoff because his ISA skip is valid. Respondent Escalante further argues he is not subject to layoff because even if the ISA skip was invalid, he also is qualified for the IB skip, a category not subject to attack. The District concedes that four-fifths of respondent Escalante's current assignment is considered to be in the IB program, since the ISA is housed within the IB. The District further concedes that if a majority of a teacher's current assignment is in the IB program, that teacher should be deemed to be in a current IB assignment. Moreover, respondent Escalante has the requisite 18 hours of IB training for purposes of the IB skip criteria. Therefore, respondent Escalante would be eligible for the IB skip, if necessary.

60. *Russell Wong*. As discussed above, respondent Wong is not subject to layoff, because he was improperly classified in the middle school social studies reduction. However, respondent Wong also argues he should not be laid off because he is eligible for the IB skip. Only two-fifths of respondent Wong's current assignment is in the IB program. The District argues that because less than a majority of his assignment is in IB, he should not be viewed as having a current assignment to the IB program. However, Board Resolution No. 2444 states that, for this skip, one must be "currently assigned" to the IB program. Respondent Wong is currently assigned to the IB program. On the other hand, the AP skip requires at least two current periods of AP instruction, showing that when the Board wanted to quantify a threshold amount of instruction necessary to qualify for a skip, it would be specific. Respondent Wong also has the requisite 18 hours of IB training. (Ex. C.) Under these circumstances, respondent Wong would be eligible for the IB skip, if necessary.

61. *Eric Glenn*. As discussed above, respondent Glenn is not subject to layoff, because a more junior employee involved in the invalid AP skip is subject to being laid off in his place. However, respondent Glenn also argues he is eligible for the IB skip. The current school year is respondent Glenn's first year at IB. According to his supervising principal, David Ibarra, respondent Glenn was hired after the IB training was offered during the summer of 2017, and he has not received 18 hours of IB training since that time. Principal Ibarra also persuasively testified that the A Monday training respondent Glenn has attended does not constitute IB training. Respondent Glenn does not qualify for the IB skip.

62. *Penelope Ibbotson*. Respondent Ibbotson contends she also has the requisite special training and experience necessary to teach in a DLIP, and therefore should have been skipped under that category. Her relevant prior experience was teaching a bilingual class for another school district from approximately 1993 to 2001, and her fluency in Spanish, which she believes allows her to teach in any DLIP or bilingual class in Spanish. She also has a BCLAD. While respondent Ibbotson has the requisite credentials, she does not meet the DLIP skipping criteria, in that she is not currently assigned to a DLIP and was not previously assigned to a District DLIP in the past five years. Respondent Ibbotson is not eligible for the DLIP skip.

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.) For example, in administrative hearings dealing with personnel matters, the burden of proof is ordinarily on the agency prosecuting the charges (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113); in personnel matters concerning the dismissal of a teacher for cause, the burden of proof is similarly on the discharging school district (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035). As no other law or statute requires otherwise, the District bears the burden of proof in this matter, and the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

2. All notice and jurisdictional requirements of sections 44949 and 44955 were met. (Factual Findings 1-7.)

3. The services identified in Resolution No. 2444 are particular kinds of services that can be reduced or discontinued pursuant to 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. Services will not be reduced below mandated levels. Cause for the reduction or discontinuation of those particular services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. (Factual Findings 8-50.)

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. (Factual Findings 1-50.)

5. Pursuant to stipulation between the parties, the District will not lay off respondents Maria Barajas, Jason Trapp, Reyna Haro, and Luis Rendon. (Factual Finding 7.)

6. Because it appears the following respondents were subject to layoff based on their credentials, and the District failed to meet its burden of establishing these employees provide services subject to reduction pursuant to section 44955, the layoff notices issued to respondents Yafeng Liao, Manuel Rustin, Russell Wong, Janet Ho, Kun Hee Lee, and Daniel Jarashow must be rescinded. (Factual Findings 8-22.)

7. Because the District's AP skip (except as to the AP Capstone program) is invalid pursuant to section 44955, subdivision (d)(1), respondent Vickie Mach, a junior employee to whom the invalid skip was applied, is subject to layoff in the area of high school math, but respondent Eric Glenn is no longer subject to layoff based on his seniority. Since the District's other skips are valid, no cause was established to layoff the remaining respondents who received precautionary notices (except as discussed above concerning Mallory White and respondent Violeta Lerma) and they shall not be laid off. (Factual Findings 8-13 & 23-45.) In addition, the following four respondents proved they have the requisite training and experience to be skipped to teach in one of the four magnet schools in

question and are therefore not subject to layoff: Jennifer Thompson, Laura MacDonald, Martin Dorado, Jr., and Karina Machuca-Evans. (Factual Finding 54.)

8. All other arguments against the Board's Resolution No. 2444 having been rejected, and taking the changes described above into account, no junior certificated employee is otherwise scheduled to be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-62.)

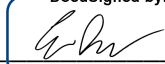
ORDER

1. The District Statement of Reduction in Force is dismissed against respondents Maria Barajas; Jason Trapp; Reyna Haro; Luis Rendon; Yafeng Liao; Dr. Manuel Rustin; Russell Wong; Janet Ho; Kun Hee Lee; Daniel Jarashow; Eric Glenn; Jennifer Thompson; Laura MacDonald; Martin Dorado, Jr.; and Karina Machuca-Evans. The District shall not give them final layoff notices for the next school year.

2. The District Statement of Reduction in Force may also be dismissed against those respondents who received precautionary layoff notices, and are identified in exhibit 5A (but not including Mallory White), except for respondent Vickie Mach and .40 of a FTE position for respondent Violeta Lerma. The precautionary notice respondents shall not be given final layoff notices for the next school year, except respondent Mach may be given a final layoff notice for the next school year, and respondent Lerma may be given a final layoff notice for .40 of a FTE position for the next school year.

3. The District Statement of Reduction in Force is sustained against the remaining respondents. The Board may give a final notice of layoff to those respondents. Notice shall be given to those respondents that their services will not be required for the 2018-2019 school year, and such notice shall be given in inverse order of seniority.

Dated: May 4, 2018

DocuSigned by:

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ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings