

**BEFORE THE
GOVERNING BOARD OF THE
COACHELLA VALLEY UNIFIED SCHOOL DISTRICT**

**In the Matter of the Reduction in Force of Certain
Certificated Employees of Coachella Valley Unified School
District.**

OAH No. 2024030817

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 16, 2024, in Thermal, California.

Christine K. Shu and Katie J. Oh, Olivarez, Madruga Law Organization, LLP, represented the Coachella Valley Unified School District (CVUSD or district).

Jon Y. Vanderpool, Vanderpool Griffith LLP, represented all 91 respondents, including those who filed a request for hearing but who did not file a notice of participation.¹

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on April 16, 2024.

¹ The district did not object to allowing those respondents who did not file a notice of participation to participate in the hearing.

FACTUAL FINDINGS

Evidence Presented by the District

1. Mayela Salcedo, Assistant Superintendent of Business Services and Chief Financial Advisor, and Maria McLeod, Interim Assistant Superintendent of Human Resources, testified on behalf of the district. The following factual findings are derived from their testimony and documentary evidence admitted at hearing.

2. On March 7, 2024, the Board of Education for the Coachella Valley Unified School District adopted Resolution Number 2024-22, reducing particular kinds of certificated services and directing the Superintendent or his designee to give appropriate notices to certificated employees whose positions would be affected by the reduction. The decision to reduce or discontinue a particular kind of service is a matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) A school district's decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

3. The resolution called for the reduction or discontinuation of 71 full-time equivalent (FTE) positions. Specifically, the resolution identified the FTE positions to be eliminated as follows:

Multiple Subject Credential Teachers (K-8)	69 FTE
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• TOSA ² , K-8 Intervention	50 FTE
• TOSA, District Office	6 FTE
• Teachers, K-8	13 FTE
Pupil Personnel Services Counseling	1 FTE
Single Subject Art	1 FTE
Total Non-Management Certificated FTE:	71 FTE

4. The resolution referenced Exhibit "A," which explained the board would deviate from the normal order of layoffs for personnel who had special training, experience, or credentials that others with more seniority did not possess (also known as skipping), in accordance with Education Code section 44955. The seminal case for the retention of less senior employees (skipping), *Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, requires a district to not only establish a specific need for personnel to teach a specific course of study, but to also establish that the certificated employee it proposes to retain has special training and experience necessary to teach that course or course of study or to provide those services. (*Id.* at p.138.) The skipping criteria detailed in the resolution is: 1) certificated personnel who possess a valid bilingual cross-cultural language and academic development authorization (BCLAD), bilingual certificate of competence (BCC), bilingual authorization in Spanish (BASP), or a bilingual certificate of competence (BCES), and who will be assigned to teach in a district dual immersion program in the 2024-2025 school year; 2) certificated personnel who possess a credential authorizing service in

² "TOSA" designates a teacher on special assignment.

special education and who will be assigned within the scope of that credential in the 2024-2025 school year; and 3) certificated personnel who will be assigned to teach transitional kindergarten (TK) for the 2024-2025 school year in combination with certain other criteria.

5. The resolution also referenced Exhibit "B," which established the tie-breaking criteria for employees who first rendered paid probationary service to the district on the same date. The district provided a worksheet showing how it applied the tie-breaking criteria to four certificated personnel. No evidence showed the district improperly used the tie-breaking criteria, and no respondents raised any objections concerning tie-breaking criteria.

6. Thereafter, the district timely provided notice to 120 certificated personnel advising them that their services would not be required for the 2024-2025 school year. The reasons for the recommendation were set forth in the notice. Some of the notices were rescinded following the initial notice for various reasons not at issue here. Of the remaining certificated personnel, 91 requested a hearing, and this hearing followed. Respondents are identified in Appendix 1.

7. All prehearing jurisdictional requirements were met.

8. The reasons that necessitated the reduction in particular kinds of services were a decline in average daily attendance of students, a reduction in funding provided by the state, the end of COVID-era school funding, and the fact that not reducing particular kinds of services would result in continued deficit spending for years to come. A review of the exhibits pertaining to the budget, which included the 2023-2024 Adopted Budget Financial Report dated June 22, 2023; correspondence between the Riverside County Office of Education (RCOE) pertaining to the 2023-2024

budget, the First Interim Financial Report (dated January 12, 2024), and the Second Interim Financial Report (dated March 7, 2024); and a Fiscal Stabilization Plan; supported the district's position that a reduction in force was warranted due to the district's financial situation.

9. Ms. McLeod discussed the need for bilingual teachers and importance of having teachers with a BCLAD or other bilingual certifications. She indicated that there is a need in the district for such services, and positions that teach dual immersion classes are extremely hard to fill. Thus, it was determined that teachers with those skills and certifications would avoid layoff. In total, 21 teachers³ were skipped based on the first skipping category identified in the resolution. No teachers were identified that could skip based on the second category identified in the resolution. Regarding the third category, concerning teachers who would be teaching transitional kindergarten and who met other specified criteria, three teachers were identified.⁴ Although there

³ The teachers who were exempt from the reduction in force in accordance with the first skipping criteria identified in the resolution were: Anaya Gonzalez, Diana; Arredondo, Romina P.; Ayala, Angela Maria; Beltran-Lara, Crystel Alonda; Cardenas, Stephanie; Carrasco, Deisy; Castro Jr., Martin Loya; Covarrubias, Yuri Maria; Estrada-Bribiesca, Cindy; Huerta, Laura Razo; Lino, Mirka Janette; Lopez, Patricia; Machuca Gonzalez, Marco Antonio; Marin Alcantar, Marlene; Padilla, Alma Rocio; Paez, Giselle; Robledo-Infante, Ruth Selene; Rodriguez, Imelda Diaz; Rodriguez, Maribel Hernandez; Rodriguez Mendoza, Jose; and Zavala, Talitha N.

⁴ The teachers who were exempt from the reduction in force in accordance with the third skipping criteria were: Brown, Justin D.; Coronel, Elisa; and Vieyra, Alicia Ericka.

was no testimony regarding the district's rationale for skipping special education teachers or those who teach transitional kindergarten, no evidence established that the district's skip of personnel in these two categories was arbitrary or capricious. The evidence also did not demonstrate that the district made any erroneous identifications with respect to any of the 24 teachers who were skipped.

10. Ms. McLeoud also determined whether the employees identified for layoff held any other credentials that would entitle them to "bump" into a position being held by a junior employee. A senior employee whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee is entitled to displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 473-474.) In total, 11 certificated personnel had the right to bump a junior teacher; eight chose to exercise their bumping rights.⁵ Three chose not to do so.⁶ No evidence was introduced that the district improperly "bumped" any employees.

11. Ms. McLeoud noted that Maria Dungao, who challenged her layoff because she is in a special assignment in the district office, has a multiple subject

⁵ The certificated personnel who elected to bump junior teachers were: Castro, Evelyn Marie; Dixon, Gwendolyn Leann; Hernandez Flores, Deyci; Morales, Viridiana; Simoneau, Edward Joseph; Smith, Christopher Jon; Tejeda Beriguete, Kelvin R.; and Tinsley, Christine Marie.

⁶ The three certificated personnel who chose to be laid off rather than bump a junior employee were: Bauman, Patricia Andrea; Ramos, Vianey; and Tittnich, Maricela.

credential, which subjects her to the reduction in force regardless of her assignment. When selecting which certificated personnel would be subject to the reduction in force, the district went strictly by seniority, the credential held, skipping criteria, bumping criteria, and applicable law.

12. The services identified in the resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The board's decision to reduce or discontinue those services was neither arbitrary nor capricious. It was a proper exercise of the board's discretion. The reduction and discontinuation of services was related to the welfare of the district and its pupils, and it became necessary to decrease the number of certificated employees as determined by the board. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

13. Positively assured attrition was considered in the layoff decisions and will be used in making future rehire decisions.

14. With the exception of the employees being exempted (skipped) by Exhibit A of the resolution, no less senior teachers are being retained while more senior teachers credentialed to perform the same service are being laid off.

Evidence Presented by Respondents

15. Several respondents elected to testify at the hearing. Their testimony is summarized below.

16. Ana Ceja Avila is an elementary school teacher who teaches a fifth and sixth grade combination class. She is also able to teach English learners. She explained that she was a student in the CVUSD for her entire elementary school education, and

her experience is what inspired her to become a teacher. She cares about her job and wants to be there for her students. She understands why the reduction in force is necessary but emphasized that not knowing what the future holds, and the lack of job security is a difficult situation to experience.

17. Samantha Valdez is a kindergarten teacher but has also taught second grade. Ms. Valdez believes she has been a valued educator throughout her tenure and the principal even described her as an asset to the CVUSD. Ms. Valdez went to school in the CVUSD, and she is honored to be teaching where she attended elementary school many years ago. Ms. Valdez understands why the reduction in force is happening but has great concerns regarding how the reduction in force will affect the students and the community as a whole.

18. Maria Dungao is on special assignment at the district and involved with coaching English Language Development teachers. She goes to different school sites to coach the various teachers and spends most of her time at secondary schools and high schools. She is confused why she is included in the reduction in force because her position is not being eliminated. Prior to being placed in her position, the position was vacant, and her belief is nobody is able to bump into her position. Her position is very important because it helps students become classified as English-proficient, which has a big impact on their ability to choose electives when they get to high school. There are no other teachers in the district that do what she does.

19. Edward Simoneau works in the district office and is on a team of six teachers in the district office on special assignment that provide various types of support to teachers across the district. Other people on his team received the same layoff notice, but at least one was able to bump into a classroom position. He understands why he is getting laid off, but he shares Ms. Dungao's perplexion

regarding why she is being laid off because the resolution identifies only six positions in the district office as subject to the reduction in force, and Ms. Dungao is not part of the team he is on.

Arguments

20. The district argued that due to declining enrollment, changes in funding from the state, and the expiration of COVID funding, a reduction in force was necessary and the district's decision was proper. The district would like to remain fiscally solvent and does not take the decision to reduce FTEs lightly. However, the district followed applicable law with respect to a reduction in force, procedural requirements, notice requirements, and the respondents identified for layoff should be upheld. Further, with respect to Ms. Dungao's argument that she should not be subject to the layoff since her position is not identified in the resolution, the district noted that the subcategories in the resolution beneath the number of 69 multiple subject credential FTEs to be reduced are "mere descriptors," and Ms. Dungao therefore is subject to the layoff. In other words, the layoff is based on her credential, not her assignment.

21. Respondents noted that the way the district conducted this reduction in force was transparent, and there are no challenges to the manner in which the district selected individuals for layoffs with respect to skipping, bumping, or tie-breaking procedures. However, with respect to Ms. Dungao, the resolution identifies six special assignment positions to be eliminated, and Ms. Dungao's position is not one of them. As such, there is no reason why she should be subject to the layoff.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections were provided as required.

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.)

3. A preponderance of the evidence sustained the statements set forth in the district's statements of reduction in force served on respondents concerning the services that will not be required.

4. The district identified the certificated employees who are providing the particular kinds of services that the board directed be reduced or discontinued. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2024-2025 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.


5. No employee with less seniority than any respondent is being retained to perform a service that any respondent is certificated and competent to render.

6. Although Ms. Dungao's special assignment position may not be one that is listed in the six "TOSA" positions being eliminated in the resolution, the lead category for the 69 FTEs under which that category falls is teachers with a multiple subject credential. Ms. Dungao has a multiple subject credential. Therefore, she is subject to the reduction in force despite her special assignment in the district office.

RECOMMENDATION

It is recommended that before May 15, 2024, the Board of Education for the Coachella Valley Unified School District give notice to the respondents whose names are set forth below, in Appendix 1, that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2024-2025 school year.

DATE: May 1, 2024


Kimberly Belvedere (May 1, 2024 09:18 PDT)

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

Appendix 1⁷

1. Aguirre, Claudia H.
2. Allen, Mark Douglas
3. Badena, Pearla Janette
4. Barragan, Bianca
5. Bartlett Delariva, Brianna Bernadette
6. Bauman, Patricia Andrea
7. Beltran-Zazueta, Rafael
8. Blume, Shelley Margorita
9. Burke, Charlene Cota
10. Calderon Regalado, Sandra
11. Cambron, Andres Antonio
12. Carlson, Teresa
13. Ceja Avila, Ana Cristina
14. Chang, Jeff Yen Jong

⁷ The numbers used in this Appendix reflect nothing more than the number of respondents being laid off, these numbers have no bearing on rehire or recall rights.

15. Dungao, Maria Carina
16. Espinoza, Julissa Ortiz
17. Fernandez, Selene Hernandez
18. Garcia, Lilia Ivette F.
19. Garcia Mejorado, Brenda
20. Garcia Toral, Maria Del Carmen
21. Gentry, Alexia Marie
22. Gonzales, Cristal Yvette
23. Grijalva, Lynda Alexis
24. Gutierrez, Jennifer Breanna
25. Guzman, Amanda
26. Hernandez, Peter R.
27. Huerta, Veronica
28. Leon, Vanessa
29. Lopez, Alyssa Mylin
30. Mendez, Saul
31. Meza, Jessica
32. Meza-Bojorquez, Paola

33. Naranjo, Laura
34. Okimura, Megan
35. Ortega, Concepcion
36. Ortega Aguirre, Maria J.
37. Osorio, Karen Giselle
38. Pimentel-Ramos, Michelle
39. Ramirez, Ashley Marie
40. Ramirez-Rodriguez, Ana Gissell
41. Ramos, Vianey
42. Regalado Gonzalez, Maribel
43. Rubio, Ashley Marie
44. Ruiz Jimenez, Cecilio Bladimir
45. Saenz, Analilia R.
46. Saenz, Jasmine Soleil
47. Sanchez, Abby Lynn
48. Serrato, Jessica Rodriguez
49. Sical, Josaphat Esteban
50. Siddiqui, Sabaina Khurram

- 51. Steele, Ericka Lynn
- 52. Talos, Damian Constantin
- 53. Tinajero-Orozco, Martha
- 54. Tittnich, Maricela
- 55. Toledo, Danya
- 56. Torres, Maria Angelina
- 57. Valdez, Samantha L. (aka Samantha Granillo)
- 58. Vasquez, Everlyn
- 59. Zamora-Cervantes, Mayra