

BEFORE THE
BOARD OF EDUCATION OF THE
INGLEWOOD UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

CERTIFICATED EMPLOYEES OF THE
INGLEWOOD UNIFIED SCHOOL
DISTRICT,

Respondents.

OAH Case No. 2013030788

PROPOSED DECISION

Erlinda G. Shrenger, State of California, Office of Administrative Hearings, State of California, heard this matter on April 26, 2013, in Inglewood, California.

Jabari A. Willis and Sharon J. Ormond, Attorneys at Law, represented the Inglewood Unified School District (District).

Lawrence B. Trygstad, Attorney at Law, represented 39 of the 40 respondents who are K-12 certificated employees listed on Exhibit 10, and the 16 respondents who are early childhood education certificated employees listed on Exhibit 34.

Robert Steinberg, Attorney at Law, represented respondent Thomas Washington, who is a K-12 certificated employee listed on Exhibit 10.

No appearance was made by or on behalf of the respondents who are certificated employees in the adult education program.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2013-2014 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2013-2014 school year.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Joyce Kennedy, Assistant Superintendent of Human Resources for the District, filed the Accusations in her official capacity. Assistant Superintendent Kennedy and her staff implemented the technical aspects of the layoff.
2. Respondents are certificated employees of the District in the K-12 regular education program, the adult education program, or the early childhood education program.
3. The District is currently under the authority of a state administrator, LaTanya Kirk-Carter (State Administrator), who was appointed by the California Superintendent of Public Instruction. The State Administrator has assumed all legal rights, duties and powers of the District's Board of Education, in accordance with Education Code section 41326.
4. On March 12, 2013, the State Administrator adopted three separate resolutions, described in Findings 5, 6, and 7, below, that proposed a layoff of certificated positions in K-12 regular education, adult education, and early childhood education.
5. The State Administrator adopted Revised Resolution No. 55/2012-2013 that proposed a layoff of 61.0 full-time equivalent (FTE) certificated positions in K-12 regular education (K-12 Resolution). Specifically, the K-12 Resolution provided for the reduction or elimination of the following particular kinds of services:

<u>Service</u>	<u>FTE Reduction</u>
Reduce K-6 Elementary Teaching Services	26.0
Reduce Secondary English/Language Arts Teaching Services	10.0
Reduce Secondary Social Studies Teaching Services	10.0
Reduce Secondary Math Teaching Services	4.0
Reduce Secondary Physical Education Teaching Services	4.40
Reduce Program and Instructional Facilitator Services	.60
Reduce Counselor Services	1.0
Reduce Principal Services	2.0
Eliminate Executive Director of School Improvement	1.0
Eliminate Director of Adult Education & Career Technical Education	1.0
Eliminate Administrator of Special Education	<u>1.0</u>
Total	61.0

6. The State Administrator adopted Resolution No. 61/2012-2013 that proposed a layoff of certificated positions corresponding to 525 hours per week of adult education services (Adult Education Resolution). Specifically, the Adult Education Resolution provided for the discontinuance of the following particular kinds of services:

<u>Service</u>	<u>Reduction</u>
Career Technical Education	174 hours per week
English as Second Language (ESL)	92 hours per week
High School Diploma	32 hours per week
ESL-ABE-GED Preparation	40 hours per week
Assessment/CSAS	20 hours per week
Teacher on Special Assignment	81 hours per week
Cosmetology	40 hours per week
Barbering	<u>46 hours per week</u>
Total	525 hours per week

7. The State Administrator adopted Revised Resolution No. 60/2012-2013 that proposed a layoff of 20 certificated positions in the early childhood education (ECE) program (ECE Resolution). Specifically, the ECE Resolution provided for the discontinuance of the following positions and particular kinds of services:

<u>Service</u>	<u>Reduction</u>
Head Start 11 Month; 8 Hour Child Devel. Ctr. Supervisor	1 position
Head Start 12 Month; 8 Hour Coordinator	1 position
Head Start 10 Month; 8 Hour Teaching Services	6 positions
Head Start 12 Month; 8 Hour Teaching Services	1 position
CDC 12 Month; 8 Hour Site Director	1 position
CDC 12 Month; 8 Hour Teaching Services	6 positions
CDC 10 Month; 7.5 Hour Teaching Services	1 position
CDC 10 Month; 3.5 Hour Teaching Services	2 positions
CDC 10 Month; 8 Hour Teaching Services	<u>1 position</u>
Total	20 positions

8. Assistant Superintendent Kennedy thereafter provided written notice to the State Administrator of her recommendation not to reemploy certain certificated employees, including

Respondents, and that notice be provided to said employees, including Respondents, that their services would not be required for the 2013-2014 school year.

