

BEFORE THE
OFFICE OF THE SANTA CLARA COUNTY SUPERINTENDENT OF SCHOOLS
COUNTY OF SANTA CLARA
STATE OF CALIFORNIA

In the Matter of the Statement of Reduction
in Force of Certificated Employees:

OAH No. 2018030560

Yael Jaari, Claudia Jones,
Veronica Ramos and Steve
Sanchez,

Respondents.

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on April 25, 2018, in San Jose, California.

Adam J. Fiss and Maggy Athanasious, Littler Mendelson, P.C., represented the Santa Clara County Office of Education.

Christopher E. Schumb, Attorney at Law, represented respondents Yael Jaari, Claudia Jones and Veronica Ramos.

Steve Sanchez did not appear and was not represented at hearing.

The matter was submitted for decision on April 25, 2018.

FACTUAL FINDINGS

Introduction

1. Anisha Munshi made and filed the Statement of Reduction in Force in her official capacity as the Director of Human Resources of the Santa Clara County Office of Education (County Office). The County Office employs teachers in the subjects of Alternative Education, Special Education, Migrant Education and in a Regional Occupational Program (ROP) that provides career technical education.

2. On February 28, 2018, Mary Ann Dewan, Ph.D., the County Superintendent of Schools, approved a resolution reducing or discontinuing particular kinds of services for the 2018-2019 school year (PKS Resolution), and directing Phillip J. Gordillo, the Chief Human Resources Officer, to send appropriate notices to all employees affected by the reduction or elimination of services.

3. On February 28, 2018, Superintendent Dewan adopted tie breaking criteria in a separate resolution. The tie breaking criteria were not used because there are no employees affected by the layoff notice who became employed on the same date.

4. On April 2, 2018, the PKS Resolution was revised; it clarified the prior resolution, but did not otherwise affect respondents' layoff notices.

5. All jurisdictional requirements of the County Office and respondents have been satisfied.

6. The PKS Resolution identified the non-administrative services to be reduced no later than the beginning of the 2018-2019 school year as:

Teacher – Alternative Education	5 @ 1.0 FTE ¹
Teacher – ROP – Computer Applications	1 @ 1.0 FTE
Teacher – ROP – Dental Assisting	1 @ 0.5 FTE
Teacher – Special Day Class	1 @ 1.0 FTE
Teacher – Migrant Education	3 @ 1.0 FTE

The County Office subsequently rescinded four Alternative Education teacher layoff notices. One Alternative Education teacher and the ROP Dental Assisting teacher did not request a hearing on the layoff notices. The eliminated Special Day Class position was not included in the layoff because it was satisfied through attrition.

7. The services set forth in the PKS Resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

8. Pursuant to Education Code section 44955, subdivision (b), when a governing body reduces particular kinds of services resulting in a decrease in the number of certificated, permanent employees, the services of a permanent employee may not be terminated if another employee with less seniority is retained to render a service that the more senior employee is “certificated and competent to render.”

¹ Full-Time Equivalent.

Migrant Education Teachers

9. Respondent Yael Jaari is a full-time Migrant Education teacher. Respondent Jaari's seniority date is January 10, 2017. She has a multiple subject (preliminary) credential and a general subjects credential.

10. Respondent Claudia Jones is a full-time Migrant Education teacher. Respondent Jones's seniority date is July 1, 2016. She has a multiple subject (clear) credential and a general subjects credential.

11. Respondent Veronica Ramos is a full-time Migrant Education teacher. Respondent Ramos's seniority date is July 1, 2016. She has an administrative services (clear) credential, a multiple subject (clear) credential and a general subjects (examination) credential.

12. Migrant Education teachers provide supplemental services to migratory students age 22 or younger before and after school or during lunch. The students come from families in the fishing and agricultural industries. Migrant Education teachers provide academic intervention in English Language Arts and Mathematics. They also connect migratory students to available resources. In the 2017/2018 school year, Migrant Education teachers provided services to approximately 750 students in 10 regions.

13. Respondents Jaari, Jones and Ramos provided these services for the County Office. The services are funded by a contract with the California Department of Education (CDE). The County Office reviewed the mandates in the contract with CDE that will take effect on July 1, 2018. The County Office decided to change its staffing needs to better serve the student population and meet the mandates of its contract. In place of the three full-time positions noticed for layoff, the County Office seeks to hire 50 teachers on an hourly basis on site in various Districts to provide the educational intervention and case management services that it is obligated to provide under the CDE contract. It will continue to provide the services, but in a different manner. The County Office is currently working on a recruitment and training plan.

14. The County Office intends to continue to provide Migrant Education at the current level in compliance with its contract obligations with CDE.

15. On March 5, 2018, Chief Human Resources Officer Gordillo served respondents Jaari, Jones and Ramos with written notice that their services would not be required for the 2018-2019 school year. The notice sets forth the reasons for the resolution.

16. Respondents Jaari, Jones and Ramos timely requested a hearing to determine if there was cause for the reduction of their services for the ensuing year. The County Office timely served respondents with a packet which included a statement to each respondent, the statement of reduction in force, copies of appropriate Education and Government Code sections, a notice of participation and a notice of hearing. Respondents Jaari, Jones and

Ramos filed timely notices of participation. All prehearing jurisdictional requirements have been met.

17. The County Office did not retain any employee with less seniority than respondents Jaari, Jones or Ramos to perform services for which they are certificated and competent to render.

ROP – Computer Application Position

18. ROP teachers provide education in subjects that are tied to the job market. The courses are meant to prepare high school students for graduation and to enter the job market. Class offerings are affected by workforce trends. There needs to be enough student interest in the subject matter to support offering the course.

19. Based on these factors, the County Office decided to eliminate one full-time ROP position in computer applications.

20. ROP services are not being reduced below a mandated level.

21. Respondent Steve Sanchez teaches computer applications. His seniority date is August 10, 2015. Respondent Sanchez has a career technical education teaching credential (preliminary) in the subject areas of information and communication technology and business and finance.

22. On March 5, 2018, Chief Human Resources Officer Gordillo served respondent Sanchez with written notice that his services would not be required for the 2018-2019 school year. The notice set forth the reasons for the recommendation.

23. Respondent Sanchez timely requested a hearing to determine if there was cause for the reduction of his services for the ensuing year. The County Office timely served respondent with a packet which included a statement to respondent, the statement of reduction in force, copies of appropriate Education and Government Code sections, a notice of participation and a notice of hearing. Respondent Sanchez filed a timely notice of participation. All prehearing jurisdictional requirements have been met.

24. The County Office did not retain any employee with less seniority than respondent Sanchez to perform services for which he is certificated and competent to render.

Respondents' Evidence and Contentions

25. Respondents Jaari, Jones and Ramos have provided valuable educational intervention and case management services to their migratory students. They have developed relationships with the students and their families.

26. Respondent Ramos has worked in Migrant Education for 13 years, including nine years in administration. She questions whether the County Office will be able to recruit and train 50 teachers to provide services to migratory students in time for the next school year. In order to provide Migrant Education, a teacher should be experienced, bilingual and have empathy and knowledge of the students' backgrounds. Respondent Ramos questions whether the new model will provide the students with sufficient intervention services.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. The services referenced in the PKS Resolution set forth in Factual Finding 6 are the kind which may be reduced or discontinued in accordance with applicable statutes and case law. (See Ed. Code, § 44955; *Campbell Elem. Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796; *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167.) The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the Superintendent's discretion. (*Rutherford v. Board of Trustees, supra*, 64 Cal.App.3d 167.)

3. The evidence established that no certificated employee with less seniority than respondents Jaari, Jones, Ramos or Sanchez is being retained to render services which respondents Jaari, Jones, Ramos and Sanchez are certificated and competent to perform. (Factual Findings 17 and 23.)

4. In accordance with Education Code sections 44949 and 44955, cause exists for reduction of particular kinds of services of the County Office, beginning no later than the commencement of the 2018-2019 school year, as follows: one ROP – Computer Applications teacher at 1.0 FTE, and three Migrant Education teachers at 1.0 FTE each. The cause relates solely to the welfare of the school and the pupils thereof within the meaning of Education Code section 44949.

5. Notice may be given to respondents Jaari, Jones, Ramos and Sanchez that their services will not be required for the 2018-2019 school year.

ORDER

Notice may be given to respondents Jaari, Jones, Ramos and Sanchez that their services will not be required for the 2018-2019 school year.

DATED: April 30, 2018

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Jill Schlichtmann

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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings