

**BEFORE THE
GOVERNING BOARD OF THE
MOORPARK UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Reduction in Force of:

**CERTIFICATED EMPLOYEES OF THE MOORPARK UNIFIED
SCHOOL DISTRICT,**

Respondents.

OAH No. 2021030756

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter remotely by video and teleconference on April 14, 2021.

Jeff C. Marderosian, Attorney at Law, represented complainant, Dr. Kelli Hays, Superintendent of Schools, Moorpark Unified School District (District). Carlos R. Perez, Attorney at Law, represented respondents Jessica Martin and Zosia Blair. Joshua Adams, Attorney at Law, represented respondents Christopher Kilbane, David Bryan Sudberry, and Cara Tedrick. There were no unrepresented respondents.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 14, 2021.

SUMMARY

The District's Board of Education (Board) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2021/2022 school year for budgetary reasons. The decision was not related to the teaching abilities of the teachers whose services were to be reduced or eliminated. District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," "skipping," and breaking ties between employees with the same first dates of paid probationary service. The selection process complied with Education Code requirements. The Accusation is sustained as to respondents Martin and Blair, and dismissed as to precautionary respondents Kilbane, Sudberry, and Tedrick.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant filed the Accusations naming each of the respondents in her official capacity, and caused all pleadings, notices, and other papers, including the Accusations, to be filed and served upon respondents under the provisions of Education Code sections 44949 and 44955.¹ All pre-hearing jurisdictional requirements have been met with respect to the District and all respondents.

¹ All statutory references are to the Education Code except as noted otherwise.

2. All five respondents—Zosia Blair, Jessica Martin, Christopher Kilbane, David Bryan Sudberry, and Cara Tedrick—are certificated employees of the District.

3. The parties stipulated as follows: all respondents were properly served and received all relevant documents; each respondent timely filed a notice of participation (comprising a notice of defense and request for hearing); and all jurisdictional issues are resolved and stipulated to.

Reduction in Force

4. On February 23, 2021, the Board adopted resolution number 2020-2021-10, entitled “Resolution to Decrease the Number of Certificated Employees Due to a Reduction in Particular Kinds of Services” (Resolution) to reduce or discontinue the number of certificated employees providing particular kinds of certificated services (PKS) at the close of the 2020-2021 school year by a corresponding number of full-time equivalent (FTE) positions.

5. The Resolution specifies the Reduction or Elimination of PKS, as follows:

PKS	FTE
Elementary Education (Multiple Subject)	7.0
Middle School English	3.0
High School English	2.2
High School Math	2.5
Middle School Math	2.0
High School Biological Science	1.0
Middle School Science	2.2

Middle School Social Science	2.0
Middle School Physical Education	1.2
Middle School Exploratory 6 Elective	0.2
Middle School Exploratory 6/8 Elective	0.2
Middle School STEM Elective	0.2
CTE: Arts, Media, Entertainment	0.6
High School Elective – SAS	0.2
Middle School Spanish	0.5
Total	25.0

6. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under section 44955.

7. The Board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of discretion and was related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District, including temporary employees hired to allow the District to comply with COVID-19 class-size and distancing requirements, as determined by the Board.

8. The District received COVID-19 funds to reopen pre-kindergarten through 12th grade in October 2020 and had to reduce class size to allow social distancing for those students choosing to attend school in person. The District hired 14 temporary teachers to help reduce class size, using the one-time funding, which

had to be spent by December 31, 2020. After December 31, 2020, the District had to convert the temporary teachers to probationary employees. The District anticipates returning to pre-pandemic conditions for the 2021/2022 school year and is, therefore, reducing services performed by, and laying off, the specially funded teachers because the District will be able to increase class size. The District will be allowed to space classroom desks three-to four-feet apart rather than the six feet required during the 2020/2021 school year, and more students will be allowed in each classroom.

9. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid probationary service) current assignments and locations, credentials, authorizations, and employment status (permanent, probationary or temporary). At hearing, the District made no changes to the seniority list. The evidence established that the Seniority List is accurate as to the information contained therein.

10. The Resolution explicitly reserved to the District the ability to "skip" employees under section 44955, subdivision (d), that is, "to deviate from terminating certificated employees in order of seniority, based on a specific need for personnel who possess special training, experience, and/or competency to teach [a] specific course or course of study or to provide specific services, which others with more seniority do not possess" (Ex. 1.) The Resolution allows the District to skip an employee who is the "Current holder of a Single Subject Physical Education Credential and a Single Subject Health Education Credential and both (1) is currently assigned to [a] Physical Education position and a Health Education position and (2) the District intends to continue the dual assignment in the 2021-2022 school year." (Ex. 1.)

11. The Board directed the Superintendent or her designee to serve notices of recommendation not to reemploy in accordance with and in the manner prescribed by sections 44949 and 44955. As the parties stipulated, District personnel provided

timely notice no later than March 15, 2021, to certificated employees that their services would not be required for the following school year. The Board properly considered all known attrition when determining the number of preliminary layoff notices to be delivered to its employees.

12. The Board adopted tiebreaker criteria, in exhibit A to the Resolution, to be used in determining the order of termination of certificated employees who first rendered paid probationary service to the District in a probationary position on the same date.

13. The Board adopted competency criteria, in exhibit B to the Resolution, resolving that "a certificated employee subject to layoff shall be considered competent to perform a service if and only if . . . [t]he certificated employee has *under the appropriate credential performed the service for one complete school year within the last ten (10) years*. One complete school year is defined as actual service of at least 75% of the number of days the regular schools of the District are in session" (Ex. B to the Resolution; emphasis added.)

14. On April 12, 2013, the District filed and timely served an accusation (Statement of Reduction in Force), copies of Resolution Number 2020-2021-10, a Statement to Respondent, a District Statement of Reduction in Force, a blank Notice of Participation that incorporated provisions of a notice of defense and a request for hearing, and pertinent sections of the Government and Education Codes upon respondents. Each respondent timely filed a Notice of Participation.

15. During the hearing, the District did not rescind any layoff notices.

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

Skiping and Bumping

MIDDLE SCHOOL PHYSICAL EDUCATION

17. The Resolution called for a reduction of 1.2 FTE in middle school physical education.

Jessica Zaragoza

18. Applying the Resolution, the District started with the least senior physical education teacher, Jessica Zaragoza, who had a seniority date of August 17, 2020.

19. The Board hired Ms. Zaragoza to be a temporary employee only for the 2020/2021 school year, as part of implementing its COVID-19 plan. Ms. Zaragoza has a single subject biological sciences credential and an English Language Acquisition Status (ELAS) certification. The Board issued Ms. Zaragoza an authorization to teach physical education during the 2020/2021 school year based on units she had that qualified her to teach that subject.

20. Board authorizations are effective annually and expire at the end of the school year. The Board has not yet determined or issued authorizations for the 2021/2022 school year.

21. Ms. Zaragoza's assignment at Chaparral Middle School included .2 FTE teaching middle school physical education. The District reduced Ms. Zaragoza's assignment by .2 FTE as to physical education.

22. The Resolution also called for a reduction of 2.2 FTE in middle school science. Ms. Zaragoza's duties at Chaparral Middle School included .8 FTE teaching middle school science. Because Ms. Zaragoza was intended to be a temporary employee only until the expiration of the 2020/2021 school year, the District decided neither to create a part-time middle school science position nor treat Ms. Zaragoza's middle school science and middle school physical education services as "bundled," and decided not to skip Ms. Zaragoza. Thus, Ms. Zaragoza's positions have been completely eliminated.

Respondent Jessica Martin

23. The District next chose to eliminate respondent Jessica Martin's 1.0 FTE in physical education to achieve the District's total reduction of 1.2 FTE of middle school physical education (having eliminated .2 FTE taught by Ms. Zaragoza). Ms. Martin teaches 1.0 FTE of physical education at Chaparral Middle School. Her seniority date is October 15, 2010, and she has a clear single subject credential in physical education and a Crosscultural Language and Academic Development (CLAD) certification. Ms. Martin has also received a certificate in kinesiology and in athletic training education, with an emphasis in sports medicine.

Precautionary Respondents Kilbane, Sudberry, and Tedrick

24. Ms. Martin is senior to Christopher Kilbane, David Bryan Sudberry, and Cara Tedrick, all of whom teach physical education and all of whom received precautionary notices in this case. If certificated employees who received precautionary reduction-in-force notices are, as a result of lack of seniority, not to be retained, they have the same due process rights under the Education Code as those receiving non-precautionary notices.

25. Assistant Superintendent for Personnel, Dr. Cathy Lasure, testified that the Board's skipping criteria apply to Mr. Sudberry. Mr. Sudberry holds a "bundled" position of both physical education and health. Ms. Martin challenged the skip, notably on the grounds that bundling physical education and health is arbitrary.

26. Mr. Sudberry's seniority date is August 15, 2016. He has a single subject physical education credential, a single subject health education credential, and a CLAD certification. Mr. Sudberry's assignments consist of .6 FTE of physical education at Campus Canyon (K-8) and at the High School at Moorpark College, and .4 FTE of health at Campus Canyon, for a total of 1.0 FTE. He teaches three periods of physical education and two periods of seventh grade health at Campus Canyon middle school, and one additional period of ninth and tenth grade physical education at the High School at Moorpark College, across the street from Campus Canyon. The additional period at the high school, for which Mr. Sudberry volunteered and for which he receives additional pay, is a temporary online class intended only for the 2020/2021 school year during the COVID-19 pandemic. Mr. Sudberry testified that, if his assignments were reduced by .6 FTE, he would have to seek employment elsewhere, though he loves working for the District.

27. The District chose to skip Mr. Sudberry because breaking up a bundled position and eliminating his physical education assignment would leave only a part-time position teaching health, which the District does not believe would be in the best interests of its students. Dr. Lasure testified that the District hired Mr. Sudberry for the bundled health education and physical education assignments because the District had a need to fill both functions. He is the only combined physical education and health teacher at Campus Canyon, the small school where is currently assigned.

28. Unlike Mr. Sudberry, who has both a physical education and a health education credential and who was hired to teach both subjects, Ms. Martin only holds a physical education credential and would not be competent to teach health. Dr. Lasure testified that, if the District did not bundle Mr. Sudberry's assignments and eliminated his physical education assignment, she would have to create two part-time positions. Ms. Martin would teach .6 FTE of physical education, and Mr. Sudberry would teach .4 FTE of health, i.e., less than half time.

29. In addition to challenging Mr. Sudberry's skip, Ms. Martin desires to bump into Mr. Kilbane's and Ms. Tedrick's physical education teaching assignments.

30. Mr. Kilbane's seniority date is August 20, 2018. He has a single subject physical education credential, a foundational math credential, and an ELAS certification. Mr. Kilbane teaches at Moorpark High School, where his assignments include .2 FTE of athletic conditioning-track, .4 FTE of Foundations of Algebra, and .4 FTE of Math II College Preparatory (CP), for a total of 1.0 FTE. These assignments comprise teaching four math classes and one physical education class (a sixth period athletic conditioning class for students in track program). Mr. Kilbane, as one of two track coaches at the school, is the assistant sprints coach and the junior varsity track coach. Only track athletes are in Mr. Kilbane's physical education class, and he tailors their conditioning program accordingly. Because of his physical education credential and his position as a track coach, Mr. Kilbane is able to give track students physical education instruction in his conditioning class so they do not have to take another physical education class.

31. In contrast to Ms. Zaragoza's services, the District treated Mr. Kilbane's services as bundled. He only teaches one period of physical education, to condition track students; if he lost that .2 FTE, the District would risk losing him as a math

teacher and a track coach. Mr. Kilbane testified that, if he is laid off only from the athletic training–track position, he will reevaluate continuing as a track coach.

32. Ms. Tedrick’s seniority date is August 17, 2015. She has a single subject English credential, a multi-subject foundational-level math credential, and a CLAD certification, as well as a Board authorization in physical education. Ms. Tedrick teaches .2 FTE of athletic conditioning–cheer, .6 FTE of math, and .2 FTE of Specially Designed Academic Instruction in English (SDAIE), all at Moorpark High School, for a total of 1.0 FTE. She testified she is certified to teach cheer, and has safety and first aid training. Ms. Tedrick is assigned four periods of math, and has a sixth period assignment teaching athletic conditioning–cheer, which focuses on competitive cheer and stunt. The class includes sports-specific conditioning, jump training, stunting, and tumbling progressions, as well as material review and the creation of performances for games and rallies. In the second semester, Ms. Tedrick teaches Title IX sport of stunt, an emerging sport for women’s athletics, involving more elite stunt routines. Ms. Tedrick is also the only coach and advisor for that program. Before the pandemic caused all of her physical education classes to be virtual, everyone in Ms. Tedrick’s athletic conditioning–cheer class was on the freshman or junior varsity cheer team. As the cheer and stunt coach at Moorpark High School, Ms. Tedrick coached three separate teams, each requiring 60 to 90 minutes of practice.

33. The District also treated Ms. Tedrick’s services as bundled. The Board authorized Ms. Tedrick to teach physical education for one period because she is a coach. If she lost the .2 FTE as a physical education teacher, teaching athletic conditioning–cheer, the District would also risk losing her as a math teacher and as a cheer coach. Ms. Tedrick testified that, if her time is reduced, it would require reducing the size of the cheer program, providing fewer students an opportunity to participate.

34. Dr. Lasure argued that Ms. Martin did not satisfy the competence requirement in the Board resolution and was, therefore, ineligible to bump more junior physical education teachers. To be competent, the employee must have, under the appropriate credential, performed “the service” for one complete school year within the last ten years. (See Factual Finding 13. That the criterion does not state “within the last 10 *school/years*” is presumed to be a deliberate Board decision, and no grounds were offered to demonstrate it was arbitrary or capricious.) Ms. Martin did not teach high school track or high school cheer for one complete school year within the past 10 years, from March 2011 to March 2021.

35. In fall 2010, Ms. Martin was assigned to teach at Moorpark High School. She helped coach girls’ varsity basketball in fall 2010, and was an assistant junior varsity softball coach in spring 2011. Ms. Martin had no coaching assignment in 2010/2011 relating to track or cheer. In addition to coaching basketball and softball, Ms. Martin also was assigned a sixth period conditioning class that served as a holding place for student athletes in various sports programs who were waiting for their specific sports coaches to arrive. Students whose parents signed a waiver only had to show up to sixth period for attendance; they were then permitted to leave campus and return when their coach arrived for practices and competitions. Dr. Lasure testified Ms. Martin’s sole duty was to take attendance and issue a grade based on attendance.

36. Ms. Martin testified that the conditioning class she taught for some or all of the 2010/2011 school year, her first year as a full-time teacher, was the last time she taught athletic conditioning. She just took attendance for boys’ soccer students, but testified she actually taught conditioning for girls’ cheer. Though she was not a cheer coach, she conducted drills and worked on conditioning and strength for the entire period. The students would then work on cheer with their coach after the conditioning

class. The District has not located records pertinent to Ms. Martin's 2010/2011 conditioning class.

37. The District's seniority list, in describing Mr. Kilbane's and Ms. Tedrick's assignments, makes no mention of their coaching duties, only of their athletic conditioning class duties. Ms. Martin argued that the District produced no evidence that any particular skill is required for either one of their assignments beyond the possession of the respectively appropriate credential. Dr. Lasure, however, persuasively disputed Ms. Martin's testimony about the generic nature of the conditioning courses, testifying that Mr. Kilbane, a high school track coach, and Ms. Tedrick, the high school cheer coach, are able to tailor the conditioning classes to the needs of the track and cheer teams. For example, Dr. Lasure testified District students cannot compete in cheer without a physical conditioning–cheer teacher who is a certified stunt coach. Ms. Tedrick has special certifications to teach cheer and stunt. Ms. Martin, who was unable to clearly remember her 2010/2011 assignments, has not taught conditioning since spring 2011. Dr. Lasure is found to have superior knowledge of the current demands of that assignment.

38. Ms. Martin is subject to layoff and lacks competency to bump any of the precautionary respondents.

39. Even were the District's reliance on its competency criterion misplaced, Dr. Lasure argued, the Resolution was directed only at reducing middle school physical education, not all physical education. Mr. Kilbane and Ms. Tedrick do not teach middle school physical education. Moreover, though she teaches physical education, Ms. Martin lacks experience in coaching cheer and competitive stunts, in coaching track, and in teaching specialized condition courses tailored to student athletes engaged in those activities. No evidence was introduced that shows the District has any improper

reason to single out Ms. Martin and decide she cannot bump into positions held by more junior employees. It is not arbitrary and capricious to attempt to retain Mr. Kilbane and Ms. Tedrick to support the needs of the cheer and track students and to avoid breaking up bundled full-time positions to create several part-time positions, creating a risk of the District losing both math teachers, each of whom wishes to work full time.² Dr. Lasure testified the Board also took into account where the precautionary respondents teach. Ms. Martin cannot replace the three precautionary respondents' fractional FTE's because each of the precautionary respondents teaches at a different high school, and two of them teach different physical education classes during the same period.

40. The Education Code and case law allow the District to avoid these problems in good faith. In *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, the court held that school districts have discretion to define positions and the manner in which they will be taught as long as it is done in good faith. In determining whether the decision of a school board is in good faith, its action is measured by a reasonableness standard, 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.)

² Nevertheless, Ms. Tedrick's Board authorization to teach physical education will expire at the end of this school year. The Board may reauthorize her in August, but as of the date of this hearing she has not been reauthorized and is not currently credentialed to teach physical education in the 2021/2022 school year. Were Ms. Martin competent to bump into the athletic conditioning–cheer assignment, she would be credentialed to do so.

41. Applying *Hildebrandt*, the District need not allow more senior employees to bump into partial positions that the District has determined should be bundled with other needed services. Since the District is reducing and eliminating positions to save money and adjust its teaching staff after hiring additional employees to allow it to comply with rules governing schools during the pandemic, it is reasonable for the District to bundle courses. The District is allowed this type of flexibility in making assignments and reassignments.

CTE TEACHER AND SAS ELECTIVE TEACHER

42. Zosia Blair has a clear Designated Subjects Vocational Education credential with an Office Occupations certification. She teaches .6 FTE in computer graphic arts (three periods), .2 FTE Structured Academic Support (SAS) (one period, a Macintosh computer lab), and .2 FTE in Introduction to Computing/MBA at Moorpark High School. Ms. Blair has taught at Moorpark High School for 23 years; she wrote the computer graphic arts course to get students fine arts credits.

43. The Resolution provides for a Career Technical Education (CTE) reduction of .6 FTE and a high school SAS elective reduction of .2 FTE. The credential required to teach the courses offered at Moorpark High School is a CTE credential in Arts, Media, and Entertainment. Dr. Lasure testified that, through an audit, the District learned that Ms. Blair is teaching CTE classes (computer graphic arts and the SAS elective) that she is not credentialed to teach. The District informed Ms. Blair of this deficiency in November 2020 so she could begin to correct it. The District, however, cannot assign Ms. Blair these classes for the next school year because she is not credentialed or competent to teach this SAS course; if audited while Ms. Blair is teaching, the District would have to discontinue the class.

44. Ms. Blair is the only CTE teacher identified in the Resolution. Ms. Blair is not the only employee teaching the SAS high school elective. She cannot bump anyone more junior who teaches SAS because she does not have the appropriate credential. Dr. Lasure testified that, if service in these two reduced areas is reinstituted, Ms. Blair will be eligible to be rehired and the District will offer the positions to Ms. Blair, but only if she is properly credentialed at the time.

45. Ms. Blair testified and offered documentation to show she has been working with the Ventura County Department of Education, and with the District, to correct the deficiency and obtain her credential.

46. Respondents Zosia Blair, Jessica Martin, Christopher Kilbane, David Bryan Sudberry, and Cara Tedrick all testified as to their respective qualifications. Each respondent established that he or she is highly qualified and competent to teach their respective current assignment.

47. None of the respondents established that any other certificated employee with less seniority than each respondent is being retained to render a service which each respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for these proceedings exists under sections 44949 and 44955. The parties complied with all pre-hearing procedural requirements.

2. The services listed in Factual Findings 4 and 5 are particular kinds of service that may be reduced or discontinued. (See § 44955.)

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services listed in Factual Findings 4 and 5. The decision to reduce was neither arbitrary nor capricious but related solely to the welfare of the District's schools and the pupils within the meaning of section 44949, as set forth at Factual Findings 6 through 16.

4. Cause exists to terminate the services of respondents Jessica Martin and Zosia Blair, as set forth in Factual Findings 17 through 47.

5. Cause does not exist to terminate the services of respondents David Bryan Sudberry, Christopher Kilbane, and Cara C. Tedrick, as set forth in Factual Findings 17 through 41, 46, and 47.

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

7. Cause exists to give notice to respondents Jessica Martin and Zosia Blair that their services will not be required for the 2021/2022 school year by reason of the findings herein.

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ORDER

The Accusation against respondents Jessica Martin and Zosia Blair is sustained. The District may notify them that their services will not be required for the 2021/2022 school year due to the reduction of particular kinds of service.

The Accusation against respondents David Bryan Sudberry, Christopher Kilbane, and Cara C. Tedrick, is dismissed. The District shall not give those respondents final layoff notices for the 2021/2022 school year.

DATE: 05/05/2021


Howard W. Cohen (May 5, 2021 15:05 PDT)

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings