

**BEFORE THE GOVERNING BOARD OF THE
SOUTH BAY UNION SCHOOL DISTRICT
COUNTY OF HUMBOLDT
STATE OF CALIFORNIA**

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

CARRIE KELLY, a Certificated Employee, Respondent.

OAH No. 2021040020

PROPOSED DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on April 19, 2021, by videoconference.

Attorney Damara Moore represented the South Bay Union School District.

Attorney Lathe Gill represented respondent Carrie Kelly, who was present.

The record closed and the matter was submitted for decision on April 19, 2021.

FACTUAL FINDINGS

1. Respondent Carrie Kelly is a permanent certificated employee of the South Bay Union School District (District).

2. On February 11, 2021, the Governing Board of the District adopted Resolution No. 21-02-01, regarding criteria to determine certificated personnel who shall be exempt from the order of layoff by virtue of their credentials, competence, assignment, experience, or certification (Skipping Criteria Resolution). In the Skipping Criteria Resolution, the Board determined: that the District has a specific need for certificated personnel who are qualified to teach English Language Learners and hold current authorization to do so; that in September 2018 the District underwent a federal program monitoring audit in which findings were made that the District had several teachers who were not properly credentialed or authorized to teach English Language Learners; and that the District is committed to equity and seeks to ensure that all students are taught by teachers who understand how to competently provide instruction to students who are English Language Learners, including students who receive specialized instruction due to a disability. The Board determined that certificated employees who meet the following criteria shall be exempt from the order of layoff: "By March 1, 2021, possess credentials or certifications which authorize instruction of English Learners (BCLAD, CLAD, SDAIE, ELA1, ELAE or LDS) and are valid through the 2021-2022 school year. . . ."

3. On March 11, 2021, the Governing Board of the District adopted Resolution No. 2021-0301 (Reduction Resolution), reducing or discontinuing particular kinds of services for the 2021-2022 school year, and directing the District's superintendent to send appropriate notices to all employees whose positions may be affected by the reduction or discontinuation of services.

4. The Reduction Resolution identified the services to be reduced for the 2021-2022 school year as:

- 1.00 Full Time Equivalent (FTE) Multiple Subject Teacher¹
- 1.00 FTE Education Specialist

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

6. On March 12, 2021, Superintendent Gary Storts provided a written "Notice of Reduction or Discontinuance of Particular Kinds of Service" to respondent, notifying her that her services would not be required for the 2021-2022 school year, pursuant to Education Code sections 44949 and 44955, and that she had the right to request a hearing. The notice was served by certified mail, return receipt requested, on March 12, 2021.

7. Respondent submitted a request for a hearing.

8. On April 2, 2021, Storts made and filed the District Statement of Reduction in Force in his official capacity as superintendent of the District.

9. On April 5, 2021, respondent was served, by certified mail, return receipt requested, with a Reduction in Force Packet, which included: a Statement to Respondent, the District Statement of Reduction in Force, copies of relevant Education Code and Government Code sections, a Notice of Participation form, and a Notice of Hearing notifying respondent of the date and time set for hearing.

¹ The teacher impacted by this reduction in service did not request a hearing.

10. Respondent submitted a Notice of Participation, and this hearing ensued.

11. Respondent is a permanent full-time (1.0 FTE) certificated teacher for the District, assigned to teach a special education day class. She has worked for the District since August 22, 2011. Respondent holds a clear Education Specialist Instruction Credential, and an emergency Crosscultural, Language and Academic Development (CLAD) Permit, both of which expire on July 1, 2021.

12. Superintendent Storts and District business manager Johnna Emery testified credibly about the Reduction Resolution and the District's actions to implement it.

13. Storts recommended the reduction of service of one education specialist after consulting with the executive director of the Humboldt-Del Norte SELPA (Special Education Local Plan Area), reviewing the current special education student caseload and number of education specialists, and determining this position was overstaffed.

14. Storts discussed the skipping criteria adopted by the Board in the context of the District's policies and priorities. The Board policy regarding equity and inclusion provides that all employees teaching English Language Learners must have authorizations from the Commission on Teacher Credentialing (CTC) to teach these students. The authorizations are intended to ensure that English Language Learners have equal access to educational material, and that historically underrepresented students receive instruction from qualified educators. Storts reported that 12 percent of the District's students are English Language Learners.

15. Storts also explained that the recently implemented California Statewide Assignment Accountability System (CalSAAS) determined that the District had two misassignments in 2019-2020, meaning teachers whose teaching assignments did not

correspond to their credentials. Starting in the 2020-2021 school year, there would be consequences for such misassignments, which would be publicly reported on the "school dashboard" published online by the California Department of Education (CDE). Storts was also informed that the CDE and CTC would be looking at trends and repeated offenses when considering financial penalties, and that school funding could possibly be affected in the future.

16. Emery prepared the District's seniority list, noting each certificated employee's first date of paid service, job class description, assignment, permanency status, credentials, and certifications, and ranking employees in order of seniority. She obtained information regarding employees' credentials and certifications from the database maintained by the Commission on Teacher Credentialing. She also asked each teacher to verify their information. There were no objections to the seniority list.

17. There are four education specialists on the District's seniority list. Respondent is the only education specialist who does not satisfy the skipping criteria. Her emergency CLAD permit is due to expire on July 1, 2021, before the end of the 2021-2022 school year. The other three education specialists include one employee with the same seniority date as respondent who holds an ELA1 authorization valid through the end of the 2021-2022 school year, and two employees with less seniority who hold ELAE authorizations valid through the end of the 2021-2022 school year.

18. On October 25, 2018, Storts notified respondent that she and three other teachers had been identified in a federal program monitoring audit as not having the required CLAD, English Learner, or Bilingual credentials. Storts provided respondent with information about credential workshops being held by the Humboldt County Office of Education (HCOE) about how to obtain a temporary emergency authorization

and the next steps to obtain a clear authorization through coursework or examination. Storts sent respondent a follow-up reminder on November 19, 2018.

19. Stephanie Jackson, personnel coordinator for HCOE, issued respondent a Temporary County Certificate for 2018-2019, which is a "bridge document" intended to cover applicants who are in the process of obtaining authorization.

20. Respondent was one of the District's identified misassignments in CalSAAS for 2019-2020, based on her lack of an English Learner authorization.

21. On a date not established by the record, respondent also received a reminder from her principal about the need to obtain English Learner authorization.

22. Respondent's current emergency CLAD permit was issued on September 28, 2020, and expires on July 1, 2021.

23. Respondent credibly testified that she previously took the CTEL (California Teacher of English Learners) examination, passing the three required sub-tests in 2008 and 2009. Respondent believed she had applied for a CLAD after passing those tests, but for unknown reasons the application was not received by the CTC or was not completed. After being advised that she needed to obtain an English Learner authorization, and receiving an emergency permit, respondent learned that her CTEL scores were only good for 10 years. She investigated taking classes to avoid having to re-test, but the classes were too expensive. The CTEL examination is only offered on certain dates during the year, at limited site locations. Respondent reported that she tried to schedule testing in 2019 and 2020, but was not able to locate a testing seat within a reasonable distance. She stated she was scheduled to take the examination on May 5, 2021.

24. Respondent contends that the skipping criteria were not applied evenly, pointing to a multiple subject teacher who was retained despite allegedly not having a full credential through the end of the upcoming school year. However, respondent's argument is inapposite. The District's implementation of the Reduction Resolution with respect to the multiple subject teacher reduction is irrelevant to respondent, who is the subject of the education specialist reduction. Moreover, the multiple subject teacher served with the Statement of Reduction in Force did not request a hearing.

LEGAL CONCLUSIONS

1. The District complied with all notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955.

2. Pursuant to Education Code section 44955, subdivision (b), when a governing board 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."

3. The seniority date of certificated employees is determined in accordance with Education Code section 44845, which provides: "Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position."

4. The services referenced in the Reduction Resolution set forth in Factual Findings 3 and 4 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 Board's decision to reduce or discontinue the services was neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

5. Education Code section 44955, subdivision (d)(1), provides that a school district may deviate from terminating a certificated employee in order of seniority where the district demonstrates a specific need for personnel to teach a specific course or course of study, and the certificated employee proposed to be skipped has special training and experience necessary to teach that course of study, which others with more seniority do not possess. Thus, a junior teacher may be given retention priority over senior teachers if the junior teacher possesses the special training and experience that is needed but is not possessed by more senior colleagues.

6. The District has demonstrated a need for certificated personnel who are qualified and hold current authorization to teach English Language Learners, including students receiving special education services, and has limited its skipping criteria to employees who possess specified English Learner credentials or certifications that are valid through the end of the upcoming 2021-2022 school year. (Factual Findings 2, 14 & 15.) Respondent did not meet the skipping criteria established by the Board. (Factual Findings 2, 11 & 17.) The District has complied with the requirements of Education Code section 44955, subdivision (d)(1), and did not abuse its discretion in declining to exclude respondent from the Reduction Resolution in applying the skipping criteria.

7. The evidence established that no certificated employee with less seniority than respondent is being retained to render services that she is certificated and competent to perform. (Factual Findings 11 & 17.)

8. Cause exists under Education Code sections 44949 and 44955 for the reduction of particular kinds of services by the District for the 2021-2022 school year as set forth in the Reduction Resolution. (Factual Findings 2 through 22.) The cause relates solely to the welfare of the District and its students, within the meaning of Education Code section 44949.

9. Notice may be given to respondent that her services will not be required for the 2021-2022 school year.

ORDER

Notice may be given to respondent Carrie Kelly that her services will not be required for the 2021-2022 school year.

DATE: 05/04/2021



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings