

BEFORE THE
LOS ANGELES COUNTY SUPERINTENDENT OF SCHOOLS
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTIFICATED TEACHERS OF THE
LOS ANGELES COUNTY OFFICE OF
EDUCATION,

Respondents.

OAH No. 2019030483

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on April 25, 2019, in Downey. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Patrick Saldaña, Deputy General Counsel, represented complainant Arthur J. Cunha, Ed.D., Chief Human Resources Officer, Los Angeles County Office of Education (LACOE).

Respondents are the 102 individuals identified in exhibits 8 and 9. Carlos R. Perez, Esq., and Alejandra Gonzalez-Bedoy, Esq., represented the 13 respondents identified in exhibit A.

The Los Angeles County Superintendent of Schools (County Superintendent) decided to reduce 154.75 full-time equivalent positions due to a budget deficit. None of the County Superintendent's specific layoff decisions were challenged by respondents. The arguments made by two respondents that new "skipping" categories should have been created for them by the County Superintendent were not persuasive. Therefore, complainant established by a preponderance of the evidence that the County Superintendent's proposed layoff meets the requirements of the Education Code and honors the seniority of LACOE's certificated staff.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The District Statement of Reduction in Force was made and filed by complainant in his official capacity with LACOE.

2. Respondents are certificated employees of LACOE.

3. On March 1, 2019, County Superintendent Deborah Duardo, M.S.W., Ed.D., adopted Resolution No. 1-S to reduce or eliminate the particular kinds of certificated services specified therein no later than the beginning of the 2019-2020 school year by a total of 154.75 full-time equivalent (FTE) positions.

4. The County Superintendent further determined it necessary by reason of Resolution No. 1-S to decrease the number of certificated employees at the close of the present school year by a corresponding number of FTE positions, and directed complainant, or his designees, to proceed accordingly by notifying the appropriate certificated employees.

5. On March 4, 2019, pursuant to Education Code sections 44949 and 44955,¹ complainant notified the County Superintendent of his recommendation that notice be given to certain certificated staff that their services will not be required for the ensuing school year, and stating the reasons therefore.

6. On or before March 15, 2019, pursuant to the above-described resolution and the provisions of sections 44949 and 44955, complainant gave written notice to respondents and other certificated staff (preliminary layoff notice) of his recommendation to the County Superintendent to lay them off for the 2019-2020 school year. The certificated staff who received the preliminary layoff notices, including respondents, are identified in attachment A to the District Statement of Reduction in Force. (Ex. 2, pp. 18-22.)

7. Some respondents served pursuant to a temporary contract, and they were non-reelected for that reason pursuant to the County Superintendent's Resolution No. 2-S. Other respondents served pursuant to provisional credentials, and they were non-reelected for that reason pursuant to the County Superintendent's Resolution No. 4-S. All these respondents were provided with the preliminary layoff notice as a precaution, so that they could participate in and exercise any claimed rights in this matter.

8. Respondents timely filed Notices of Participation, or were deemed by LACOE to have done so, requesting a hearing to challenge their layoff.

9. Prior to the hearing, LACOE rescinded the preliminary layoff notices issued to LaShonda Tillmon, Martin Navaroli, and Ella Dennen.

Reduction or Elimination of Particular Kinds of Services

10. Resolution No. 1-S provides for the reduction or elimination of the following particular kinds of services:

¹ All further statutory references are to the Education Code unless otherwise noted.

EDUCATIONAL PROGRAMS

A.	<u>Division of Student Programs / LA County Court Schools SELPA</u>	<u>FTE</u>
1.	Assistant Principal	5
2.	Coordinator I	1
3.	Counselor	7
4.	Director I	1
5.	Principal	1
6.	School Psychologist	3
7.	Teacher CCS	4
8.	Teacher CUR	1.35
9.	Teacher ED	8
10.	Teacher JCS	23
11.	Teacher Literacy Specialist	4
12.	Teacher LSS	1
13.	Teacher Resource Specialist Program	2
	Subtotal	61.35

EDUCATIONAL SERVICES

A.	<u>Division of Accountability, Support and Monitoring</u>	<u>FTE</u>
1.	Coordinator II	1
	Subtotal	1
B.	<u>Division of Curriculum and Instructional Services</u>	<u>FTE</u>
1.	Coordinator II	1
2.	Project Director III	1
	Subtotal	2
C.	<u>Division of Special Education</u>	<u>FTE</u>
1.	Assistant Principal	3
2.	Coordinator II	1
3.	Educational Audiologist	4
4.	Principal	1
5.	Regional School Psychologist	1
6.	School Nurse	2

7.	School Psychologist	4
8.	SELPA Director III	1
9.	Teacher APE	1
10.	Teacher Autism	3
11.	Teacher CAR	1
12.	Teacher DHH	26
13.	Teacher DIS HH	1
14.	Teacher DIS-VIS HDCP	8.8
15.	Teacher ED	5
16.	Teacher ID	5
17.	Teacher ID DH	5
18.	Teacher LSS	5.5
19.	Teacher LSS and Verbal Therapy	1
20.	Teacher MD	4.6
21.	Teacher Mobility Instruction	4
22.	Teacher VI – Braille Production	1
Subtotal		88.9

HUMAN RESOURCE SERVICES

A.	<u>Human Resource Services – Certificated Recruitment</u>	<u>FTE</u>
1.	Coordinator III	.5
Subtotal		.5

TECHNOLOGY SERVICES

A.	<u>Technology Learning and Support Services</u>	<u>FTE</u>
1.	Coordinator II	1
Subtotal		1.0
		=====
Total FTE positions to be reduced or eliminated		154.75

11. The County Superintendent's decision to reduce or eliminate 154.75 FTE positions was the result of the budget deficit caused by the transfer of remaining special education services to special education local plan areas (SELPAs) and school districts in the county, as well as the reduction of incarcerated youth placed in LACOE schools.

12. The services or programs set forth in Factual Finding 10 are particular kinds of services that may be reduced or eliminated within the meaning of section 44955. The County Superintendent's determination to reduce or eliminate these services is within her

sound discretion and was not arbitrary or capricious. The reduction or elimination of services relates to the welfare of LACOE and its pupils, and, based on the County Superintendent's determination, it has become necessary to decrease the number of certificated employees.

13. LACOE considered personnel changes due to the releases of provisionally credentialed and temporary employees in making its determination to issue preliminary layoff notices, and will consider retirements that occur before May 15, 2019.

14. LACOE maintains a seniority list which contains employees' seniority dates, current assignments and locations, credentials, and authorizations. LACOE used the seniority list to identify the most junior employees working in a particular kind of service being reduced or eliminated and to determine which of those employees would receive preliminary layoff notices. In November 2018, LACOE certificated staff were notified of their respective seniority dates, and requested to advise LACOE's Human Resource Services Division if a stated seniority date was incorrect or if they had obtained any additional credentials not already registered with LACOE's Credentials Unit.

15. The County Superintendent also adopted Resolution No. 3-S, which contained criteria used in determining the order of termination of certificated employees who first rendered paid probationary service to LACOE on the same date. The County Superintendent determined such criteria best served the needs of LACOE and its pupils. Respondents did not challenge the tie-breaking criteria, nor did it affect any particular layoff decision.

Skiping

RESOLUTION NO. 5-S

16. Pursuant to Resolution No. 5-S, the County Superintendent determined to retain certain certificated staff in the particular kinds of services identified in Factual Finding 10, regardless of seniority, who, by their training, experience, and assignment, meet the following criteria: Probationary or permanent certificated employees who are currently assigned to the Los Angeles County Outdoor Science School as an Outdoor Education teacher possessing specialized training and at least two years' experience in a residential outdoor science school. Respondents do not challenge the validity of this skip decision.

CHRISTOPHER ANAYA

17. Respondent Anaya teaches at the International Polytechnic High School (IPoly) in Pomona. IPoly educators teach content by creating cross-curricular group projects for students, instead of using textbooks. Respondent Anaya argues the County Superintendent should have used her discretion to skip IPoly teachers because it takes special training and experience to teach in the IPoly program.

18. Respondent Anaya was assigned to IPoly in February 2017. He took two courses to prepare for teaching at IPoly. During the school year, IPoly teachers regularly meet with each other to create and implement their cross-curricular projects. IPoly teachers also meet over the summer to plan the cross-curricular projects. Respondent Anaya has taught at IPoly for the past two school years. This is the special experience and training respondent Anaya contends should have warranted the County Superintendent to decide to skip IPoly teachers. (Ex. C, attach. 1.)

19. In support of his position, respondent Anaya submitted many letters and notes from students who attest to his excellence as a teacher and the importance of the IPoly program. (Ex. C, attach. 2.) He also presented certificates from several trainings and workshops he has attended since teaching at IPoly. (Ex. C, attach. 3.)

20. A. Respondent Anaya also points out that teacher Shawn Strand left IPoly in January 2019 to take a Teacher on Special Assignment (TOSA) Instructional Media position and that Mr. Strand's IPoly position remains vacant. Respondent Anaya argues the vacant position should be used to spare one respondent from being laid off.

B. Human Resource Services Director III Nick Stephany, Ed.D., testified that Mr. Strand's TOSA position is temporary and not currently in next school year's budget. This means it is likely there will not be a vacancy at IPoly next school year caused by Mr. Strand's TOSA assignment this year.

C. In any event, school districts and county superintendents have discretion to "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." (§ 44955, subd. (c).) Therefore, even if Mr. Strand's former position at IPoly remains vacant, LACOE has the discretion to make assignments and reassignments for the next school year at IPoly, and how LACOE exercises that discretion is not an issue to be decided in this case.

DAVID OLIVARES

21. Respondent Olivares teaches female students at LACOE's Central Juvenile Court School (Central School). Among his three teaching credentials is a clear single subject credential in history.

22. Respondent Olivares contends all the single subject credentialed teachers at Central School have been laid off. He argues the lack of single subject credentialed teachers at Central School will prevent the school from offering what are known as "A-G courses," which is core curriculum that meets admission requirements of the University of California (UC) and California State University (CSU) systems. This is because only single subject credentialed teachers are qualified to teach A-G courses. (Ex. B.) In fact, respondent Olivares contends this has happened to Central School students at LACOE for the past several years. (Ex. B, attach. 9, p. 1.)

23. Because other schools at LACOE offer A-G courses, respondent Olivares argues LACOE is depriving juvenile court school students of their constitutional Equal Protection rights by not offering to them the education that other LACOE students receive. Though not clear, it appears respondent Olivares argues that he and other single subject credentialed Central School teachers should be skipped to address this problem.

24. However, respondent Olivares conceded on cross-examination that he teaches all subjects to his students in a self-contained classroom. Since he does not have a credential that covers English language assignments, he is not qualified to teach an A-G English course, and therefore his students have not received credit for English if they apply to the UC or CSU systems. In addition, respondent Olivares acknowledged that five single subject credentialed Central School teachers senior to him are not being laid off, indicating Central School will still have single subject credentialed teachers next school year. These facts indicate the present layoff will not change the A-G course situation at Central School, which undermines respondent Olivares' argument.

Overall Finding on Seniority

25. Taking into account the findings above, no junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. In administrative hearings involving personnel matters, the burden of proof is on the agency prosecuting the charges. (See, e.g., *Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; *Gardner v. Commission on Prof. Competence* (1985) 164 Cal.App.3d 1035.) In this case involving the employment rights of respondents, the County Superintendent bears the burden of proof. As no other law or statute requires otherwise, the standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.)

2. All notice and jurisdictional requirements of sections 44949 and 44955 were met. (Factual Findings 1-8.)

3. A. In this case, respondents have not challenged any of the County Superintendent's layoff decisions. Instead, respondents Anaya and Olivares contend additional skipping categories should have been created for them.

B. Section 44955, subdivision (d)(1), permits a school district or county superintendent to deviate from the order of seniority in teacher layoffs when "the district demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the employee [who is retained] has special training and experience necessary to teach that course or course of study . . . which others with more seniority do not possess."

C. In this case, section 44955, subdivision (d)(1), provides the exclusive purview of skipping decisions to school boards or county superintendents, not to teachers, parents or students. Therefore, the ALJ has no jurisdiction to create new skipping categories.

D1. Section 44955, subdivision (d)(2), does provide for skipping junior personnel for purposes of “maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.” However, aside from the fact respondent Olivares did not establish that the instant layoff will affect the A-G course situation at Central School, the type of skipping provided by subdivision (d)(2) is solely within the discretion of the County Superintendent, not a teacher. In this case, respondent Olivares has had other forums to complain about LACOE’s alleged deprivation of juvenile court school students’ rights. According to him, he has known of this problem for several years, but apparently has taken no steps to address his grievance about it, until he was given his preliminary layoff notice. However, this layoff proceeding is not the appropriate forum to litigate the equal protection problem described by respondent Olivares.

D2. Respondent Olivares cites to the judgment in the Los Angeles County Superior Court case of *Reed v. State of California* (Super. Ct. L.A. County, 2010, No. BC 432420)² as precedent that such challenges may be made in a layoff proceeding by students or teachers. However, that case involved a declaratory and injunctive relief lawsuit brought against several defendants in the Superior Court, not a skipping argument made in an administrative proceeding involving school teacher layoffs.

E. Finally, even if the ALJ has jurisdiction to create skipping categories proposed by certificated staff, neither respondent Anaya nor respondent Olivares established they have the kind of special training and experience required by section 44955, subdivision (d)(1), necessary to teach a specific course or course of study and therefore justify being skipped. Respondent Olivares has a single subject credential, which in itself is not special or unique. Respondent Anaya took two training courses before teaching at IPoly. It is not clear that those two training courses were conditions precedent to being able to teach at IPoly. Though the IPoly program appears to be unique, respondent Anaya failed to demonstrate he possesses special training and experience that another teacher assigned to IPoly would be required to have in order to teach there. (Factual Findings 17-24.)

4. The services identified in Resolution No. 1-S are particular kinds of services that can be reduced or eliminated pursuant to section 44955. The County Superintendent’s decision to reduce or eliminate the identified services was neither arbitrary nor capricious, and was a proper exercise of her discretion. Services will not be reduced below mandated levels. Cause for the reduction or discontinuation of those particular services relates solely to the welfare of LACOE’s schools and pupils within the meaning of section 44949. (Factual Findings 1-25.)

² The Superior Court’s judgment was later reversed on appeal in *Vergara v. State of California* (2016) 246 Cal.App.4th 619, as modified (May 3, 2016).

5. Cause exists to reduce the number of certificated employees of LACOE due to the reduction or elimination of particular kinds of services. (Factual Findings 1-25.)

6. During the hearing, LACOE rescinded the preliminary layoff notices issued to LaShonda Tillmon, Martin Navaroli, and Ella Dennen. The District Statement of Reduction in Force will be dismissed as against them. (Factual Finding 9.)

7. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-25.)

ORDER

The District Statement of Reduction in Force is dismissed as against LaShonda Tillmon, Martin Navaroli, and Ella Dennen. LACOE shall not give them final layoff notices for the 2019-2020 school year.

The District Statement of Reduction in Force is sustained against the remaining respondents. LACOE may give a final notice of layoff to those respondents. Notice shall be given to those respondents that their services will not be required for the 2019-2020 school year, and such notice shall be given in inverse order of seniority.

DATED: May 1, 2019

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ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearing