

BEFORE THE  
GOVERNING BOARD OF THE  
METROPOLITAN EDUCATION DISTRICT  
SANTA CLARA COUNTY, STATE OF CALIFORNIA

In the Matter of the Statement of Reduction  
in Force of certificated employees Peggy  
Nutz and Alice Rodriguez,

OAH No. 2016031050

Respondents.

**PROPOSED DECISION**

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on April 20, 2016, in San Jose, California.

Adam J. Fiss, Littler Mendelson, P.C., represented the Metropolitan Education District.

Christopher E. Schumb, Attorney at Law, represented respondents Peggy Nutz and Alice Rodriguez.

The matter was submitted for decision on April 20, 2016.

**FACTUAL FINDINGS**

1. Alyssa Lynch made and filed the Statement in Reduction in Force in her official capacity as the superintendent of the Metropolitan Education District (District). The District offers a Regional Occupational Program (ROP) that provides career technical education (CTE) classes to high school students from nearby, participating high schools.

2. On March 14, 2016, the governing board of the District adopted Resolution No. 08-03-14-16 (PKS Resolution), reducing or discontinuing particular kinds of services for the 2016-2017 school year, and directing Superintendent Lynch to send appropriate notices to all employees affected by the reduction or elimination of services.<sup>1</sup>

---

<sup>1</sup> On March 9, 2016, the governing board adopted tie breaking criteria in Resolution No. 08-03-09-16. The tie breaking criteria were not used because there were no employees notified of layoff who became employed on the same date.

The PKS Resolution identified the services to be reduced no later than the beginning of the 2016-2017 school year as:

Teacher, Office Careers – Public Services	0.5 FTE <sup>2</sup>
Teacher, Legal Careers	1.0 FTE <sup>3</sup>
Teacher, Business Entrepreneurship	0.5 FTE

Office Careers, Legal Careers and Business Entrepreneurship are three-hour courses that have been offered in the morning and in the afternoon. As a result of the reduction in force identified in the PKS Resolution, the District will offer one three-hour course in each of these subjects next year.

3. The services set forth in the governing board’s PKS Resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. No service is being reduced below a mandated level.

4. 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.”

In the PKS Resolution, the Board defined competence to identify employees who have a right to “bump” into the position of a less senior employee pursuant to Education Code section 44955, subdivision (b). The Board defined competence as follows:

- a) Possession of a current valid credential to teach the assigned subject matter;
- b) Experience teaching the subject for at least one year or the equivalent of one year during the past 10 years; and
- c) An employee must have all appropriate certifications, as determined by the District and state law, to hold the position (e.g., ASE Certification (automotive), EL Certification, CLAD, registered nursing license).

5. Before the governing board adopted the PKS Resolution, it was notified of the resignation of one certificated employee. The governing board considered this information

---

<sup>2</sup> Full-Time Equivalent.

<sup>3</sup> The District subsequently decided to effectuate only a 0.5 FTE in the Legal Careers course.

in determining the necessary reduction of services for the 2016-2017 school year.

6. On March 15, 2016, Superintendent Lynch served three employees written notice of her recommendation that their full-time services would not be required for the ensuing school year: Mark Adams, Peggy Nutz and Alice Rodriguez. Each notice set forth the reasons for the recommendation.

7. Adams did not request a hearing to determine whether cause existed for the reduction of his services. Adams teaches the Legal Careers course. Because the District is effectuating a 0.5 FTE reduction of the course, Adams's full-time position is being reduced to 0.5 FTE. He is being retained to continue teaching one Legal Careers class.

8. Respondents Nutz and Rodriguez timely requested a hearing to determine if there was cause for the reduction of their services for the ensuing year. The District timely served respondents with a packet which included a statement to respondents, the statement of reduction in force, copies of appropriate Education and Government Code sections, a notice of defense and a notice of hearing. Respondents Nutz and Rodriguez each filed a timely notice of defense. All prehearing jurisdictional requirements have been met.

#### *Basis for PKS Resolution*

9. Marie dela Cruz, the District's Chief Business Officer and Interim/Acting Human Resources Director, testified at hearing. She was involved in the layoff process and the preparation of the governing board resolutions. The District ties its classes to the current labor market, and the tools and education students need in order to succeed in that market. The District constantly reviews and evaluates its course offerings based on viability and student interest. This year, the superintendent, principal and dela Cruz met and determined that reducing the services identified in the PKS Resolution met the needs of the students. The cause for the reduction in particular kinds of services relates to the welfare of the schools and the pupils thereof.

10. In order to effectuate the reduction in force, dela Cruz met with management and human resources staff members to discuss the competency criteria. She reviewed the competency criteria used in the District's prior layoff proceedings. Dela Cruz considered the previous criteria to emphasize teaching skills and subject matter experience and to meet the needs of the students. CTE and ROP classes cover a broad range of subject matter; the District seeks to assign teachers to courses for which they have the necessary skills and experience. Dela Cruz and the other staff members recommended that the governing board adopt the competency criteria set forth in Factual Finding 4, which had been adopted and implemented by the District in prior years.

11. After the PKS Resolution, including the competency criteria, was adopted, dela Cruz applied the criteria to the three employees whose courses were being reduced (Nutz, Rodriguez and Adams) to determine whether they could be retained full-time by filling a position of a less senior employee.

### *Nutz Layoff*

12. Peggy Nutz is a certificated employee of the District who was hired in November 2000. She holds a designated subject career technical education credential, and a designated subject supervision and coordination credential, in the Finance and Business pathway and the Marketing, Sales and Services pathway. Respondent Nutz also holds a pupil personnel services (PPS) credential and an administrative services credential. The PPS credential authorizes her to provide school services as a counselor in grades 12 and below.

13. The PKS Resolution reduces the course offerings in the 2016-2017 school year to one Business Entrepreneurship course, which equates to a 0.5 FTE. Respondent Nutz taught two Business Entrepreneurship courses this year, providing her with a 1.0 FTE position.

Dela Cruz reviewed respondent Nutz's credentials and the classes she has taught in the past 10 years to determine whether she was eligible to bump into a position held by an employee with less seniority. In the last 10 years, respondent Nutz has been assigned to teach: 1) Office Assistant; 2) Microsoft Office XP; 3) Small Business Management; and, 4) Business Entrepreneurship.

14. After reviewing the subjects that respondent Nutz had taught in the past 10 years and the classes being offered in the 2016-2017 school year, dela Cruz determined that there was no certificated employee with less seniority who was being retained to perform services which she is certificated and competent to render pursuant to the District's competency criteria.

### *Rodriguez Layoff*

15. Alice Rodriguez has been a certificated employee of the District since at least 1998.<sup>4</sup> She holds a designated subject career technical education credential, and a designated subject vocational education credential, in the Finance and Business pathway, the Marketing, Sales and Services pathway and Business Office Occupations pathway.

16. The PKS Resolution reduces the course offerings in the 2016-2017 school year to one Office Careers – Public Services course, which equates to a 0.5 FTE. Respondent Rodriguez has taught two Office Careers or Office Assistant courses, providing her with a 1.0 FTE position.

Dela Cruz reviewed respondent Rodriguez's credential and the subjects she had taught in the past 10 years to determine whether she was eligible to bump into a more junior employee's position. In the last 10 years, respondent Rodriguez has been assigned to teach:

---

<sup>4</sup> The District's seniority list states that her seniority date is July 1, 1998; however, Rodriguez testified that she had been hired by the District in 1994.

1) Office Assistant; and 2) Office Careers – Public Services.

17. After reviewing the courses that respondent Rodriguez had taught in the past 10 years and the classes being offered in the 2016-2017 school year, dela Cruz concluded there was no certificated employee with less seniority than respondent Rodriguez who was being retained to perform services which she is certificated and competent to render pursuant to the District's competency criteria.

*Mark Adams*

18. After reviewing the courses that Mark Adams taught in the past 10 years against the classes being offered in the 2016-2017 school year, dela Cruz concluded there was no certificated employee with less seniority than Adams who was being retained to perform services which he is certificated and competent to render under the District's competency criteria. Adams has been retained to teach the Legal Careers course at 0.5 FTE.

*Respondent Rodriguez's Evidence and Contentions*

19. Respondent Rodriguez has been teaching for 22 years. Before she was hired by the District, she worked for nine months as a legal assistant. Respondent Rodriguez has a master's degree in public administration.

20. Respondent Rodriguez also teaches as an adjunct professor at Evergreen Valley College. She teaches classes in medical terminology, medical office practices and business. Over the summer, respondent Rodriguez teaches computer applications at Presentation High School.

21. In March 2015, the principal asked respondent Rodriguez if she would update her course so it would satisfy the "a through g" subject requirements for students applying to the University of California. Respondent Rodriguez agreed and implemented key assignments so that the class would satisfy the "a through g" requirements.

22. Respondent Rodriguez asserts that she is competent to assume the 0.5 FTE teaching the Legal Careers course taught by Adams, who has less seniority. She concedes that she has not been assigned to teach the Legal Careers course in the past 10 years; nevertheless, she believes she is competent to teach the course. Respondent Rodriguez notes that in the past when she has been assigned to teach a different class, she was not required to have taught the class before. Respondent Rodriguez asserts that she has incorporated a legal careers component in her Office Careers – Public Services course. She estimates that she spent 51 percent of her class time discussing legal careers this year. No syllabus confirming this assertion, or comparing it to the Legal Careers syllabus was offered in evidence. Respondent Rodriguez contends that she meets the District's competency criteria based on her work as a legal assistant, her credential and the amount of time she has spent teaching a legal component in her classes over the years.

23. Respondent Rodriguez also asserts that she is competent to teach the Business Entrepreneurship class taught by respondent Nutz, who has less seniority. Although she concedes that she has not taught the Business Entrepreneurship course in the past 10 years, respondent Rodriguez's credential would allow her to teach the class, and she feels qualified to do so.

24. Respondent Rodriguez contends that the second prong of the competency requirement should be interpreted to apply to a subject matter, not to a course assignment.

#### *Respondent Nutz's Evidence and Contentions*

25. Respondent Nutz has a business management degree and a master's of education, counseling degree from San Jose State University. She earned her PPS credential in 2014. Respondent Nutz wrote her master's thesis on the needs of special education children and has taught District staff members about the tools available for handling special needs children. To earn her master's degree, respondent Nutz performed 600 hours of counseling, including 200 hours with the Santa Clara County Foundry School, working with youth in difficult life situations.

26. Respondent Nutz has received the following awards: 1) the superintendent's award for outstanding performance dated January 21, 2009; 2) the superintendent's award for outstanding performance dated April 21, 2010; 3) the superintendent's award for outstanding performance dated February 16, 2011; 4) the Central County Occupational Center (CCOC) teacher of the month award in January 2009; 5) the CCOC teacher of the month award in October 2009; 6) the CCOC teacher of the month award in February 2011; and, 7) the CCOC teacher of the month award in January 2013.

27. Respondent Nutz presented letters of recommendation from Sara Crowder, Assistant Principal at the District; Peter J. Vrabel, Assistant Principal at the District; Jessica Baker, co-founder and chief operating officer of The Respect Institute; Marianne Cartan, Director at the District; Chantu Nguyen, Academic Counselor at Andrew Hill High School; and Leota Kuzma, a counselor at the District. These individuals uniformly praise respondent Nutz's excellent teaching and communication skills, her passion for her students' success, her experience with counseling and motivating her students, and her tireless efforts as a leader on campus.

28. Respondent Nutz has reviewed the job description for the District's counseling position and contends that she is competent to assume the position. The District employs a full-time counselor with less seniority than respondent Nutz. Respondent Nutz has spent a significant amount of time counseling the students in her classes. She believes that between the counseling work she performed while earning her master's degree and PPS credential, and the time she has spent informally counseling her students, she has met the District's competency criteria.

29. In the alternative, respondent Nutz contends that she is competent by virtue of her credential and overall experience to teach Adams's Legal Careers course. Respondent Nutz has more seniority than Adams.

## 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 3 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 District's discretion.

3. Respondents challenge the validity of the District's competency criteria, which require the senior employee to have experience teaching the subject for at least one year, or the equivalent of one year, during the past 10 years. Respondents contend that they are competent to teach courses being taught by employees with less seniority, and that therefore District's criteria are arbitrary and capricious, and invalid.

4. The governing board has broad discretion to establish standards of competency for the purpose of exercising bumping rights. (*Duax v. Kern Community College Dist.* (1987) 198 Cal.App.3d 555, 564-567.) Whether the board has acted arbitrarily and capriciously "is measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject." (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

5. The fundamental requirement of competency criteria is that they must relate to the skills and qualifications to teach. (*Duax v. Kern Community College Dist.*, *supra*, 198 Cal.App.3d at pp. 556-557.) In *Duax*, the governing board adopted a competency standard that prohibited a senior employee from exercising bumping rights unless he or she could demonstrate one full year of teaching in the junior employee's subject area within the last 10 years. The district's assistant chancellor testified that he recommended that standard to emphasize tasks important to teaching, such as teaching skills, development of course material, interaction with students, knowledge of student abilities, and evaluation of student work. The court held that the district's standard clearly related to the skills and qualifications to teach and, "since it requires only one year of teaching in the last ten, not one in the last two or three, we are not persuaded that it too narrowly defines competency." (*Id.* at p. 567.) Thus, a district is permitted to establish a standard of competency that includes prior teaching experience in the relevant subject area.

Here, the District's governing board adopted competency criteria that are nearly identical to the criteria approved in *Duax*. Because the criteria relate to the skills and qualifications to teach and have not been shown to be arbitrary and capricious, the issue is whether the District properly applied the criteria. (Factual Findings 4, and 9 through 11.)

6. Respondent Rodriguez has had a long and successful career teaching Office Assistant and Office Careers courses at the District. She has adjusted her curriculum to meet the needs of her students over the years. Respondent Rodriguez's credential would allow her to teach the Legal Careers course. However, the evidence did not establish that she met the second prong of the District's competency criteria, in that she has not taught the Legal Careers course in the past 10 years. Thus, no certificated employee with less seniority than respondent Rodriguez is being retained to render services which respondent Rodriguez is certificated and competent to perform pursuant to the District's competency criteria. (Factual Findings 9 through 11, 15 through 17, and 19 through 24.) As a result, respondent Rodriguez's layoff of 0.5 FTE must be upheld.

7. Respondent Nutz has also had a lengthy and successful career at the District. She has furthered her education and now has a PPS credential. By all accounts, respondent Nutz is a highly competent and respected teacher. However, respondent Nutz has neither taught the Legal Careers course nor been assigned as a counselor for one year within the past 10 years. Therefore, no certificated employee with less seniority than respondent Nutz is being retained to render services which respondent Nutz is certificated and competent to perform under the District's competency criteria. (Factual Findings 9 through 14 and 25 through 29.) Therefore, respondent Nutz's layoff of 0.5 FTE must be upheld.

8. In accordance with Education Code sections 44949 and 44955, cause exists for reduction of particular kinds of services of the District, beginning no later than the commencement of the 2016-2017 school year, as follows: 1) teacher, 0.5 FTE position in Office Careers – Public Services; 2) teacher, 0.5 FTE position in Legal Careers; and, 3) teacher, 0.5 FTE position in Business Entrepreneurship. The cause relates solely to the welfare of the school and the pupils thereof within the meaning of Education Code section 44949. (Factual Findings 2, 3 and 9.)

9. Notice may be given to respondents Rodriguez and Nutz that their services will be reduced from 1.0 FTE to 0.5 FTE for the ensuing school year.



## ORDER

Notice may be given to respondents Nutz and Rodriguez that their services will be reduced for the 2016-2017 school year.

DATED: April 27, 2016

DocuSigned by:  
*Jill Schlichtmann*  
D0097D940B484D9...

---

JILL SCHLICHTMANN  
Administrative Law Judge  
Office of Administrative Hearings