

BEFORE THE  
GOVERNING BOARD OF THE  
BELLFLOWER UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction In Force of:

CERTIFICATED TEACHERS OF THE  
BELLFLOWER UNIFIED SCHOOL  
DISTRICT,

Respondents.

OAH No. 2018030759

**PROPOSED DECISION**

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Bellflower, California, on April 20, 2018.

Eric Bathen, Attorney at Law, represented Bellflower Unified School District (District).

Daniel B. Rojas and Glenn Rothner, Attorneys at Law, represented 43 respondents<sup>1</sup> listed in Exhibit 14, who were present at the hearing except as noted below.

Respondents Jennifer Bergman, Amy M. Dolliver, Jenna K. Lind, Andre Lopez, Melissa McCutcheon, John Palmer, Matthew Sanjurjo, and Stacey Van Fossen were not present at the hearing, but were represented by Mr. Rojas and Mr. Rothner.

There was no appearance by, or on behalf of three respondents who had filed a request for hearing: Jordan Clarke, Jeannette Garces and Florian Mocilnikar. They were properly served with the Accusation and notice of hearing and they were determined to be in default.

Oral and documentary evidence was received and oral argument was heard. The record was closed and the matter was submitted for decision on April 20, 2018.

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<sup>1</sup> The District dismissed Derek Bedell as a respondent in this matter because he is being re-employed by the District for the 2018-2019 school year due to attrition from a recent retirement.

## FACTUAL FINDINGS

1. Tracy McSparren is the District's Interim Superintendent. Sulema Holguin is the District's Director of Instructional Personnel. Their actions were taken in their official capacities. Ms. McSparren made and filed the Accusation in her official capacity. The District is a properly constituted public school district located in the County of Los Angeles. It is composed of high schools (grades 7-12) and elementary schools (TK<sup>2</sup> to grade 6). Currently, it has an enrollment of 11,956 students.

2. Respondents in this proceeding are certificated employees of the District.

3. On March 14, 2018, the District timely provided written notice to respondents, pursuant to Education Code<sup>3</sup> sections 44949 and 44955 and Government Code section 11500 et seq., that they would not be re-employed by the District for the 2018-2019 school year. (Exhibit 1, p.1.)

4. On April 5, 2018, the District filed and thereafter served the Accusation and related documents on respondents. (Exhibit 2.) Each respondent appearing in this matter filed a timely request for hearing for a determination of whether cause exists for not reemploying them for the 2018-2019 school year.<sup>4</sup> All prehearing jurisdictional requirements were met.

5(A). On March 8, 2018, the Board of Education (Board) of the District adopted *Resolution of the Board of Education's Intention to Reduce and/or Discontinue Particular Kinds of Service* (PKS Resolution) (Exhibit 1, pp. 6-8), which provides for the elimination of 55 full time equivalent (FTE) positions, described as follows:

[T]hirty-two (32) single subject FTE reduction due to declining enrollment in grades K-12 in the statutory subject areas of: English, Mathematics, Science, Physical Education, Home Economics, Music, Art, Industrial and Technology Education, Social Science, and World Languages-Languages other than

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<sup>2</sup> TK is a two-year Kindergarten program for children born between September 2 and December 2.

<sup>3</sup> All statutory citations are to the Education Code, unless indicated otherwise.

<sup>4</sup> Eight individuals failed to file a request for hearing and did not appear, or have representation, at the hearing: Sandra De Hoop, Ethel Fimbres, Rogelio Garcia, Katina Joncich, Valeh Khavari, Desirea Kyle, Andrew Malonzo, and Sixiang Xie.

English; and twenty-three (23) multiple subject FTE due to a reduction in student enrollment for a total of fifty-five (55) FTE reductions of particular kinds of services in grades TK-12th grade and Adult Re-Entry.

5(B). The PKS Resolution (Exhibit 1, p. 7) indicates that the District shall retain certain certificated employees, regardless of their seniority, if they are:

. . . considered necessary to meet the District's program staffing needs. Such employees shall be retained based upon their qualifications and credentials and include, but are not necessarily limited to, special education teachers and multiple subject teachers with BCC/BCLAD/BSP certification in Spanish. In accordance with Education Code Section 44955(c) the Governing Board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which seniority and qualifications entitle them to render.

5(C). The services set forth in Factual Finding 5(A) are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

6. On March 8, 2018, the Board of the District adopted a *Resolution of the Board of Education to Determine the Order of Termination of Certificated Personnel* (Exhibit 3), which establishes tie-breaker criteria for determining the relative seniority of certificated employees with the same date of first rendering paid service to the district. The criteria establish a point system and process to be applied.

7. The Board took action to reduce the services set forth in Factual Finding 5(A) because the District has lost approximately 1,500 students over the last four years and anticipates an additional 300 student decrease in enrollment during the 2018-2019 school-year. This would result in a loss of revenue to the District which receives funding based upon attendance and enrollment. The District is overstaffed. The reduction of services is not related to the capabilities and dedication of the individuals whose services are proposed to be reduced or eliminated. The decision to eliminate the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

8. Ms. Holguin was responsible for implementation of the technical aspects of the Board's Resolutions. She and her staff reviewed available information to compile a tentative seniority list containing seniority dates, current assignments, credentials, certifications and other pertinent data. The list was made available for review by certificated employees within the District so that they could verify, update or correct pertinent information.

9. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced, including whether more senior employees affected by the layoffs held credentials in another area and were entitled to displace or “bump” other less senior employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and determined whether they could “bump” other employees.

10. The District properly considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of layoff notices to be delivered to employees by March 15, 2018.

11. The District rescinded the layoff notice to Derek Bedell due to attrition from a retirement which was announced after March 15, 2018.

12. Respondents challenged the manner in which the District skipped Denise Lara, a high school teacher whose seniority date is August 26, 2015, and who holds a single subject credential in Spanish, and has CLAD, LDS, and ESL status.<sup>5</sup> Ms. Holguin explained that Sixiang Xie, a Mandarin language teacher<sup>6</sup> who has more seniority than Ms. Lara, was laid off while Ms. Lara was skipped because, as a Spanish language teacher, Ms. Lara was considered necessary to meet the District’s program staffing needs, as expressed in the PKS Resolution. (Exhibit 1, pp. 7-8.) Respondents did not establish that Ms. Xie, or anyone senior to Ms. Lara, was certified and competent to teach Spanish at the high school level.

13. Respondents challenged the lay-off notice issued to Henry C. Chen, who teaches Driver’s Education and is also credentialed to teach Health. Ms. Holguin testified that Mr. Chen’s lay-off notice is based upon the “Assignment Description” (Exhibit 10), which Ms. Holguin and her staff put together to implement the Board’s PKS Resolution. The “Assignment Description” in Exhibit 10 lists “Single Subject-Elective/Vocational” with an FTE reduction of eight. The particular Elective/Vocational subjects to be reduced are Music, Mandarin, Technology, Industrial Arts, Art, Health, and Industrial Technology. Driver’s Education is not included in that list. Moreover, “Single Subject-Elective/Vocational” is not identified in the PKS Resolution as one of the particular kinds of services to be reduced. (Exhibit 1, pp. 7-8.) Accordingly, the layoff notice for Mr. Chen, a Driver’s Education teacher, must be rescinded.

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<sup>5</sup> These designations indicate that Ms. Lara is able to teach English-learners.

<sup>6</sup> As noted previously, Ms. Xie did not request a hearing, nor was she present or represented at the hearing.

14. Respondents assert that pursuant to Education Code section 44955, subdivision (b), the school board cannot terminate the services of “more than a corresponding percentage of the certificated employees of the district” if the layoffs are the result of a decline in average daily attendance in all of the schools of a district for the first six months of the school year. Respondents contend that because the District failed to compute a “corresponding percentage,” the reduction in force cannot be upheld. Respondent’s argument is not well-taken. The Board identified this as a reduction of particular kinds of services, rather than as a lay-off resulting from a decline in the average daily attendance in all of its schools for the first six months of the school year. Although the District noted that it was reducing particular kinds of services due to a drop in student enrollment, the reduction in force is not based upon a decline in average daily attendance during a specified time period. The District’s failure to compute a percentage does not render its action arbitrary or capricious, or an improper exercise of its discretion.

## LEGAL CONCLUSIONS

1. Section 44949 provides in pertinent part:

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

2. Section 44955 provides in pertinent part as follows:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the

modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

[¶] . . . [¶]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis on needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish . . . a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group . . . .

(c) . . . [S]ervices of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

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

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

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

3. All notice and jurisdictional requirements set forth in sections 44949 and 44955 were met.

4. Boards of education hold significant discretion in determining the need to reduce or discontinue particular kinds of services, which is not open to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School Dist.* (1976) 64 Cal.App.3d 167.) Such policy-making decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and action must be reasonable under the circumstances, with the understanding that “such a standard may permit a difference of opinion.” (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831, 845.) Numerous cases stand for the proposition that the process of implementing layoffs is a very flexible one and that school districts retain great flexibility in carrying out the process. (*Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796.)

5. The services set forth in Factual Finding 5 are particular kinds of services which may be reduced or discontinued 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.

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

7. Cause exists pursuant to sections 44949 and 44945 to reduce the number of certificated employees of the District due to the reduction or discontinuation of the particular kinds of services set forth in Factual Finding 5. The District properly identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued, except as to Henry Chen, as noted in Factual Finding 13.

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

9. 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. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara, supra.*) This “skipping” is a process, under section

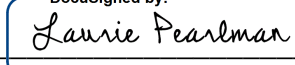
44955, subdivision (d)(1), wherein a school district may choose to demonstrate a specific need and that an employee has the special training and experience to meet that need. In fact, school districts have been permitted to present at hearing, for the first time, evidence of the type of tie-breaking that might apply. (*Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838; *Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127.) In the case of Ms. Lara, the decision to retain her was proper under the general language of the resolution allowing the board to deviate from strict seniority to retain her, based upon her qualifications and credentials and to meet the needs of the District, as well as the statutory authority under section 44955, subdivision (d)(1).

## ORDER

1. The Bellflower Unified School District may give notice to respondents Alvarez, Arlene; Azevedo, Ashley; Baca, Elizabeth; Bergman, Jennifer; Blanck, Brooke; Chang, Christina; Chatterjee, Anita; Chin, Jit Fong; Clark IV, Alexis; Clarke, Jordan Zachary; Croes, Amanda; Dolliver, Amy M.; Ellis, Mark; Garces, Jeannette; Gonzalez, Javier; Haggard, Stephanie; Hamilton, Holly M.; Hofmans, Lynnette R.; Hooker, Marisela; Huntington, Jennifer S.; King, Kelly A.; Kinsey, Ben; Klingsporn, Heather; Lind, Jenna K.; Lopez, Andre; Lopez, Misthian; McCutcheon, Melissa; Mendoza, Albert D.; Mocilnikar, Florian Stuart; Moran, Guadalupe; Munoz, Michael; O'Connell, Rebecca; Opfer, Kristie M.; Palmer, John; Pedersen, Hillary; Sanjurjo, Matthew; Shaheen, Phil; Silva, Anita; Sneddon, Reid; Sochin, Deborah; Stiglbauer, Christine K.; Stocks, Elizabeth; Ugale, Summer; Van Fossen, Stacey; and Webber, Joseph, that their services will not be required for the 2018-2019 school year.

2. The Bellflower Unified School District may not give notice to respondent Henry C. Chen that his services will not be required for the 2018-2019 school year.

Dated: April 27, 2018

DocuSigned by:  
  
LAURIE R. PEARLMAN  
Administrative Law Judge  
Office of Administrative Hearings