

BEFORE THE  
GOVERNING BOARD OF THE  
PLANADA ELEMENTARY SCHOOL DISTRICT  
COUNTY OF MERCED, STATE OF CALIFORNIA

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

SHARON CHEN,

Respondent.

OAH No. 2016031279

**PROPOSED DECISION**

This matter was heard before Erin R. Koch-Goodman, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 27, 2016, in Merced, California.

Planada Elementary School District was represented by Lawrence Schoenke, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, Pleasanton, California.

Respondent Sharon Chen was represented by Michael Hersh, Staff Attorney, Department of Legal Services, California Teachers Association, Santa Fe Springs, California.

Evidence was received, the record was closed, and the matter was submitted for decision on April 27, 2016.

**FACTUAL FINDINGS**

*Jurisdiction*

1. José L. González is the Superintendent of the Planada Elementary School District (District). The actions of Superintendent González, and those of the District's staff and Board of Trustees (Board), were taken solely in their official capacities.

2. On March 11, 2016, Superintendent González recommended that the Board reduce or discontinue particular kinds of services (PKS) no later than the end of the 2015-2016 school year in the amount of 1.0 full-time equivalent (FTE) position. Thereafter, the Board adopted Resolution No. 2016.05, entitled "Resolution of the Governing Board of Planada Elementary School District Regarding the Reduction or Discontinuance of Particular

Kinds of Services (Certified Layoff)” (Resolution), which resolved to reduce or discontinue PKS in the amount of 1.0 FTE. The Resolution authorized Superintendent González to take action to reduce or discontinue the following particular kinds of services for the 2016-2017 school year:

<b>Particular Kinds of Services</b>	<b>FTE</b>
Computer Literacy Teacher	1.0 FTE
<b>Total FTE</b>	<b>1.0 FTE</b>

3. The Board directed Superintendent González to send appropriate notices to all employees whose services would be terminated as a result of the Board’s action to reduce or discontinue PKS. On March 11, 2016, Superintendent González served respondent written notice, entitled “Notice of Recommendation That Your Services Will Not be Required For the Ensuing School Year (2016-2017)” (Notice), pursuant to Education Code sections 44949 and 44955, of his recommendation to the Board that respondent’s services be terminated at the close of the 2015-2016 school year. A copy of the Resolution was served with the Notice.

4. On March 18, 2016, respondent timely filed a Request for Hearing and Notice of Participation. On April 5, 2016, Superintendent González served respondent with, among other things, the District Statement of Reduction in Force and a Notice of Hearing for Wednesday, April 27, 2016, at 1:00 p.m. Jurisdiction for the subject proceedings exists pursuant to Education Code sections 44949 and 44955.

#### *Cause for Reduction or Discontinuance of Services*

5. The District has two schools, an elementary (K-5) and a middle school (6-8), providing services to 765 students in kindergarten through eighth grade. The District employs 39 certificated employees. Respondent is a certificated, permanent employee of the District. Since 2004, respondent has taught Computer Literacy to students in the District in a computer lab setting. Each school had one computer lab.

6. In the last few years, the District has transitioned its curriculum from a decentralized, single subject teaching, to a “common core,” general education curriculum. In addition, the District has embedded technology into the classroom, with a computer device for each student. Initially, the District had limited technological infrastructure and it could only sustain one centralized cart of computer devices for a teacher to check-out. Now, with improvements to technology infrastructure and bandwidth, the District can sustain 350 computer devices at the middle school alone. Students are now learning core subjects using a personal computer device, and the need for a separate Computer Literacy class is obsolete. Given the above, the reduction or discontinuances of services are in the interest of the District’s schools and its pupils.

7. The services set forth in the Resolution are “particular kinds of services” that may be reduced or discontinued within the meaning of section 44955. The Resolution does not reduce services below the mandated levels. There was no evidence that the Board’s decision to reduce or discontinue the identified services was arbitrary or capricious. The reduction or elimination of the services set forth in the Resolution constituted a proper exercise of the Board’s discretion, within the meaning of section 44955.

#### *Respondent’s Credentials and Seniority*

8. Respondent began teaching for the District on August 11, 2004. She has a clear Single Subject (SS) credential in Business, Introduction to English, and Mandarin. She is Crosscultural, Language, and Academic Development (CLAD) certified and she has an Administrative Certificate of Eligibility. Respondent has only ever taught Computer Literacy for the District.

9. Respondent is senior to 24 teachers in the District. Of those teachers, 20 junior teachers have Multiple Subject (MS) credentials and are teaching multi-subject general education to students. There are two junior teachers with Special Education certifications who are teaching special education classes. The remaining two junior teachers are Christopher Busch, hired on August 10, 2006, with a clear SS credential in Physical Education, Administrative Certificate of Eligibility, and CLAD, and Iida Lopez, hired on August 11, 2004, with a clear SS credential in Social Science and English, and an English Learner Authorization (CLAD equivalent). Busch is now Principal of Cesar Chavez Middle School, an administrative position, and Lopez teaches in a general education setting in two core subjects.

10. A teacher with more seniority typically has greater rights to retain employment than a junior teacher. A senior teacher whose position is discontinued has the right to a position held by a junior teacher if the senior teacher is properly credentialed and competent. (Ed. Code, § 44955, subd. (b).) The displacement of a junior teacher is known as “bumping.” In general, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers if the senior teacher has both the credentials and competence to occupy such positions. (Ed. Code, § 44955, subd. (c).)

#### *Displacement Rights – Bumping Criteria*

11. In the Resolution, the Board established criteria for respondent to displace or “bump” a junior teacher, so long as respondent is certificated and competent to render the services of the junior teacher. The Resolution provides in relevant part:

That for purposes of this Resolution and all related proceedings and actions “competency” as described in Education Code sections 44955(b), 44956, and 44957, for the purposes of displacement (“bumping”) and rehire rights, shall necessarily

include: (1) possession of a valid credential; (2) the appropriate English language authorization; (3) compliance with and/or Highly Qualified Status under federal and state law in the relevant subject matter area; and (4) at least one year of actual teaching experience in a subject matter area in the general education setting.

Superintendent González drafted and recommended the bumping criteria based upon the District's needs and a teacher's experience.

12. Superintendent González acknowledged that the Master Schedule for 2016-2017 is still being worked on, because the Master Schedule is driven by the Local Control Accountability Plan (LCAP), which will be finalized in June, following public input. At this time, Superintendent González does not believe there is a place for respondent in the Master Schedule, because she is not certificated and competent to render the services being performed by any teacher with less seniority who is being retained.

13. Respondent contends she is certificated and capable of teaching the English classes taught by junior teachers Marissa Luna, Michelle Gray, Kathlene Wilson, and Alejandra Alvarez. In addition, respondent asserts that she functionally taught English while she taught Computer Literacy. Superintendent González provided the following information: Luna will teach second grade in 2016-2017, Wilson and Alvarez will teach seventh and eighth grade in 2016-2017, and Gray has not yet been assigned for 2016-2017, but she will be used to teach multiple subjects in a general education setting.

### *Discussion*

14. The District is no longer offering Computer Literacy as a course for students, because computer devices are now integrated into the classroom. Respondent is the only teacher to have provided instruction for the Computer Literacy class at the District. Because Computer Literacy is no longer necessary, the reduction of respondent's position is appropriate.

15. However, respondent has the ability to "bump" a junior teacher from a position that respondent is certificated and competent to teach. The District has set competency criteria to include certification and at least one year of teaching experience in a subject matter area in a general education setting. The District's competency criteria are reasonable. Here, respondent is certificated to teach SS English, Business and Mandarin. However, respondent has never taught English, Business, or Mandarin in a general education setting; having only ever taught Computer Literacy for the District. Therefore, respondent does not meet the requirements of the District's competency criteria and cannot bump a more junior teacher.

16. The District has established cause to give notice to respondent that her services will be reduced and will not be required for the 2016-2017 school year because of the reduction or elimination of particular kinds of services.

## LEGAL CONCLUSIONS

1. The fundamental principle of a particular kinds of services layoff is that permanent teachers must be laid off in inverse of their seniority. (Ed. Code, § 44955, subds. (b) & (c).) As set forth in Education Code section 44955, subdivision (b):

Except as otherwise provided by statute, the services of no permanent employee may be terminated . . . 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.

2. A District may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The burden is on the District to demonstrate that the reduction or elimination of the particular kinds of services is reasonable and that the District carefully considered its needs before laying off any certificated employee. (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 807-808.) Once the District makes the initial determination, the burden shifts to the certificated employee asserting the right to bump the junior employee to prove that the former is certificated and competent to perform the service for which the latter is being retained. (*Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 656.) Here, the District’s competency criteria were reasonable (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565-7.) and respondent does not meet the criteria.

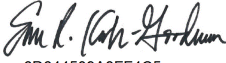
3. Legal cause exists to reduce or discontinue 1.0 FTE of particular kinds of services offered by the District as set forth in detail in the Factual Findings. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the District’s schools and pupils within the meaning of Education Code section 44949.

4. As set forth in Factual Findings 8 through 17, no permanent or probationary teacher with less seniority is being retained to render a service for which respondent is certificated and competent to teach. Cause exists to give notice to respondent that her services will be reduced and will not be required for the 2016-2017 school year because of the reduction or elimination of particular kinds of services.

## RECOMMENDATIONS

Notice may be given to respondent Sharon Chen that her services will be reduced or will not be required for the 2016-2017 school year.

DATED: April 29, 2016

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ERIN R. KOCH-GOODMAN  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE  
GOVERNING BOARD OF THE  
CASCADE UNION ELEMENTARY SCHOOL DISTRICT  
SHASTA COUNTY, STATE OF CALIFORNIA

In the Matter of the Reduction  
in Force Against:

STEPHANIE GOSLING,

Respondent.

OAH No. 2016040044

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Tiffany L. King, State of California, Office of Administrative Hearings on April 27, 2016, in Anderson, California.

Thomas E. Gauthier, Attorney at Law, Lozano Smith, appeared on behalf of the Cascade Union Elementary School District.

Lesley Beth Curtis, Attorney at Law, Langenkamp, Curtis & Price, LLP, appeared on behalf of respondent Stephanie Gosling.

Testimony and documentary evidence were received, and oral arguments were made. The record was closed and the matter was submitted for decision on April 27, 2016.

**FACTUAL FINDINGS**

1. Baljinder Dhillon, Ed.D., is the Superintendent of the Cascade Union Elementary School District (District). The actions of Superintendent Dhillon, and those of the District's staff and the District's Governing Board (Board), were taken solely in their official capacities.

2. Stephanie Gosling (respondent) is a certificated permanent employee of the District.

3. On February 10, 2016, the Board adopted Resolution No. 13 (Resolution). The Resolution was based on a recommendation from Superintendent Dhillon to reduce or eliminate particular kinds of services (PKS) of the District, affecting 4.85 full time equivalent (FTE) certificated positions for the 2016-2017 school year.