

**BEFORE THE GOVERNING BOARD OF THE  
BIG VALLEY JOINT UNIFIED SCHOOL DISTRICT  
COUNTY OF LASSEN  
STATE OF CALIFORNIA**

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

**CERTIFICATED EMPLOYEES OF THE BIG VALLEY JOINT  
UNIFIED SCHOOL DISTRICT NAMED IN THE APPENDIX,<sup>1</sup>  
Respondents**

**OAH No. 2020040008**

**PROPOSED DECISION**

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on April 21, 2020, in Sacramento, California.

Gabriela D. Flowers, Esq., and Katherine S. Holding, Esq., Lozano and Smith, represented the Big Valley Joint Unified School District (District).

Leslie B. Curtis, Esq., Langenkamp, Curtis & Price LLP, represented the respondents named in the Appendix.

---

<sup>1</sup> See Attachment A.

Oral and documentary evidence was received. The record was held open for the parties to submit closing briefs by Monday, April 27, 2020. The District and respondents timely submitted closing briefs which were marked as Exhibits 24 and X, respectively. The matter was submitted for decision on Monday, April 27, 2020.

## **FACTUAL FINDINGS**

### **Jurisdiction and Background**

1. Paula Silva is the Superintendent/Principal of the District (Superintendent Silva). The actions of Superintendent Silva, and those of the District's staff and Board of Trustees (Board), were taken solely in their official capacities.

2. On February 19, 2020, Superintendent Silva recommended that the Board reduce or discontinue particular kinds of services (PKS) no later than the beginning of the 2020-2021 school year in the amount of 2.0 full-time equivalent (FTE) positions. The Board adopted Resolution No. 20-6, entitled "Resolution to Eliminate Certificated Employees Due to a Reduction in Particular Kinds of Service" (the layoff resolution), which provides that it was necessary to reduce or discontinue PKS in the amount of 2.0 FTE positions as follows:

<u>Services</u>	<u>Number of FTE Positions</u>
Multiple-Subject (Elementary	2.0 FTE
<u>Teaching Services)</u>	
<b>Total Full Time Equivalent Reduction</b>	<b>2.0 FTE</b>

3. The Board further determined that it was necessary by reason of the reduction or discontinuance of services to decrease the number of certificated

employees at the close of the 2019-2020 school year by a corresponding number of FTE positions. The Board directed Superintendent Silva or her designee to send appropriate notices to all employees whose services would be terminated as a result of the Board's action to reduce or discontinue PKS.

4. The District operates Big Valley Preschool, Big Valley Elementary School (the elementary school), and Big Valley High School (the high school), which is designated as a "necessary small high school" pursuant to Education Code section 44865. The District currently employs 11 teachers. All respondents are full-time, permanent certificated employees of the District.

5. The District's current financial concerns include its having to spend significant cash reserves to maintain its operations. The District is in a relatively remote Northern California location and local residents have experienced job losses due to a contraction in the timber industry; as a result, some families have left the community. The District projects a decrease in enrollment during the 2020-2021 school year.

6. On February 27, 2020, Superintendent Silva served respondents with written notice, entitled "Notice of Recommendation that Services Will Be Terminated" (Notice), pursuant to Education Code sections 44949 and 44955, of her recommendation to the Board that respondents' services be terminated at the close of the 2019-2020 school year. A copy of the layoff resolution was served with the Notice.

7. All respondents were properly and timely served with the Notice and timely requested a hearing to determine if there is cause for not reemploying them for the 2020-2021 school year.

8. All respondents were properly and timely served with the District's Reduction in Force packet, which contained a Statement of Reduction in Force,

Statement to Respondent, Notice of Hearing, Notice of Participation, Request for Discovery and applicable statutes, and was signed by Superintendent Silva on March 10, 2020. Respondents timely filed notices of participation. All prehearing jurisdictional requirements were met.

## **Determining the Layoffs**

9. The District maintains a 2019-2020 Certificated Seniority List (seniority list) containing its employees' seniority (i.e., first date of paid service) dates, current assignments and locations, advance degrees, credentials, and authorizations. The Lassen County Office of Education (Office of Education) registers and maintains such credentialing and authorization data and documentation. At Superintendent Silva's direction, the District's human resources director compiled data from the employees' personnel files maintained by the District, and contacted the Office of Education to verify the accuracy of the seniority list's contents regarding credentialing and authorizations. The District also referred to the online site maintained by the Commission on Teacher Credentialing to verify the credentialing and authorization information on the seniority list. The District referenced the seniority list to determine a proposed layoff list of the least senior employees assigned in the various services being reduced.

10. On February 19, 2020, the Board adopted Resolution 20-7 (skipping resolution), which provided that the District may deviate from eliminating a certificated employee in order of seniority (i.e., "skipping"). The skipping resolution stated that the District could "skip" a less senior employee if it demonstrates a specific need for the less senior employee to teach a specific course or course of study the less senior employee has special training and experience necessary to teach that course or course of study, which others with more seniority do not possess, or to maintain compliance

with equal protection of the laws. The District set forth the following specific skipping criteria as serving the needs of the District and its students:

1. Individuals who possess a single-subject PE [i.e., physical education] credential (internship, preliminary, or clear).
2. For high school positions, individuals must possess a single subject teaching credential (internship, preliminary, or clear); are currently teaching at least one course authorized by their credential; and will be assigned to continue teaching at least one course authorized by their credential for the 2020-2021 school year.
3. For high school positions, individuals who are currently teaching one (1) or more courses outside of their credential authorization (internship, preliminary, or clear), must have at least two (2) school quarters of experience within the past two (2) years teaching the course(s) that is outside of their credential authorization pursuant to Education Code section 44865, subdivision (d).

11. On February 19, 2020, the Board adopted Resolution 20-9 (competency and special fitness resolution). In this resolution, the Board noted that while Education Code section 44955, subdivision (b), states that an employee "competent" to render a service must be retained in favor of a less senior employee, the section does not define "competent;" and similarly, section 44865, subdivision (d), states that a valid teaching credential and "special fitness" to perform shall be deemed qualifying for a

teacher in a "necessary small high school," but the section does not define "special fitness." The Board deemed that an individual shall be deemed "competent" and possessing necessary "special fitness" as follows:

1. For high school positions, employees must possess a single subject teaching credential (internship, preliminary, or clear) and are currently teaching at least one course authorized by their credential; and/or
2. For high school positions, employees who are currently teaching one (1) or more courses outside their credential authorization (internship, preliminary, or clear) must have at least two (2) school quarters of experience within the past two (2) years teaching the course(s) that is outside of their credential authorization pursuant to Education Code section 44865, subdivision (d).

12. To carry out the layoff resolution, the District determined to "skip" respondent Johanna Crabtree. Respondents Kristin Noelle Gunnerson and Debra Jones have seniority over Ms. Crabtree. The respondents' comparative seniority rankings, current teaching assignments, and credentials and authorizations are as follows.

Respondent Johanna Crabtree is a fifth/sixth grade teacher at the elementary school with a seniority date of July 31, 2014. She has a clear single subject credential in Physical Education (PE), and a clear multiple subject credential. She teaches seventh/eighth grade PE, but did not teach it last year because she was out on leave.

Respondent Debra Jones is a fourth grade teacher at the elementary school with a seniority date of January 27, 2014. She has a clear multiple subject credential,

with a Crosscultural, Language, and Academic Development (CLAD) Certificate authorizing instruction to English learners.

Respondent Kristin Noelle Gunnerson is a second/third grade teacher at the elementary school with a seniority date of July 1, 2013. She has a clear multiple-subject credential, with an English language authorization.

13. At hearing, the District stated it issued a layoff notice to respondent Crabtree “in an abundance of caution” only, but it had no present intent to lay off Ms. Crabtree. Thus, the District orally withdrew the layoff notice issued to respondent Crabtree.

14. In determining the two teachers to be laid off, the District skipped respondent Crabtree, a teacher whom the District believed was necessary to teach a specific course or course of study in PE, because she holds a clear single subject credential in PE. Also, the District plans to have respondent Crabtree teach PE at the high school during the 2020-2021 school year. The District contends no one more senior to respondent Crabtree is certificated and competent to teach these classes.

15. Superintendent Silva detailed the District’s current and upcoming financial challenges as set forth in Finding 5.<sup>2</sup> She further explained that the District has a specific need to staff the high school as fully as possible with teachers possessing the necessary single subject teaching credential to teach each core academic subject in the high school. Such staffing is important because it ensures the teachers are “subject matter experts” with a deeper level of expertise in their

---

<sup>2</sup> That evidence was not disputed at hearing.

respective core classes.<sup>3</sup> In addition, the high school is accredited by the Western Association of Schools and Colleges (WASC), a widely recognized accrediting commission for schools. The District believes its commitment to maintaining high quality instruction in its core subjects, partly by providing teachers with clear single subject credentials to teach core courses, has helped it achieve WASC accreditation. Such accreditation is necessary to maintain because it validates the high school program's quality and integrity and ensures the high school's students' credits are valid and acceptable for purposes of college admission.<sup>4</sup>

16. The services set forth in the layoff resolution are "particular kinds of service" that may be reduced or discontinued within the meaning of Education Code section 44955. The evidence did not establish that the Board's decision to reduce or discontinue those services set forth in the layoff resolution was arbitrary or capricious.

---

<sup>3</sup> Notably, each of the five other full-time high school teachers the District currently employs hold one clear single subject credential in either math, English, science, social science, or agriculture; and although some teach a class or classes other than in their core subject, all five teach a substantial majority of high school classes in their core subject.

<sup>4</sup> As rebuttal evidence, respondents offered the testimony of Louise Biggs, a Westwood Unified School District employee who teaches at Westwood High School, a "necessary small high school" in Southern California that apparently achieved WASC accreditation while a multiple subject credentialed teacher was teaching math. This testimony was given little weight, as it was merely anecdotal and did not detract from the District's purpose of providing high-level instruction at the high school based on the criteria it developed.



The reduction or elimination of these particular kinds of services constituted a proper exercise of the Board's discretion within the meaning of section 44955.

17. Education Code section 44955 allows a school district to deviate from terminating a certificated employee in order of seniority if either "[t]he district demonstrates 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 . . . which others with more seniority do not possess." (Ed. Code, § 44955, subd. (d)(1).) As set forth in Finding 15, the District demonstrated a specific need for PE to be taught by a teacher with a single subject teaching credential in PE. By virtue of her single subject teaching credential in PE, respondent Crabtree has the necessary special training and experience necessary for the course of study in PE the high school will offer the next school year. Although respondents Gunnerson and Jones have more seniority than Ms. Crabtree, they do not possess that requisite "special training and experience."

17. At hearing, respondents Gunnerson and Jones challenged whether the District could retain respondent Crabtree, a less senior teacher than they, when, as respondents Gunnerson and Jones argued, they were validly credentialed, pursuant to Education Code section 44865, to teach at the high school due to its status as a "necessary small high school."

18. Education Code section 44865 states:

A valid teaching credential issued by the State Board or the Commission on Teacher Credentialing, based on a bachelor's degree, student teaching, and special fitness to perform, shall be deemed qualifying for assignment as a

teacher in the following assignments, provided that the assignment of a teacher to a position for which qualifications are prescribed by this section shall be made only with the consent of the teacher:

- (a) Home teacher.
- (b) Classes organized primarily for adults.
- (c) Hospital classes.
- (d) Necessary small high schools.
- (e) Continuation schools.
- (f) Alternative schools.
- (g) Opportunity schools.
- (h) Juvenile court schools.
- (i) County community schools.
- (j) District community day schools.
- (k) Independent study.

19. Pursuant to Education Code section 44865, a teacher must possess a credential "based on a bachelor's degree," but also have the "special fitness to perform" as a teacher in any one or more of the 11 programs the statute enumerates. These 11 program are widely diverse. Hence, a reasonable presumption may be made that a teacher's "special fitness to perform" as required in a juvenile court school

setting would necessarily differ from a teacher's "special fitness to perform" in teaching independent study, or at a necessary small high school. Given this built-in disparity, a teacher's "special fitness" could substantially differ depending on the District's needs to fulfill the curriculum offered; the statute appears purposely broad, allowing for a fact-based definition of "special fitness" relevant to each particular teaching setting.

20. The District addressed the statute's lack of specificity by providing distinct definitions of competence and special fitness. A teacher would necessarily satisfy the District's competency and special fitness criteria for teaching in the high school if the teacher has a single subject teaching credential and is currently teaching at least one course authorized by that credential, or has at least two quarters teaching experience within the past two years teaching the course, or courses, outside of the teacher's credential authorization.

21. Here, neither Ms. Gunnerson nor Ms. Jones hold single subject teaching credentials; thus, they do not meet the District's first criterion. As for the second criterion of recent teaching experience, Ms. Gunnerson taught one leadership course at the high school during the 2013-2014 and 2014-2015 school years, while Ms. Jones taught summer school at the high school during summer 2017, and as a substitute teacher in the District's adult school for two months, from November 1 to December 31, 2018. Both consented to teach at the high school if given the opportunity, and both opined that they were qualified to do so. Yet, in sum, neither Ms. Gunnerson nor Jones meet the District's second criteria, nor does their teaching experience outside their credential authorizations demonstrate that either has the special fitness to teach at the high school.

22. The District's evidence established that, except as provided by statute, no permanent or probationary certificated employee with less seniority is being retained to render a service which respondents, or any of them, are certificated and competent to render. More specifically, the District established by a preponderance of the evidence that it properly skipped respondent Crabtree.

## **LEGAL CONCLUSIONS**

1. The fundamental principle of a PKS layoff is that permanent teachers must be laid off in inverse of their seniority. (Ed. Code, § 44955, subds. (b) & (c).) As set forth in Education Code section 44955, subdivision (b):

Except as otherwise provided by statute, the services of no permanent employee may be terminated . . . 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.

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.) The burden is on the district to demonstrate that the reduction or elimination of the PKS is reasonable and that the district carefully considered its needs before laying off any certificated employee.

(*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 807-808.)

3. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board layoff resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

4. The services identified in Board Resolution No. 20-6 are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The District Board of Trustee's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

5. Cause exists to reduce the number of certificated employees of the Big Valley Joint Unified School District due to the reduction or discontinuation of particular kinds of services. Cause for reduction or discontinuation of services relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

6. 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) CalApp.3d 831, 842-843.) As set forth in Factual Findings 15 and 17, the district skipped a single certificated employee. It demonstrated that Ms. Crabtree could teach a specific course or course of study (Physical Education) in which she had special training and experience, and which others with more seniority did not possess. (Ed. Code, § 44955, subd. (d)(1).)

## **ORDER**

1. Cause exists for the reduction of 2.0 full-time equivalent certificated positions at the end of the 2019-2020 school year. Notice shall be given to respondents, except for Johanna Crabtree, occupying up to 2.0 FTE that their services will not be required for the 2020-2021 school year because of the reduction or discontinuation of particular kinds of services.

2. Pursuant to Factual Finding 13, the District shall rescind the notice given to Johanna Crabtree.

DATE: May 5, 2020

DocuSigned by:  
*John DeCure*  
17FD47F60F0543E...  
JOHN E. DeCURE

Administrative Law Judge  
Office of Administrative Hearings

## **ATTACHMENT A**

### **Appendix: The Respondents**

1. Kristin Noelle Gunnerson
2. Debra Jones
3. Johanna Crabtree