

**BEFORE THE
GOVERNING BOARD OF THE
BUENA PARK SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Reduction in Force of:

**CERTAIN CERTIFICATED TEACHERS OF THE BUENA PARK
SCHOOL DISTRICT, Respondents**

OAH No. 2020040036

PROPOSED DECISION

Administrative Law Judge Jennifer M. Russell, Office of Administrative Hearings (OAH), State of California, held a telephonic hearing in the above-captioned matter in Los Angeles, California on April 21, 2020.

Aaron v. O'Donnell and Mellissa Gallegos, Attorneys at Law, represented Buena Park School District (District).

Marianne Reinhold, Attorney at Law, represented respondents Natalie Benda, Ivonne Chaikittirattana, Soo Jin Choi, Julie Hadfield, Tina Nguyen, Grace Park, Catherine Villavicencio, and Colin Woodward, all of whom appeared telephonically.

Tizoc Perez-Casillas, Attorney at Law, represented respondent Polyn Spirtos, who appeared telephonically.¹

Testimony and documentary evidence were received. The record closed and the matter was submitted for decision on April 24, 2020.²

FACTUAL FINDINGS

1. Ramon Miramontes, the District's Superintendent, and Russell Harrison, the District's Chief Personnel Officer for Human Resource and Superintendent's designee, acted in an official capacity at all relevant times to cause all pleadings, notices and other pertinent documents to be filed and served in accordance with Education Code sections 44949 and 44955.

2. Natalie Benda, Ivonne Chaikittirattana, Soo Jin Choi, Julie Hadfield, Tina Nguyen, Grace Park, Catherine Villavicencio, and Colin Woodward (collectively "respondents") are certificated employees of the District.

¹ At the outset of the hearing, respondent Spirtos, a certificated employee of the District, withdrew from the proceedings without testifying or contesting the District Statement of Reduction in Force, which subjects her to non-reemployment for the 2020/2021 school year.

² Pursuant to a Post-Hearing Order issued on April 22, 2020, the record remained open for submissions, including written closing arguments. *Buena Park School District's Post-Hearing Brief* is marked for identification only as Exhibit 18. *Closing Brief of Certain Respondents* is marked for identification only as Exhibit H.

3. On March 9, 2020, the Governing Board of the District (Governing Board) adopted Resolution Number 19-20 (Reduction or Discontinuation of Particular Kinds of Service) (Resolution), which provides for the reduction or discontinuance of the following particular kinds of services no later than the beginning of the 2020/2021 school year:

SERVICE	FULL TIME EQUIVALENT (FTE)
Reduce K-6 Classroom Teaching Services	14.00
Reduce Teacher on Special Assignment-Technology	1.00
Reduce Junior High School Science Teaching Services	1.00
Reduce Counselor Services	2.00
Reduce Program Specialist	1.00
Discontinue Teacher of Special Assignment-Special Projects	2.00
Discontinue Teacher on Special Assignment-English Learners	1.00
Discontinue Elementary School Assistant Principal	1.00
TOTAL CERTIFICATED POSITIONS	23.00

4. The Resolution exempts from layoff certificated employees possessing credentials authorizing them to teach English Learner students. The Resolution states the following:

[T]his Board has determined that due to a significant population of English Language learners with specialized educational needs, a specific and compelling need exists to employ and retain certificated employees who have authorization to teach English Learner ("EL") students, as determined by the California Commission on Teacher Credentialing, and the special training and experience that comes therewith[.]

[C]ompliance with the provisions of the Williams Settlement require that EL students be served by certificated employees with appropriate EL authorizations. Thus, each failure to staff a classroom containing one or more EL students with a certificated employee possessing an appropriate EL authorization is a "misassignment" subject to sanction by the County Superintendent of Schools[.]

5. The Resolution addresses the ability of one employee serving in a position subject to reduction or discontinuance to displace another employee (i.e. bumping) as follows:

[I]n order for an employee serving in a position identified for reduction or discontinuance to be eligible for bumping an employee with less seniority, the senior employee must be both credentialed and competent to render the service currently being performed by the junior employee pursuant to Education Code section[s] 44955, 44956, and 44957. For purposes of implementing this Resolution, a more senior

employee is defined as competent for reassignment into a position currently held by a more junior employee, if he or she: (a) currently possesses a clear or preliminary credential which authorizes instruction in each subject(s) or grade level to which the employee will be assigned at the beginning of the 2020-2021 school year; (b) has previously taught under the credential(s) required for the entire assignment to which the employee will be assigned at the beginning of the 2020-2021 school year in the District for one complete school year within the last 5 year[s]; and (c) has an appropriate EL authorization. In no event may a more senior employee displace a more junior employee unless the more senior employee is both competent and credentialed for the entire assignment of the more junior employee[.]

6. Under the direction of the District's Superintendent, a tentative seniority list containing seniority dates, current assignments, and credentials and certifications, was distributed to District's certificated employees for their review and verification of pertinent information.

7. The District used the seniority list to identify District certificated employees subject to and exempt from layoff and, in the case of certificated employees with equal seniority, their relative order of termination as provided for in Resolution Number 19-21 (Determination of Seniority Among K-8 and Management Certificated Employees with the Same Seniority Date) (Tie-Breaker Resolution), which the Governing Board also adopted on March 9, 2020.

8. The Tie Breaker Resolution sets forth criteria to resolve ties in seniority between certificated employees. It lists each criterion in priority order and provides for a “one step at a time” application to resolve ties in seniority between certificated employees. The Tie Breaker Resolution instructs each criterion shall be used only if application of the preceding criterion does not resolve all ties between employees having the same seniority date. The tie-breaking criteria are listed in priority order as follows:

[1.] Credential status in the area of the current assignment, in order of priority:

(a) Clear professional, standard, life, or general teaching credential;

(b) Preliminary credential;

(c) Intern credential;

(d) Short-term staff permit (STSP), provisional internship credential (PIP), Education Code Option (i.e., Board authorization Sections 44256(b), 44258.2, 44258.3, 44258.7, 44263, 44865) or waiver.

[2.] Possession of a clear or preliminary authorization to teach English Language Learners, in order of priority:

(a) Bilingual Cross Cultural Language and Academic Development (BCLAD), Bilingual Certificated of Competence (BCC), or Bilingual Specialist Credential (BCS) certification;

(b) Any other certification/authorization to teach English Language Learners (e.g., Cross Cultural Language and Academic Development (CLAD), SB 1969 or SB 395 Certificate, Language Development Specialist Certificate, Supplemental Authorization for English as a Second Language, Specially Designated Academic Instruction in English (SDAIE).

[3.] Breadth of clear and preliminary credentials and authorizations, permitting assignment in the widest range of teaching or service areas, in order of priority:

(a) Multiple credentials, with the employee possessing the greatest number having greater seniority;

(b) A single credential with specific subject matter authorization(s), with the employee possessing the greatest number having greater seniority;

(c) A single credential with introductory subject matter authorization(s), with the employee possessing the greatest number having greater seniority;

(d) A single credential with specific supplemental authorization(s), with the employee possessing the greatest number having greater seniority;

(e) A single credential with introductory supplemental authorization(s), with the employee possessing the greatest number having greater seniority;

(f) A single credential.

[4.] Number of verified years of certified employee experience, as a certificated employee for Buena Park School District and up to eight (8) years of certificate experience outside of the Buena Park School District, as determined by actual step placement on the Buena Park School District Certificated Salary Schedule(s), with the employee possessing the greatest number of years having greater seniority.

[5.] Academic degrees from an accredited institution of higher education, in order of priority:

(a) Possession of a Doctorate Degree, earliest date prevails;

(b) Possession of a Masters Degree, earliest date prevails;

(c) Two Bachelors degrees, earliest date prevails;

(d) A single Bachelors degree, earliest date prevails.

[6.] Number of total semester credits earned at an accredited institution of higher education after earning a Bachelors Degree, with the employee possessing the greatest number of credits having greater seniority.

[7] Assuming that the preceding paragraphs do not resolve all ties between employees having the same seniority date, the tie will be broken by drawing of lots with the employee drawing the highest number being regarded as most senior

9. The District applied criteria set forth in the Tie Breaker Resolution to place Ester Choi (Seniority #194), Grace Park (Seniority #195), Tina Nguyen (Seniority #198), Maegan Shoemaker (Seniority #199) in an appropriate order on the District Seniority List. These four certificated employees share an assigned August 5, 2015 seniority date among themselves as well as with other District employees. Ms. Choi, Park, Nguyen, and Shoemaker all hold a clear credential (Criterion [1](a)). Ms. Choi and Park hold bilingual authorizations (Criterion [2](a)), BAKO³ and BCLAD, respectively, thus, they are ranked higher above those employees without a bilingual authorization. Ms. Choi has a higher ranking than Ms. Park because Ms. Choi has two multiple credentials (Criterion [3](a)), which Ms. Park does not have.

10. The District also applied criteria set forth in the Tie Breaker Resolution to place Soo Jin Choi (Seniority #220), Natalie Benda (Seniority # 221), and Ester Noh (Seniority #222) on the District Seniority List. All three certificated employees were assigned an August 8, 2017 seniority date with several other District employees. The August 8, 2017 seniority date assigned to Ms. Choi, Benda, and Noh was subsequently revised when, in early April 2020, Ms. Benda raised questions after discovering records stating she performed paid services prior to her contract start date. The District

³ Chief Personnel Officer Harrison's testimony established although BAKO or Bilingual Authority Korean is not specifically named or identified, the BAKO authorization is included in Criterion [2](a).

investigated and determined Ms. Benda was retained in late July 2017 as a Teacher on Special Assignment (TOSA). Ms. Benda's correct seniority date is July 24, 2017. Ms. Choi and Noh also performed paid services as a TOSA commencing on July 24, 2017. The parties stipulated to re-assign a July 24, 2017 seniority date to Ms. Benda, Choi, and Noh and that the revised seniority date does not change their order of relative seniority on the District Seniority List or overturn any layoff notice.

11. On March 9, 2020, the District Superintendent and the Superintendent's designee provided the Governing Board with a list identifying which permanent or probationary employees would receive notice their services would not be required for the 2020/2021 school year due to the reduction or discontinuation the of particular kinds of services set forth in the Resolution.

12. On March 12, 2020, the District served 16 permanent or probationary employees, in person or via certified mail, with a Preliminary Notice of Recommendation Not to Reemploy for the 2020-2021 School Year, the Resolution, a form Request for Hearing—Certificated Employee Layoff, and copies of Education Code sections 44949 and 44955. The District additionally served seven temporary employees with Release From Temporary Employment; Precautionary Layoff Notice, the Resolution, a form Request for Hearing—Certificated Employee Layoff, and copies of Education Code sections 44949, 44954, 44955.

13. Thirteen permanent or probationary employees receiving preliminary layoff notices filed a timely request for hearing. Three permanent or probationary employees—Ester Park, Meagan Shoemaker, and Angie Sy—filed no request for hearing thereby waiving their rights to a hearing. Ester Park, Meagan Shoemaker, and Angie Sy are precluded from contesting the District's recommendation for their non-reemployment for the 2020/2021 school year. (Ed. Code, § 44949, subd. (b).)

14. None of the seven temporary employees receiving precautionary layoff notices requested a hearing or asserted a claim to permanent or probationary employment status. These seven temporary employees—Brianne Cavallaro, Claire David, Marisa Hopkins, Hannah Jaramillo, Megan Rodriguez, Karen Suh, and Megan Vanderwest—have no hearing rights. (Ed. Code, §§ 44954, subds. (a), (b), & 44949, subd. (b).)

15. On March 30, 2020, the District served the 13 permanent or probationary employees requesting a hearing a Certificated Reduction in Force Hearing Packet (RIF packet), which included a Notice of District Statement of Reduction in Force, a District Statement of Reduction in Force, a form Notice of Participation and pertinent statutory provisions of the Government Code. The 13 permanent or probationary employees were instructed to file a Notice of Participation on or before 4:00 p.m. on April 7, 2020, otherwise the Governing Board may proceed on the District Statement of Reduction in Force without a hearing.

16. Eleven permanent or probationary employees filed a timely Notice of Participation. Marylee Adair and Ester Noh are among the 11 permanent or probationary employees filing a Notice of Participation; however, the District rescinded layoff notices to Ms. Adair and Noh after some of its permanent employees not subject to layoff accepted a retirement incentive. Two permanent or probationary employees—Ester Choi and Tai Lew—did not file a Notice of Participation because the District also rescinded their layoff notices after some of its permanent employees not subject to layoff accepted a retirement incentive.

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17. In sum, after the filing and service of all required pleadings and notices, a total of nine permanent or probationary employees—the eight respondents identified in Factual Finding 2 and Polyn Spirtos⁴—were entitled to a hearing in connection with the District Statement of Reduction in Force.

18. All prehearing jurisdictional requirements are satisfied.

19. Ivonne Chaikittirattana (Seniority #180) holds a Pupil Personnel Services (PPS) School Counseling Credential, a Multi-subject Teaching Credential to teach in an elementary school classroom, and a BCLAD certification. Ms. Chaikittirattana has an August 4, 2014 seniority date.

20. The District hired Ms. Chaikittirattana as a counselor, and she has worked six years in the District as such. Ms. Chaikittirattana has never taught under her multi-subject credential in any K-6 classroom within the District. Ms. Chaikittirattana therefore has not met the competency requirement of previously teaching “one complete school year within the last 5 year[s]” set forth in the Resolution. (See Factual Finding 5.) Ms. Chaikittirattana is not both “competent and credentialed,” as the Resolution requires, for reassignment or “bumping” into a K-6 classroom position currently held by an employee with less seniority.

21. At the hearing and in written closing argument, counsel contended Ms. Chaikittirattana should be nonetheless “slotted” into one of the remaining vacant

⁴ As explained in footnote 1, respondent Spirtos withdrew from these proceedings. The hearing in this matter proceeded without respondent Spirtos’ actual participation. She offered neither evidence nor argument contesting the District Statement of Reduction in Force as it pertains to her non-reemployment.

positions created by the retirement of K-6 classroom teachers with multiple subject credentials. Chief Personnel Officer Harrison testified, after service of preliminary notices and RIF packets, eight of the District's permanent employees not subject to layoff accepted retirement incentives. Five of the retirees were K-6 classroom teachers. The District rescinded a total of four layoff notices, three of which were for K-6 classroom teachers—Marylee Adair, Tai Lew, and Ester Choi. (See Factual Finding 16.) The District determined not to fill the remaining four positions. Harrison credibly testified the District looked ahead and projected a likely reduction in funds during the 2020/2021 school year due to declining inter-district transfers and the resulting decreased average daily attendance within the District. The District therefore determined "to be fiscally conservative and responsible" and not fill all eight positions vacated by employees accepting the its retirement incentives.

22. So long as it acts in good faith, a governing board has wide discretion regarding its budget. (*Hildebrant v. Helena Unified School District* (2009) 172 Cal.App.4th 334.) In determining whether a governing board exercised its discretion in good faith, the governing board's action is measured by the standard set by reason and reasonable people bearing in mind that such a standard may permit a difference of opinion on the same subject. (*Campbell v. Abbott* (1978) 76 Cal.App.3d 796, 808.) No evidence offered at the hearing established the Governing Board lacked good faith exercising its discretion in this matter. The Governing Board's judgment managing its fiscal affairs by statutorily permissible reduction or discontinuation of the particular kinds of services set forth in the Resolution, notwithstanding any subsequent employee retirement, is presumptively sound. Counsel's contention on behalf of Ms. Chaikittirattana is rejected.

23. Colin Woodward (Seniority #205) holds a Single Subject Foundational General Science Teaching Credential. Mr. Woodward's full-time assignment is to teach Science in a Junior High School Teacher position in the District. Mr. Woodward has a November 9, 2015 seniority date.

24. Mr. Woodward is the only science teacher at the District's Beatty Middle School where he currently teaches two periods of required 8th-Grade Science, one period of required 7th-Grade Science, and three periods of "Medical Forensic: Project Lead the Way," an elective course offered to both 7th and 8th grade students that is sometimes known as "Medical Detectives" or "Medical Forensics," or "Medical Science."

25. At the hearing and in written closing argument, counsel contended Mr. Woodward is not subject to lay off to satisfy the 1.0 FTE reduction or discontinuation of "Junior High School Science Teaching Services" set forth in the Resolution (see Factual Finding 3) because "the classes he teaches were for half or more than half his schedule not Middle School Science classes, but rather electives." (*Closing Brief of Certain Respondents* at p. 4.). As stated in Factual Finding 23, Mr. Woodward's full-time assignment is to teach Science in a Junior High School Teacher position within the District. It is not relevant that the actual content of his full-time equivalent assignment is apportioned between required and elective courses offered at the District's junior high school. Mr. Woodward's status within the District providing junior high school science teaching services is properly determined and is uncontested. The particular kinds of services he performs for the District and its pupils—Junior High School Science Teaching Services—is subject to reduction or discontinuation. Counsel's contention on behalf of Mr. Woodward is rejected.

26. The Resolution enumerates particular kinds of services for reduction or discontinuation within the meaning of section 44955.

27. The Governing Board took action to reduce or discontinue services set forth in the Resolution based on the needs of the District and its students. The Governing Board's decision to reduce or discontinue services was not related to the capabilities and dedication of the individuals whose services are proposed to be reduced or discontinued. The Governing Board's decision is neither arbitrary nor capricious. The Governing Board properly exercised its discretion to reduce or discontinue the particular kinds of services.

28. The reduction or discontinuation of services enumerated in the Resolution is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees by the Governing Board.

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

LEGAL CONCLUSIONS

1. Section 44949 provides in pertinent part the following:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefore.

2. Section 44955 provides in pertinent part the following:
- (a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.
- (b) Whenever in any school year the average daily attendance in all of the schools district for the first six months in which school is in session shall have declined[,] whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, 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 certified and competent to render. [¶ . . . ¶]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of the needs of the district and the students thereof.

Upon the request of any employee whose order of termination is so determined, the governing board shall furnish . . . a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group

(c) [S]ervices of such employees shall be terminated in the inverse of the order in which they are employed, as determined by the board in accordance with Sections 44844 and 444845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

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

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

3. The services set forth in Factual Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. The Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious. The decision was a proper exercise of the Governing Board's discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

4. A school district may reduce services within the meaning of Education Code 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 service' 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.)


5. The District properly identified the certificated personnel providing the particular kinds of services the Governing Board directed should be reduced or discontinued.

6. Cause exists pursuant to Education Code sections 44949 and 44945 to reduce or discontinue the services provided by respondents Natalie Benda, Ivonne Chaikittirattana, Soo Jin Choi, Julie Hadfield, Tina Nguyen, Grace Park, Catherine Villavicencio, Colin Woodward and Polyn Spirtos.

ORDER

Buena Park School District may give notice to respondents Natalie Benda, Ivonne Chaikittirattana, Soojin Choi, Julie Hadfield, Tina Nguyen, Grace Park, Catherine Villavicencio, Colin Woodward, and Polyn Spirtos that their services will not be required for the 2020/2021 school year due to the reduction or discontinuation of particular kinds of services.

DATE: May 4, 2020

DocuSigned by:

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings