

**BEFORE THE GOVERNING BOARD  
OF THE INGLEWOOD UNIFIED SCHOOL DISTRICT**

In the Matter of the Reduction in Force of  
Certificated Staff of Inglewood Unified  
School District,

Respondents.

OAH No. 2015040175

**PROPOSED DECISION**

This matter came on regularly for hearing on April 23, 2015, in Inglewood, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Sharon J. Ormond and Aaron V. O'Donnell, Attorneys at Law, represented the Inglewood Unified School District (District).

Lawrence B. Trygstad, Attorney at Law, represented the respondents.

Oral and documentary evidence was received. The matter was submitted for decision on April 23, 2015.

At the commencement of the hearing, the District rescinded the layoff notices of Respondents Nyieshia Irby, Christopher Wade, and Mary Spruce.

**SUMMARY OF PROPOSED DECISION**

The District is currently under the authority of a State Trustee, Dr. John Brand (State Trustee), who was appointed after the District borrowed \$29,000,000 from the State of California to help cover its expenses. The State Trustee has assumed all legal rights, duties and powers of the District's Board of Education pursuant to Education Code section 41326.

The State Trustee determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

District staff carried out the State Trustee's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

## FACTUAL FINDINGS

### *Parties and Jurisdiction*

1. Nora Roque, Executive Director, Human Resources, made and filed the District Statement of Reduction in Force in her official capacity.
2. Respondents are certificated District employees in the K-12 regular education program.

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3. On March 9, 2015, the State Trustee adopted Resolution No. 34-2014-2015 that proposed the layoff of 51 full-time equivalent (FTE) certificated positions in the K-12 regular education program. Specifically, the resolution provided for the reduction or elimination of the following particular kinds of services:<sup>1</sup>

<u>Service</u>	<u>FTE Reduction</u>
Eliminate Executive Director of School and Community Relations	1.00 FTE
Eliminate Executive Director of Secondary Support Services	1.00 FTE
Eliminate Executive Director of Strategic Development Initiative	1.00 FTE
Eliminate Executive Director of School Improvement	1.00 FTE
Eliminate Principal on Special Assignment—SIG	1.00 FTE
Eliminate Coordinator – ASES Program	1.00 FTE
Eliminate Assistant Principal – Elementary Services	3.00 FTE
Reduce K-6 Elementary Teaching Services	6.00 FTE
Reduce 7-8 Language Arts Teaching Services	2.00 FTE
Reduce 7-8 Social Science Teaching Services	2.00 FTE
Reduce 7-8 Math Teaching Services	1.00 FTE
Reduce 7-8 Study Skills Teaching Services	.20 FTE
Reduce 9-12 English/Language Arts Teaching Services	1.00 FTE
Reduce 9-12 Social Studies Teaching Services	1.00 FTE
Reduce 9-12 Physical Education Teaching Services	1.00 FTE
Reduce 9-12 Foreign Language – French Teaching Services	1.00 FTE
Reduce 9-12 Computer Applications Teaching Services	1.00 FTE
Reduce 9-12 Industrial Arts – Home Economics Teaching Services	1.00 FTE
Reduce Counseling Services	1.00 FTE
Eliminate Program Instructional Facilitator Services	14.00 FTE
Eliminate Reading 180 Teaching Services	3.80 FTE
Eliminate Instructional Coach – ELA	2.00 FTE
Eliminate Instructional Coach – Math	2.00 FTE
Eliminate Instructional Coach – Professional Development	1.00 FTE
Eliminate Instructional Coach – Literacy	<u>1.00 FTE</u>
<b>TOTAL</b>	<b>51.00 FTE</b>

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<sup>1</sup> In addition to reductions in the K-12 program, the resolution also provided for a reduction of 33 hours per day in the Adult Education program. The Adult Education reductions were not at issue in the present action.

4. Executive Director Roque also provided written notice to the State Trustee of her recommendation not to reemploy certain certificated employees, including the respondents, and that notice be provided to those employees that their services would not be required for the following school year.

5. On or before March 15, 2015, the District served, by personal service, certified mail, and/or United States Mail, on each respondent a written notice that it had been recommended that notice be given to each respondent, pursuant to Education Code sections 44949 and 44955, that his/her services would not be required for the next school year (District Statement of Reduction in Force). Each written notice set forth a reason for the recommendation and noted that the State Trustee had passed a Resolution (Resolution Number 34-2014-2015) reducing the certificated staff.

6. Each respondent timely submitted a written request for a hearing and/or notice of participation to determine if there was cause for not reemploying him/her for the ensuing school year.

7. Board Resolution Number 34-2014-2015, adopted on March 9, 2015, established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District and its students.

8. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Credential and authorization data are obtained from the records of the County Office of Education, at which certificated employees must register such documents, and from the Commission on Teacher Credentialing website.

9. All prehearing jurisdictional requirements were met.

10. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

11. The eliminated services were "particular kinds of services" that could be reduced or discontinued within the meaning of Education Code section 44955. The State Trustee's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of discretion.

12. The reduction or discontinuation of particular kinds of services 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 as determined by the State Trustee.

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*Jonathan Barbee*

13. Respondent Jonathan Barbee (#447)<sup>2</sup> has a seniority date of August 26, 2008. He holds a clear, single-subject credential in social science. Mr. Barbee teaches social science, World History Honors, United States History Honors, and AP United States History at City Honors High School. He was “bumped” by Tambera Thompson (#86) who also holds a clear, single-subject credential in social science but with a supplemental authorization in introductory math. Ms. Thompson also holds a CLAD certificate.

14. Mr. Barbee argued that he is specially trained and certified to teach AP World History and AP United States History and should be retained by virtue of that special training.

15. Education Code section 44955, subdivision (d), states:

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 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.

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

16. The above statute provides a district discretion to permit skipping under the conditions listed. However, a district is not required to employ the skipping mechanism. Therefore, although Mr. Barbee may be eminently qualified to teach advanced social science/history courses, the District is not obligated to skip him so that he may do so. Accordingly, he is subject to layoff.

*Doris Macdonald*

17. Respondent Doris Macdonald (#469) has a seniority date of September 27, 2010. She holds a clear single-subject credential in French and a clear certificate of completion in staff development. She teaches French 1, 2, and 3 at City Honors High School and is certified to teach AP French. However, she has no AP students this school year.

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<sup>2</sup> Numbers in parentheses indicated teachers’ positions on the District’s seniority list.

18. At City Honors High School, students must complete at least two years of a foreign language. The school offers classes in French and Spanish. Ms. Macdonald argued that many of the students take French because they are Hispanic and already know Spanish. Therefore, if a language had to be reduced or eliminated, it should have been Spanish. Since Ms. Macdonald's seniority date is earlier than that of the Spanish teacher, Ms. Macdonald believes the Spanish teacher should have been laid off and Ms. Macdonald should have been permitted to retain her position. Ms. Macdonald also argued that, if she is laid off, those students who took their first year of French will now have to begin their foreign language requirement again because both years of language instruction must be in the same foreign language.

19. Ms. Macdonald has gone beyond the basic teaching requirements for a high school teacher by starting a chapter of the French Honor Society at City Honors High School. Students belonging to that chapter wear a special cord at graduation.

20. Provided it is neither arbitrary nor capricious, the decision regarding which programs to eliminate or reduce is within the District's (in this case, the State Trustee's) discretion. No evidence was offered to show that the State Trustee's decision to reduce French instruction was either arbitrary or capricious. Therefore, Ms. Macdonald is subject to layoff.

*Paula Morrison*

21. Respondent Paula Morrison (#37) has a seniority date of September 8, 1986. She holds a clear single-subject credential in home economics and a clear certificate of completion in staff development. She also holds a certification for eligibility for administrative service. She teaches home economics at Inglewood High School. Ms. Morrison is the only home economics teacher in the District.

22. Ms. Morrison spoke in glowing terms of the home economics program at Inglewood High School. She has designed her program to be consistent with the position of the Superintendent of Public Instruction and has modified it to align with Common Core goals. The program makes it possible for students to "merge into the 21st century." (Ms. Morrison's testimony.) The classes help to provide students with skills in various fields, and the program has produced numerous successes. Ms. Morrison questioned where students will obtain those skills if the home economics program is eliminated.

23. As with the French program at City Honors High School, no evidence was offered to establish that the State Trustee's decision to eliminate the home economics program was arbitrary or capricious. Accordingly, the decision cannot be questioned at the administrative level. Ms. Morrison is subject to layoff.

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*Maria Aguirre*

24. Respondent Maria Aguirre (#534) has a seniority date of September 2, 2014. She holds a clear multi-subject credential and a BCLAD certificate. She teaches kindergarten at Woodworth Elementary School. She was “bumped” by Elizabeth Amador (#298). Ms. Amador also holds a clear multi-subject credential, and she holds a CLAD certificate.

25. Ms. Aguirre was first employed by the District on August 1, 1995, under an emergency credential. Her credential subsequently became permanent. She took maternity leave effective April 17, 2001. She claims to have thereafter taken a leave of absence. Ms. Aguirre did not return to the District until 2010 when she was re-hired as a substitute teacher. She returned to a full-time teaching position in 2014. Ms. Aguirre argued that she never resigned from the District and was never notified that she had been discharged. Therefore, she believes her seniority date should be August 1, 1995.

26. On January 22, 2002, Ms. Aguirre submitted a Statement of Intent to the District indicating that she intended to return to her employment in the District for the 2002-2003 school year, but that she requested a transfer to a substitute teacher position. On March 14, 2002, she reiterated her request to transfer from her permanent teacher position to a substitute teacher position. She was a permanent employee of the District when she made the request. Ms. Aguirre never received a response from the District regarding her request.

27. Between January 22, 2002, when she made the request to transfer into a substitute position, and February 25, 2010, when she returned to the District as a substitute teacher, Ms. Aguirre did not serve as a substitute in the District even one day.

28. At the hearing in the instant matter, Ms. Aguirre testified that she considered herself on a leave of absence for the entire period between January 2002 and February 2010. However, the evidence did not contain any written request for a leave of absence, and Ms. Aguirre testified that she never received word from the District that a request for leave of absence had been granted.

29. Ms. Aguirre’s preliminary credential expired on February 1, 2002. She obtained a clear, professional multi-subject credential on October 1, 2002. She did not hold any teaching credential between those two dates. The District’s records show her status as of February 1, 2002 as terminated. However, a formal termination notice or proceeding was not initiated.

30. Included in Exhibit 11 is Ms. Aguirre’s resume which she prepared in connection with her 2010 application to serve as a substitute teacher with the District. In her resume, Ms. Aguirre represented that she had worked for the District as a kindergarten teacher from 1995 to 2002. The resume contains no reference to working for the District as a substitute teacher between 2002 and 2010, or to being on a leave of absence between those dates.

31. On June 20, 2014, Ms. Aguirre wrote a letter to the District to accompany her application for a full-time teaching position. In that letter, she wrote:

I am also a former Inglewood School District classroom teacher and have a great desire to return full-time. I left to stay home and care for my children. (Exhibit 11, page 39.)

32. On August 21, 2014, Ms. Aguirre submitted an electronic application for a full-time teaching position with the District. In that application, she represented that she had worked for the District from September 1, 1995, to June 30, 2001, and that she had been currently employed by the District since September 1, 2009. She made no reference to a period of substitute teaching between 2002 and 2010 or a leave of absence. However, she also indicated on the application that she had been an employee of the Lawndale Elementary School District since September 1, 2004, which was during the period of time she now claims she was on a leave of absence from the District. (Exhibit 11, page 42.)

33. When Ms. Aguirre accepted the District's offer to return to a full-time position in 2014, she accepted the position as a probationary employee even though she was aware that she had been a permanent employee when she left in 2002.

34. Ms. Aguirre's testimony at the hearing was disingenuous. She offered no convincing evidence of continued employment with the District between 2002 and 2010 either as a substitute teacher or by virtue of a leave of absence.

35. The parties offered argument regarding whether the District followed proper procedures under the Education Code and applicable case law in discharging Ms. Aguirre from her employment with the District. Those arguments are not germane to the issue because Ms. Aguirre is found to have left the District by her own volition.

36. The District correctly calculated Ms. Aguirre's seniority date, and Ms. Aguirre is subject to layoff.

## LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The services identified in Resolution Number 34-2014-2015 are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The State Trustee's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of his 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.



3. 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.)

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the State Trustee directed be reduced or discontinued.

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

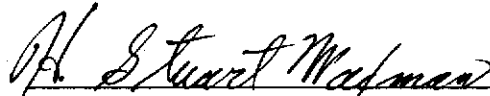
6. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

#### ORDER

1. The District Statement of Reduction in Force against the respondents is sustained. Notice may be given to the respondents that their services will not be required for the 2015-2016 school year because of reduction or discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

Dated: April 27, 2105

  
H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings