

**BEFORE THE
BOARD OF TRUSTEES OF THE
PERRIS UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Reduction in Force Involving:

1 Certificated Employee, Respondent

OAH No. 2024030856

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on April 10, 2024.¹

Dean T. Adams, Attorney at Law, Adams Silva & McNally LLP, represented the Perris Union High School District (district).

Dr. Casaundra McNair, respondent, represented herself.

The matter was submitted on April 10, 2024.

¹ Dr. McNair's request for a continuance so she could retain counsel was denied for failure to establish good cause as there is no right to counsel in administrative proceedings. (*Borror v. Department of Investigations* (1971) 15 Cal.App.3d 531, and *Walker v. State Bar* (1989) 49 Cal.3d 1107.)

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 5, 2024, the Board of Trustees (board) adopted Resolution Number 21:23-24, reducing a particular kind of certificated service and directing the Superintendent or designee to give appropriate notice to the certificated employee whose position would be affected by the reduction. The resolution called for the reduction or discontinuation of 1.0 full-time equivalent (FTE) position. The resolution referenced Exhibit "A," which identified the particular kind of service and FTE that was being discontinued and reduced, namely, the Director - Diversity, Equity and Inclusion.

2. The decision to reduce or discontinue a particular kind of service is a matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) School districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.) A school district's decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

3. On March 12, 2024, the district sent notice to Dr. McNair advising her that her service as Director would not be required for the 2024-2025 school year, but that she would be reassigned as a Secondary Classroom Teacher (SPED), site to be determined. The reasons for that decision were set forth in the attached Resolution. Thereafter, the district served a Statement of Reduction in Force and other documents

on Dr. McNair who requested a hearing. All prehearing jurisdictional requirements were met.

Witness Testimony

4. Kirk Skorpanich, the district's Assistant Superintendent of Human Resources, and Dr. McNair testified in this proceeding, and documents were received in evidence. The following findings are based thereon.

5. The district serves 12,000 students through eight schools and has 563 certificated employees (as noted on the district's seniority list).

6. The Superintendent made the recommendation that Dr. McNair's position be eliminated. Mr. Skorpanich explained that financial considerations were the primary rationale behind the district's layoff decision. The district is facing a projected multi-year \$27 million deficit, at \$9 million per year. The decision to dismiss certificated employees was based solely on the welfare of the district and its students.

7. To offset its budget deficit, the district did many things, including decreasing site and department budgets, curtailing travel and attendance at conferences, eliminating stipends, supplementing early retirement packages, freezing position hiring, working with the union to minimize the use of substitute teachers, creating three tiers of programs and positions to determine those they could immediately reduce, and reducing other certificated and classified positions.

8. Owing to the COVID pandemic, the district received funding it used to pay for different programs, including adding positions at various school sites. That funding is not ongoing, and the district is unable to sustain those positions going

forward. Dr. McNair's position and the Diversity, Equity and Inclusion program were paid with COVID funds. Dr. McNair did not know that her position was grant funded.

9. No employee with less seniority than Dr. McNair is being retained to perform a service that she is certificated and competent to render. The district will still be able to meet the state's minimum staffing requirements and provide all mandated services.

10. Dr. McNair holds both an administrative services credential and a special education credential. Because of the latter, the district can retain her as a secondary classroom teacher. A senior employee whose position is discontinued has the right to transfer to a continuing position in which he or she is certificated and competent to fill. In doing so, the senior employee is entitled to displace or "bump" a junior employee who is filling that position. (Education Code section 44955, *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 473-474.) No evidence was introduced that the district improperly "bumped" Dr. McNair into the Secondary Classroom Teacher (SPED) position.

11. Dr. McNair was originally informed by Mr. Skorpanich that the decision to eliminate her position was removed from the board's March 4, 2024, agenda. Thereafter, a parent called Dr. McNair and told her the matter had been placed back on the agenda. Dr. McNair called Mr. Skorpanich, who had no knowledge the matter was placed back on the agenda. Mr. Skorpanich later learned the Superintendent placed it back on the agenda because of the district's financial issues.

12. Employees in the district work a 6/7 schedule described as a seven period school day for students where employees teach six periods and have one prep period. Employees may also elect to teach seven periods and are then paid approximately an

additional \$15,000 per year. Dr. McNair asserted that were she to teach seven periods, the cost-saving to the district between her current salary and what she would earn as a teacher would only be approximately \$50-\$60,000. However, in addition to her salary, Dr. McNair also had a \$60,000 budget, which would also be eliminated with the layoff, resulting in closer to a \$120,000 savings by the district. Moreover, Dr. McNair has not been told she can teach a seventh period class next year, so the savings may be more.

13. Dr. McNair presently has \$100,000 in grant funds for her program that have not yet been expended. She recently completed a \$12.3 million grant application, which has not yet been approved. The grant would fund her program and other programs. Dr. McNair asserted that if the district needed funds for her program, she has the ability to write grants to obtain them.

14. Dr. McNair asked why she had not been considered for a principal position the board approved on March 20, 2024, when it promoted an interim principal to principal. Mr. Skorpanich was not privy to that decision so he did not know why she was not considered. However, administrators serve at the pleasure of the appointing authority. (*Hentschke v. Sink* (1973) 34 Cal.App.3d 19, 23.) But, in certain circumstances, which were satisfied here, they retain their permanent classification as a classroom teacher (Ed. Code, § 44893) and, if they meet certification and competence standards, which Dr. McNair met, can bump into teaching positions of junior employees. Nothing allows them to bump into administrative positions.

15. Dr. McNair does not believe her department needed to be eliminated based on financial considerations as the cost savings to the district will not be considerable enough to assist in the multimillion-dollar shortfall.

16. Dr. McNair provides direct services to students. She believes other departments such as human resources, business services, or others should have been considered for layoff. The district also has an overage of teachers that should have been considered for layoff as well as other classified employees.

17. Dr. McNair was rehired by the district in 2023, 18 months after she initially left to become the Director of Special Education for Riverside County Office of Education. She was very happy in that position. She was not told that her position as Director of Diversity, Equity and Inclusion was funded by a nonrenewable grant.

18. Dr. McNair believes the Diversity, Equity and Inclusion department was targeted "based on what we were uncovering." Her department found racism, sexism, and ageism occurring in the district. It was her job to ensure she was looking at district policies and procedures and the district's stance on educational equity. She also believes she was targeted by the Board of Trustees and the Superintendent since he was the one who recommended her layoff.

Parties' Arguments

19. The district acknowledged Dr. McNair's work but argued that fiscal concerns led to this difficult decision. Dr. McNair only has rights to bump into a teaching position, not a management position. The district requested its decision to eliminate the Diversity, Equity And Inclusion Director position be affirmed.

20. Dr. McNair asserted that she was never informed when rehired that her position was grant funded. Eliminating her position and moving her to a teaching position is not a cost savings to the district. She asked that the layoff notice issued to her be rescinded.

Evaluation

21. Although it was undisputed that Dr. McNair serves a valuable need in the district, the service identified in Resolution Number 21:2023-24 is the particular kind of service that may be reduced or discontinued within the meaning of Education Code section 44955. The board's decision to reduce or discontinue her service as Director - Diversity, Equity and Inclusion, was a proper exercise of the board's discretion. The reduction and discontinuation of the service was related to the welfare of the district and its pupils, and it became necessary to decrease the number of certificated employees as determined by the board. No particular kind of service was lowered to levels less than those levels mandated by law and no employee with less seniority was being retained to perform the service Dr. McNair currently performs.

After giving notice to Dr. McNair, the district was able to "bump" her to a Secondary Classroom Teacher (SPED) position, which was within its discretion. Dr. McNair is credentialed and competent to be assigned to that SPED position. Funds for the nonapproved grant recently submitted by Dr. McNair are speculative, and the district was not required to consider them in this proceeding.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections were provided as required.

2. A district may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by

determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. If an employee leaves a district and returns within 39 months, the employee's rights, benefits and burdens as a permanent employee are restored but, for seniority purposes, the employee does not regain his or her original hiring date. (Ed. Code, §§ 44848 and 44931, *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 630-631.)

4. A preponderance of the evidence sustained the statements set forth in the district's statements of reduction in force served on Dr. McNair concerning the service that will not be required.

5. The district identified the certificated employee providing the particular kind of service that the board directed be reduced or discontinued. Because of the reduction of that particular kind of service, cause exists pursuant to Education Code section 44955 to give notice to Dr. McNair that her service as Director - Diversity, Equity and Inclusion will not be required for the 2024-2025 school year, but she can be retained as a Secondary Classroom Teacher (SPED) position. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

6. The service being reduced is the kind the board may reduce.

7. No employee with less seniority than Dr. McNair is being retained to perform a service she is certificated and competent to render.

RECOMMENDATION

It is recommended that before May 15, 2024, the Board of Trustees give notice to Dr. Casaundra McNair that her employment as Director - Diversity, Equity and Inclusion will be terminated at the close of the current school year and her service in that position will not be needed for the 2024-2025 school year, but she may bump to a Secondary Classroom Teacher (SPED) position.

DATE: April 12, 2024


Mary Agnes Matyszewski (Apr 12, 2024 13:55 PDT)

MARY AGNES MATYSZEWSKI

Administrative Law Judge

Office of Administrative Hearings