9. On or before March 15, 2013, the District served Respondents and other certificated employees with written notice that their services would not be required for the 2013-2014 school year due to the reduction or discontinuance of particular kinds of services. The notice indicated that a request for hearing had to be in writing and delivered to the District by 4:30 p.m. on March 22, 2013.

10. Forty certificated employees in K-12 regular education, 11 certificated employees in adult education, and 16 certificated employees in the ECE program, collectively referred to herein as Respondents, submitted timely requests for a hearing to determine if there is cause for not reemploying them for the 2013-2014 school year. The employees who failed to submit a request for hearing by March 22, 2013, waived their right to a hearing to contest the recommendation of their non-reemployment. (Ed. Code, § 44949, subd. (b).)

11. Assistant Superintendent Kennedy made and filed Accusations with the State Administrator, which were served with other required documents on each of Respondents on or about April 3, 2012. The District received Notices of Defense from 30 of the K-12 Respondents, from four of the adult education Respondents, and from 15 of the ECE Respondents. For Notices of Defense that were filed late, the District agreed to accept those Notices of Defense as being timely.

12. All prehearing jurisdictional requirements have been met.

The Lay Off Resolutions

13. Assistant Superintendent Kennedy testified that the K-12 Resolution, the Adult Education Resolution, and the ECE Resolution were required by the District's financial difficulties. The District has a projected budget deficit of \$16 million. Eighty-five percent of the District's operating budget is for staff. For the 2013-2014 school year, the District must also pay back the \$55 million loan that it received from the state. For K-12 regular education, Assistant Superintendent Kennedy testified that employees will be rehired if and to the extent that the District's budget allows.

14. The Adult Education Resolution provides for the discontinuance of the adult education program in its entirety. Assistant Superintendent Kennedy testified that the District does not desire to terminate the adult education program and will reinstate the program if and when it is able to do so.

15. The ECE Resolution provides for the discontinuance of the ECE program in its entirety due to a lack of funds and/or lack of work. The ECE program receives state and federal funding. The program is funded only through June 30, 2013. The contract for federal funding ends on June 30, 2013. The District, at this time, has received no indication whether funding will be restored for the 2013-2014 school year. Assistant Superintendent Kennedy testified that it is not the District's desire to terminate the ECE program and will reinstate the program for the next school year should funding become available for the District to do so.

16. The services set forth in Factual Findings 5, 6, and 7 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.

17. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion. The reduction or elimination of services set forth in Findings 5, 6, and 7 are related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the State Administrator.

The Seniority Lists and Lay Offs

18. Assistant Superintendent Kennedy, or persons acting under her supervision, prepared and maintained separate seniority lists for K-12 regular education certificated employees, adult education certificated employees, and ECE certificated employees.¹ The seniority lists were based on information from the District's human resources records, credentialing records, and personnel files. Draft seniority lists were sent to school sites and employees were allowed to review and verify their information.

19. At the hearing, no issues were raised regarding the ECE and adult education seniority lists. The District is eliminating both of those programs.

20. The K-12 Resolution established tie-breaker criteria for determining the relative seniority of K-12 certificated employees who first rendered paid service on the same date. The criteria, which are set forth in Attachment 1 to the K-12 Resolution, provide that the order of termination shall be based on the needs of the District and its students in accordance with a priority list of degrees, qualifications, authorizations, credentials, certifications, experience, undergraduate units, and training. In addition, the K-12 Resolution

¹ At the start of the hearing, the District made corrections to the K-12 seniority list (Exhibit 11), which were described on the record by the District's counsel. The corrections are shown on Exhibit 11 at pages 8, 10, 16, and 17, by interlineations made by the Administrative Law Judge.

established competency criteria for determining whether a senior employee could be reassigned to a position held by a more junior employee.

21. The District used information from the K-12 seniority list to apply the tie-breaker criteria and competency criteria of the K-12 Resolution.

22. The District used the K-12 seniority list to develop a proposed layoff and “bumping” list of the least senior employees currently assigned in the various K-12 services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to “bump” other employees. In determining who would be laid off for each kind of 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. The District then checked the credentials of affected individuals and whether they could “bump” other employees, and used that information to determine that certain Respondents should be included in these layoff proceedings.

23. (A) The District stipulated to withdraw the Accusation and its request for a final layoff notice as to Respondents Patricia Carlos (#344), Lucia Ortiz (#345), Jacquelyn Jones (#346), Idor Laurent (#436), and Cheryl Alexander (#471).²

(B) The withdrawal of the Accusation and request for final layoff notice as to Respondents Ortiz (#345) and Jones (#346) is due to the District's having misclassified two employees as temporary instead of permanent. The District stipulated to convert the two employees from temporary to permanent status, which affected the seniority list. To remedy this situation, the District stipulated to rescind the layoff corresponding to the two most senior K-6 Respondents who were noticed for layoff, namely, Ortiz and Jones.

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

25. The District identified the certificated employees providing the particular kinds of services that the State Administrator directed be reduced or discontinued.

26. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

Contentions of Individual Respondents

² Respondents and other employees are identified by their seniority number on the K-12 Seniority List (Exhibit 11).

27. (A) Respondent Carolyn McDonald (#402) has a seniority date of September 1, 2004, and holds a clear multiple subject credential. She is currently an instructional coach at Warren Lane Elementary School, which is a position funded through the School Improvement Grant (SIG) program. She has been identified as an employee subject to layoff because she is being bumped by another employee. McDonald contends she should not be laid off because of her special skills and training.

(B) A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Assistant Superintendent Kennedy's testimony established that McDonald's SIG funded instructional coach position requires only a multiple subject credential and no special training is needed to be hired for the position. Training is provided after the employee is hired for the position. Employee #332 has a seniority date of October 24, 2001, and holds a clear multiple subject credential. Employee #332 was identified as an employee subject to layoff as one of the 26.0 FTE reduction in K-6 elementary teaching. However, by her seniority and credential, employee #332 may bump into the instructional coach position currently held by McDonald. McDonald's testimony about her special skills and training does not change her status in this layoff. The District correctly identified McDonald as an employee subject to layoff.

28. Respondent Wendy Frandell (#388) has a seniority date of September 22, 2003. She holds a clear multiple subject credential. She is currently a kindergarten teacher at La Tijera K-8 School. Frandell has been identified as an employee subject to layoff as one of the 26.0 FTE reduction in K-6 elementary teaching. Frandell contends she should not be laid off. She testified that she brings unique experience and skills to the transitional kindergarten program. She has attended trainings and conferences on transitional kindergarten curriculum. Frandell's testimony regarding her experience and skills does not change her status in this layoff. The District correctly identified McDonald as an employee subject to layoff.

29. (A) Respondent Thomas Washington (#506) has a seniority date of July 1, 2010. He holds a clear multiple subject credential and an administrative credential. For the past seven years, he has been a K-12 principal for the District. He has not been a classroom teacher for the District. However, in another school district, he was a principal for two years and a classroom teacher for 16 years in a self-contained classroom for grades 4 through 6. Pursuant to Education Code section 44951, in January/February 2013, the District released Washington from his position as principal as of the end of the 2012-2013 school year, and reassigned him to a K-6 elementary teaching position for the 2013-2014 school year. Pursuant to Education Code section 44956.5, Washington was given the maximum of three years seniority for the time he served as a site administrator (principal) for the District. He was assigned a seniority date of July 1, 2010, as a K-6 elementary teacher. He has been identified as an employee subject to

layoff as one of the 26.0 FTE reduction in K-6 elementary teaching because he is the K-6 teacher in the District with the least seniority.

(B) Washington contends he should be exempt or "skipped" from layoff as a K-6 classroom teacher because of his special skills, experience and training. He relies on Education Code section 44955, subdivision (d)(1), for this contention. Washington's reliance on section 44955, subdivision (d)(1), to change his layoff status is misplaced. In general, a school district is required to lay off certificated employees in order of seniority. (Ed. Code, § 44955.) However, section 44955, subdivision (d)(1), provides, in pertinent part, that "a school district may deviate from terminating a certificated employee in order of seniority" if the school district demonstrates both "a specific need for personnel to teach a specific course of study" and "the certificated employee has special training and experience to teach that course of study." The statutory language, on its face, establishes that skipping is a discretionary act of a school district. In this case, the District conducted no "skipping" in identifying employees subject to lay off. Washington cannot compel the District to "skip" him or any other teacher in this layoff. The District correctly identified Washington as a K-6 certificated employee subject to layoff.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955, by reason of Factual Findings 1 through 12.³
2. The services listed in Factual Findings 5, 6, and 7 are determined to be particular kinds of services within the meaning of section 44955, by reason of Factual Findings 5, 6, 7, 16, and 17.
3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth Factual Findings 5 and 6, which cause relates solely to the welfare of the District's schools and pupils, by reason of Factual Findings 13 through 17.
4. Cause exists under section 8366 for the District to reduce or discontinue the particular kinds of services set forth in Factual Finding 7, which cause relates solely to the welfare of the District's schools and pupils, and is due to a lack of funds and/or lack of work, by reason of Factual Findings 13, 15, 16, and 17.
5. 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 1-26 and Legal Conclusions 1 through 4, and 8.)

³ All further statutory references are to the Education Code unless otherwise stated.

6. Respondents contend that a reduction in "K-6 elementary teaching" is not a reduction of a "particular kind of service" within the meaning of section 44955. This contention is without merit. It is well established that a reduction in K-6 elementary teaching is a "particular kind of service." In *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32, 36 -37, the court held: "A board may 'reduce services' ... by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved. [This] determination falls within the statutory language.' [¶] Accordingly, we conclude that a reduction of 11 kindergarten through sixth grade classes is a reduction of a particular kind of service, and the termination of the teachers who provided those services is permitted under Education Code section 44955." (*Id.* at pp. 36-37 (citing *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179).)

7. (A) Respondents contend that the lay off of all K-6 elementary teaching positions must be invalidated because the District misclassified two permanent employees as temporary, and those two teachers have less seniority than the K-6 elementary teachers identified for lay off. This contention is based on the language in section 44955, subdivision (b), that "the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." Respondent's counsel stated he was arguing the "domino theory"; that is, because of an error as to one employee, several more senior respondents must be retained. In this case, it is determined that there is insufficient justification for invalidating the layoff of all K-6 elementary teachers or applying the domino theory.

(B) Education Code section 44949, subdivision (c)(3) , specifically provides: "Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors." In *Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567, 576-577, the court adopted a "corresponding number" approach in not applying the over-inclusive remedy of ordering the school district to retain all employees who were senior to the junior employees who were not served with a layoff notice. The remedy was tailored to correct the mistake to identify only those employees who were directly prejudiced by the error. "Because at least some of the persons skipped should have received the notices, a corresponding number of the most senior of the employees who were not reemployed must have been improperly given notices. The trial court must determine which of the Teachers suffered prejudicial error in this case." (*Id.*) In this case, the District has remedied the error caused by the reclassification of the two temporary employees as permanent by rescinding the layoff as to the two most senior K-6 Respondents directly affected by the error, i.e., Ortiz and Jones.

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

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ORDER

1. Except as provided in paragraph 2 of this Order, the Accusations are sustained and the District may notify employees corresponding to the 61.0 FTE reduction in K-12 regular education services, the 525 hours per week reduction in adult education services, and the 20 position reduction in early childhood education services, that their services will not be needed during the 2013-2014 school year due to the reduction or discontinuance of particular kinds of services. Notice shall be given in inverse order of seniority.

2. The Accusation is dismissed and the District may not provide final layoff notices to respondents Patricia Carlos (#344), Lucia Ortiz (#345), Jacquelyn Jones (#346), Idor Laurent (#436), and Cheryl Alexander (#471).

DATED: May 2, 2013

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings