

**BEFORE THE
GOVERNING BOARD OF THE
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

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

**CERTIFICATED TEACHERS OF THE SANTA MONICA-MALIBU
UNIFIED SCHOOL DISTRICT, Respondents**

OAH No. 2020040372

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on April 30, 2020, from Los Angeles, California.

The Santa Monica-Malibu Unified School District (District) was represented by Elizabeth Zamora-Mejia, of Atkinson, Andelson, Loya, Ruud & Romo.

Respondents Matt Kirk, Brian Patenaude, and Jason Battung were represented by Stephanie Joseph, Staff Attorney, California Teachers Association (CTA).

Respondents Nally Aceves, Richard Bertone, Jennifer Botello, Keri Lynn Hofland, Amanda Lopez, Katherine Merlob, Sarah Paulis, Alana Rattan, Alana Rivera, San Kyung, Soul, Stepanie Tovar, Theresa Wallace, and Ramsey Lambert were represented by Hannah Weinstein, of Rothner, Segall & Greenstone.

Respondent Katherine Pawlick represented herself.

The District submitted a pretrial brief, which is identified as exhibit 18. The District submitted, after the end of testimony, revised versions of exhibits 8 and 13, which will be substituted for the original exhibits. Respondent Patenaude submitted letters endorsing his continued employment by the District, which were submitted on the afternoon of April 30, and are received as exhibit A.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 30, 2020, with the understanding that revised versions of exhibits 8 and 13 would be submitted, and that exhibit A would be submitted on April 30.

On May 4, 2020, after the record was closed, Respondents submitted a brief pertaining to the revised version of exhibit 8, and arguing that the due process rights of Respondent Ramsey Lambert had been violated; this expanded on closing argument made during the hearing. The District submitted a responsive post-hearing brief as well on that same date. The post-hearing briefs were not available to the ALJ until May 5, 2020, as the filing process does not bring such documents directly to the ALJ.

The record is deemed re-opened to receive the briefs. Respondent's brief will be identified as exhibit B, and the District's brief will be identified as exhibit 19.

The matter is again deemed submitted for decision, as of May 5, 2020. The ALJ hereby makes his factual findings, legal conclusions, and orders, as follows.

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FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant Mark Robinson, Ed. D., filed and maintained the Statement of Reduction in Force while acting in his capacity as Assistant Superintendent, Human Resources, for the District.

2. Respondents Nally Aceves, Jason Battung, Richard Bertone, Jennifer Botello, Keri Lynn Hofland, Matt Kirk, Ramsey Lambert, Amanda Lopez, Katherine Merlob, Brian Patenaude, Sarah Paulis, Katherine Pawlik, Alana Rattan, Alana Rivera, San Kyung, Soul, Stefani Tovar, and Theresa Wallace are certificated employees of the District.

3. (A) On February 20, 2020, the Board of Trustees of the District (Board) adopted Resolution number 19-22, pertaining to the reduction of services within the District (Reduction Resolution). The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2020-2021 school year. Specifically, the resolution requires the reduction of 45.4 "FTE"—Full Time Equivalents—by reducing several types of services.

(B) Thereafter, on March 5, 2020, the Board resolved to reduce .6 FTE of another service, so that the total FTE to be reduced was 46. That resolution was number 19-33, and may be referred to hereafter as the "Additional Reduction Resolution."

(C) The Reduction Resolution and the Additional Reduction Resolution were attached to the operative pleading in this matter (the District's Statement of Reduction in Force) and incorporated therein by reference.

(D) The FTEs that the Board determined to reduce by the Reduction and Additional Reduction Resolutions are described as follows:

TK-7 Elementary/Middle Teaching Services (multiple subjects):	10 FTE
Secondary English Language Arts Teaching Services	5 FTE
Secondary Mathematics Teaching Services	3 FTE
Secondary Middle Science Teaching Services	3 FTE
Secondary Social Studies Teaching Services	5 FTE
Secondary Foreign Language Teaching Services (Spanish)	.4 FTE
Secondary Physical Education Teaching Services	5 FTE
Secondary Visual Arts Teaching Services	1 FTE
Secondary Counseling Services	1 FTE
Reading Teaching Services	.5 FTE
Literacy Coaching Services	11.5 FTE
Special Education Preschool Reading Services	.6 FTE
Total Full Time Equivalencies to be Reduced	46 FTE

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4. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.¹

5. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion given the uncertainty regarding the District's financial resources. The District is facing a budget shortfall of seven million dollars, and the pandemic is causing further uncertainty for the District as well.

6. The reduction and discontinuation of services is 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 Board.

7. (A) Prior to March 15, 2020, Respondents and 25 other teachers were served with a written notice that it had been recommended that their services would not be required during the upcoming 2020-2021 school year. Each teacher was served with a packet of materials that included the aforementioned written notice, along with other documents pertinent to the Reduction in Force process. Thus, the teachers were all served with a copy of the operative pleading, the District's Statement of Reduction in Force. Further, each was served with a blank form to

¹ All further statutory references are to the Education Code unless otherwise noted.

request a hearing/request for participation. Copies of pertinent portions of the Code and the Government Code were included in the packets.

(B) All the teachers were served with these documents, an exemplar of which is found in exhibit 6. The documents indicated that if a teacher subject to lay off wanted a hearing, they were required to submit a written request for hearing. Twenty-three teachers requested a hearing. Thereafter, some lay-off notices were rescinded by the District, leaving the 17 teachers identified as the respondents in this matter. It should be noted that three of the notices are deemed precautionary notices. Those were issued to three physical education teachers who had been skipped.

8. After respondents requested a hearing, the District gave notice that a hearing would be held, telephonically, on April 27, 2020. As discussed hereafter, Respondent Ramsey Lambert did not receive a notice of the April 27, 2020 hearing. However, on April 23, 2020, during a telephonic prehearing conference it was agreed by all of the parties that the hearing would be continued to April 30, 2020. Mr. Lambert received notice of the continued hearing on April 29, 2020, and was able to participate in the hearing, testifying on his own part. The particulars of his situation are discussed further below.

9. All jurisdictional requirements have been met.

The Tie-Breaking and the Skip Criteria

10. On February 20, 2020, the Board adopted resolution 19-23 (Tie-Breaking Resolution), which established tie-breaking criteria that would apply if two or more teachers potentially subject to lay off had the same seniority date, or first date of paid service. The Tie-Breaking Resolution contained criteria that examined such matters as a teacher's credentials and authorizations, whether those credentials were clear or

preliminary, provisional or temporary. Other factors were built into the tie-breaking criteria as well, such as whether advanced degrees were held by a subject teacher, and when they obtained those advanced degrees. The Tie-Breaking Resolution was attached to the District's Statement of Reduction in Force and incorporated therein by reference.

11. There was at least one instance when the tie-breaking criteria was applied. No respondent challenged the propriety of the tie-breaking criteria, and no respondent asserted that the tie-breaking criteria had been improperly applied to a given situation such that the respondent's seniority was incorrectly determined as a result of how the tie-breaking criteria was applied to teachers who shared the same seniority date.

12. On February 20, 2020, the Board adopted Resolution 19-24, regarding competency standards and skipping criteria. (Skipping Criteria Resolution.) The purpose of the skipping criteria was to establish the qualifications of junior teachers that might be retained instead of a more senior teacher. The Skipping Criteria Resolution was attached to the District's Statement of Reduction in Force and incorporated therein by reference.

13. In the Skipping Criteria Resolution, the Board determined that a "specific and compelling need exists to employ and retain certificated employees who have special training and experience to provide instruction to" a number of described students or particular areas of instruction. (Ex. 5.) Thus, the recitals of the Skipping Criteria Resolution provide that a compelling need requires retention of teachers to provide instruction for:

(A) English Learner students in bilingual classes, and Spanish Immersion classes, where the certificated employee possesses a BCLAD authorizing such service. (Ex. 5, fourth recital.)

(B) Special Education students with moderate/severe designations, where the certificated employee holds a moderate/severe credential authorizing such service. (Ex. 5, fifth recital.)

(C) A particular course of study where the certificated employee is instructing in the particular course of study or has special training and experience necessary to teach the course of study. (Ex. 5, sixth recital.)

14. The Skipping Criteria Resolution went on to provide that the Superintendent or designee could deviate from seniority and retain junior teachers—skip them—in the following circumstances:

(A) Where the retained teacher can teach English Learner students in bilingual classes and Spanish Immersion classes where the teacher holds a BCLAD and is currently assigned to teach such students within the scope of the BCLAD.

(B) Where the retained teacher holds a moderate/severe special education certificate.

(C) Where the junior teacher holds a CLAD or similar credential, they may be retained to provide special instruction to English Learner students.

(D) In order to provide instructional coaching, a junior teacher could be retained to provide Instructional Coaching if they had one year of Instructional Coaching in the past two years.

(E) In order to meet the need to provide personalized project- based learning, the skipping of teachers where they have experience in personalized project based instruction was authorized.

(F) In order to retain teachers with special training and experience in supervising competitive athletics, skipping teachers with three years of actual experience as an athletic director in the past five years was authorized.

The Seniority List

15. The District compiled a seniority list, which sets out the seniority date of each of the District's certificated employees. The list provides other important information about the employees, such as their current assignment, their credentials and authorizations, and their present school sites.

16. The parties stipulated that there was one defect in the seniority list, because Respondent Stefani Tovar was assigned two seniority dates. The parties stipulated that her proper seniority date is October 10, 2016, and her rank on the list should be 550, not 669.

17. There were no other challenges to the seniority list, which as amended by the parties' stipulation, is found to be accurate for purposes of establishing seniority dates.²

² There appear to be other shortcomings not generally material to resolution of this matter. For example, the seniority list shows Respondent Lambert to be a football coach, but he testified he hasn't coached football since 2017. Ms. Tovar and Ms.

The Failure to Give Proper Notice of Hearing to Respondent Ramsey Lambert

18. Respondent Ramsey Lambert was provided with written notice that he was to be laid off, and he was provided with a packet of related documents, such as the exemplar found in exhibit 6. This included a form Request for Hearing/Participation.

19. Lambert submitted a Request for Hearing electronically, by e-mailing a photo of the written request for hearing to the District. According to the District's witness, Mr. Kelly, the District did not receive a hardcopy of the Request for Hearing. However, Lambert testified that he mailed a hardcopy as well.

20. Mr. Kelly and District staff did not realize that the District had received the e-mail version of Lambert's Request for Hearing. Thus, the District did not serve a notice of the original hearing date (April 27, 2020) upon Lambert, and it did not serve notice of the continued hearing date (April 30, 2020) date on him. However, two other respondents did not send a hard copy of their Requests for Hearing, only providing it by e-mail. Both did so after Lambert sent his e-mail on March 16, 2020. Katherine Pawlik submitted her Request for Hearing on March 19, 2020, and Brian Patenaude

Merlob testified to having credentials such as a BCLAD, but those credentials do not appear on the seniority list. They do show on exhibit 13, however.

submitted his on March 27, 2020, the last day to do so.³ However, they received notice of both hearing dates.

21. Lambert had participated in a Zoom meeting with other teachers affected by this proceeding before the April 30, 2020 hearing date, and heard about the pending hearing. He communicated with his union representative, who contacted Kelly on the morning of the April 29. Kelly went through his e-mails and found Lambert's e-mailed Request for Hearing. Lambert was informed of the hearing the day before it was to take place.

22. At the hearing, Weinstein represented Lambert, questioning witnesses about the reason for Lambert's lay-off when junior teachers were being skipped. Lambert testified during the hearing, bringing out an important fact: that Kelly was wrong when Kelly testified that Respondent Patenaude used his sixth period to train and work with the Girls Lacrosse Team. Patenaude admitted that Lambert was correct that Patenaude did not work with the team during sixth period, testifying that it was during "seventh" period.

23. The District asserted that it waived Lambert's failure to submit a written Request for Hearing. In the circumstances, when it gave notice of hearing to two others who submitted only by e-mail, it could not do otherwise, especially when one of those teachers, Patenaude, is someone the District would skip to the detriment of Lambert.

³ The dates and method of filing for Pawlik and Patenaude are established by the revised version of exhibit 8 submitted on May 1, 2020.

24. Notwithstanding the late notice to Lambert, he has not been prejudiced by that late notice, and he provided testimony that supports his position that he should not be laid off.

The Skipping of Respondents Battung, Patenaude, and Kirk

25. (A) Respondents Battung, Patenaude, and Kirk are physical education (PE) instructors. They are junior (have less seniority) than other PE teachers, but were skipped, that is retained over more senior teachers, by the District. Notwithstanding the District's desire to skip them, they received precautionary lay-off notices.

(B) Kirk and Pattenauade are junior to Respondents Bertone, Lambert, and Wallace. However, Battung is senior to Respondents Lambert and Bertone, as well as Patenaude and Kirk, but he is junior to Respondent Wallace. Wallace, Lambert, and Bertone all testified, as the District's decision to skip Kirk, Battung, and Patenaude leaves Wallace, Lambert, and Bertone exposed to lay-off.

26. None of the skipped respondents fall into categories found in the Skipping Criteria Resolution. The only criteria in that resolution pertaining to the skipping of PE teachers asserts the need to retain teachers with experience in supervising competitive athletics, with experience as an athletic director for three years during the past five years. As developed below, Patenaude has experience as an athletic director, but does not have three years of experience in the last five.

27. Kelly testified that at some point in the process, and inferentially after the Skipping Criteria Resolution was adopted, the District decided that it needed to provide yoga classes through Battung, Girls Lacrosse coaching through Patenaude, and needed to retain Kirk so that he could continue in his role of Head Football Coach for the varsity football team at Santa Monica High. Plainly, these activities are not

referenced in the Skipping Criteria Resolution. Kelly testified that the Board was aware of the efforts to skip Battung, Patenaude, and Kirk by communications through the Superintendent to the Board.

28. (A) Through Kelly's testimony and documentation, the District showed that Battung is experienced in teaching yoga, certified to do so, and near completion of a master's degree in yoga studies from Loyola Marymount University.

(B) Through Kelly's testimony and documentation, the District showed that Kirk has been the Head Football Coach at Santa Monica High since 2018, and there was evidence that he has brought the team from losing records to a winning season and playoff berth in 2019. He has been a football coach for 19 years at the junior college and university level, coaching several position groups, and acting as a coordinator.

(C) Kelly and Patenaude established through their testimony that Patenaude has coached the girls' lacrosse team for two seasons, taking over for the former head coach, who resigned abruptly. Patenaude testified to working as an athletic director for two years at another school, and he was athletic director at Santa Monica High from March through July 2017.⁴ He testified about other skills useful to a coach, such as the ability to edit match video so as to coach the team, and to prepare a video package for two seniors to use in efforts to gain admission, and potentially a scholarship from a college or university. Patanaude testified that he receives a stipend to coach the lacrosse team, and it is fairly inferred that Kirk is similarly compensated for his work coaching the football team.

⁴ See exhibit 17.

29. Battung teaches yoga for several periods. Kirk has a sixth period PE class that is used to coach football players. Kelly asserted that Patenaude had a sixth period PE class devoted to the girls' lacrosse team, but Lambert disputed that, and Patenaude admitted that he coaches the girls after school, in what he labelled seventh period.

30. Respondents Wallace, Lambert, and Bertone testified and all have taught yoga as a unit in their physical education classes, along with other sports including football. None is certificated to teach yoga, but since no competency criteria was established for yoga teachers, they would not need a certificate to take over Battung's classes.. Bertone has high school coaching experience, though not in football, and he has a coach's certificate from the California Interscholastic Federation or CIF. Lambert was the head football coach at Santa Monica High from 2015 until partway through the 2017 season.⁵

The Claims of Respondents Merlob, Tovar, Paulis

31. (A) Sarah Paulis is credentialed to teach English, has a master's degree in that subject as well as a BCLAD. She started the year teaching four periods of English, and coached soccer during sixth period and after school. Her seniority date is August 20, 2019, number 603 on the seniority list.

(B) Paulis's position changed to Student Activities Director in November 2019, and she is not teaching English at this time. Her current position has her overseeing and fostering activities with the Associated Student Body, as well as other coordinating activities, such as managing the school calendar. She asserts that since

⁵ Exhibit 12, the seniority list, shows him as "football coach."

she is not now teaching English, she should not be laid off with other English teachers.

32. Katerina Merlob is being laid off as part of the reduction of secondary social studies teachers (along with Ms. Pawlick). Her seniority date is August 19, 2019, and she is number 661 on the seniority list. She has a single subject social studies credential, and a BCLAD and AVID certificate. She teaches 10th grade Econ/Government and history in an immersion seminar, under the aegis of her BCLAD. She has three non-immersion seminars as well. Respondent Merlob asserts that she is within the skip criteria pertaining to skipping those currently teaching immersion classes with a BCLAD. (See Factual Finding 14(A).)

33. (A) Respondent Stefani Tovar holds several credentials, including a multi-subject credential, a BCLAD, a reading specialist credential, and a librarian services credential. As set out in Factual Finding 16, her seniority date is October 10, 2016, and she is number 550 on the seniority list. The District intends to lay her off (as to .5 FTE) as part of the reduction of reading teaching services.

(B) Respondent Tovar testified that she teaches half time as a Spanish Intervention Teacher, providing instruction in Spanish, and under her BCLAD. Essentially, she asserts she should have been skipped because of her use of her BCLAD to instruct English Learners.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 9.

2. (A) A District may reduce particular kind of services (PKS) 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 Court of Appeal has made clear that a PKS reduction does not have to lead to fewer classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-85; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 (*San Jose Teachers*) [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.).

(B) The services to be discontinued by the District are particular kinds of services within the meaning of 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. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. This Legal Conclusion is based on Factual Findings 3 through 6 and the foregoing authorities.

3. (A) 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.) At

the same time, a junior teacher may be given retention priority by the District over one or more senior teachers, that teacher may be “skipped”—that is not laid off while more senior employees are laid off—if the junior teacher possesses superior skills or capabilities not possessed by more senior colleagues, which must be necessary to teach a course or course of study that is specifically needed in the District. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.)

(B) No teacher who was bumped by a more senior teacher showed that they were improperly bumped by the senior teacher. At the same time, no respondent contended or established that they were entitled to bump a junior teacher.

1. 4. (A) As generally discussed in Legal Conclusion 3, a school district may deviate from seniority through skipping, which is governed by section 44955, subdivision (d). The statute provides that there are two reasons a district may skip a junior teacher. First, it may do so pursuant to section 44955, subdivision (d)(1), where the district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, 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.

(B) Under subdivision (d)(2), the district may also skip junior teachers in order to achieve or maintain constitutional requirements related to equal protection of the laws.

5. (A) It can be said that the Legislature established four justifications within section 44955, subdivision (d), for a skipping over a junior employee and terminating a senior employee instead. First, a district may skip over a junior teacher and terminate a senior teacher if “the district demonstrates a specific need for personnel to teach a specific course or course of study.” Second, a district may skip if “the district demonstrates a specific need for personnel . . . to provide the services authorized by a services credential with a specialization in . . . pupil personnel services.” Third, a district may skip if “the district demonstrates a specific need for personnel . . . to provide the services authorized by a services credential with a specialization in . . . health for a school nurse.” (§ 44955, subd. (d)(1).) Fourth, a district may skip to maintain or achieve “compliance with constitutional requirements related to equal protection” (§44955, subd. (d)(2).)

(B) Furthermore, a district must demonstrate that the certificated employee who would be skipped has special training and experience necessary to provide the instruction or service in question.

(C) None of the skipped teachers are providing services under a services credential, whether personnel services or nursing, and the District has not contended it has skipped junior teachers under section 44955, subdivision (d)(2).

(D) Thus, the only relevant statutory skipping justification in this matter is the one pertaining to the District demonstrating a specific need for personnel to teach a specific course or course of study.

6. Respondents correctly argue that coaching competitive sports is not the teaching of a specific course or course of study. And, Respondents argue that one does not have to be a teacher to coach a team engaged in interscholastic competitive

sports, citing California Code of Regulations (CCR), title 5, section 5590. On that latter point, they are correct. CCR section 5590 provides that a coach is a temporary employee, and section 5592 makes it clear that a school district does not have to hire certificated persons to coach a competitive sports team.

7. Coaching football, lacrosse, or any other competitive sport is not a course or course of study within the meaning of section 44955, subdivision (d). Arguably teaching yoga constitutes a course, but that issue need not be resolved because Battung is senior to Lambert, Bertone, Paenaude, and Kirk. However, he is junior to Wallace, and may not be skipped to the detriment of Wallace.

8. There was no Board resolution to skip football and lacrosse (or any other) coaches, nor was there a resolution to skip dedicated yoga instructors. Kelly argued that the Code does not require written skip criteria. While it may not do so, the Code contemplates more transparency than Kelly would provide. Further, the Board did make a resolution for skipping, and that resolution was incorporated by reference into the operative pleading. That gave notice to all who received lay-off notices the reason some junior teachers might be retained. Incorporating the Skipping Criteria Resolution into the pleading amounted to a judicial admission, confining the issue of skipping to the pleading and the Skipping Criteria Resolution. (See generally 4 Witkin, California Procedure, § 452 (2020).) Having some undisclosed skipping criteria tends to deny due process, and in any event the unwritten skipping criteria used to protect Battung, Patenaude, and Kirk does not validly pertain to a course or course of study.

9. The District may not skip Kirk and Patenaude to the detriment of Wallace, Lambert, and Bertone, as the two coaches are junior to Wallace, Lambert and Bertone, and their skipping cannot be justified. The District may not skip Battung to the detriment of Wallace, who is senior to him, as the Skipping Criteria Resolution does

not speak to yoga instruction. To the extent that the District remains intent on eliminating five FTE of secondary PE teachers, it must retain Wallace, and lay off the five teachers junior to her: Battung, the next most senior, then Lambert, Bertone, Patenaude, and Kirk, the most junior. If it is content to eliminate three FTE, it must lay off Kirk, Petnaude, and Bertone, the three most junior PE teachers. Patenaude may not be skipped due to his experience as an athletic director; that is not a course of study or a service, and he does not have three years of experience in the last five, falling short by several months. (Factual Findings 14(F), 26, 28(C).)

10. Lambert has asserted that one-day of notice of the hearing violated his due process rights. The District's position that he failed to comply with the proper method of service of a request for hearing is belied by the evidence that Respondents Patanaude and Pawlick also served their requests electronically. However, as set forth in Factual Findings 18 through 24, Lambert he was not prejudiced by the short notice, as he participated in the hearing, providing relevant evidence about the nature of the coaching and PE assignments, and eliciting the fact that he has been a head football coach.

11. The claims of Respondent Paulis are not convincing. She is credentialed to teach English, and is junior to other English teachers. That she is currently not assigned to English classes ignores the fact that she was at the beginning of the school year, and she might have been re-assigned to teach English in the coming school year. The District may reduce the ranks of those who can teach English in order to eliminate some FTE of English instruction.

12. The claims of Respondents Merlob and Tovar are also not convincing. Essentially, they argue that they should have been skipped. Skipping is a power

awarded to a district, and not to a teacher; teachers get to bump others, but cannot demand to be skipped.

13. Based on the foregoing, Respondent Wallace must be retained as a District employee, and dismissed from this case. When that has occurred, no junior certificated employee will be retained in a position which a senior employee is certificated and competent to fill.

14. The evidence established that the respondents are competent and dedicated teachers and coaches. That the unwritten skipping criteria cannot justify skipping Battung, Patenaude, and Kirk is not a finding that they are not well-trained coaches or instructors. Certainly the letters of support for Patenaude show him in a fine light. The fact that Paulis, Tovar and Merlob cannot sustain their arguments in no way detracts from their professional abilities. At bottom, the only issue is that the remaining respondents are low on the seniority list.

ORDER

The Statement of Reduction in Force is dismissed as to Respondent Theresa Wallace. A final lay-off notice shall not be issued to her. The District may lay off the remaining respondents, in inverse order of seniority, with the lay-off of PE teachers subject to Legal Conclusion 9.

DATE: May 6, 2020

DocuSigned by:
Joseph D. Montoya
JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings

