

BEFORE THE
GOVERNING BOARD
GREENFIELD UNION SCHOOL DISTRICT
COUNTY OF KERN
STATE OF CALIFORNIA

In the Matter of the Layoff of:

Katy Chudy and other certificated
employees of the Greenfield Union
School District,

Respondents.

OAH Case No. 2012030594

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 26, 2012, in Bakersfield, California.

Christopher W. Hine, Attorney at Law, represented Chris Crawford (Crawford), Superintendent of the Greenfield Union School District (District).

Jashua F. Richtel, Attorney at Law, represented Katy Chudy (Chudy), Sandi Dotson (Dotson), Rose Girguis (Girguis), Mary (Susan) Holloway (Holloway), Mary Huff (Huff), Ashley Lara (Lara), Kelly Mashburn (Mashburn), Sarah Ozuna (Ozuna), and Beverly Roquemore (Roquemore), collectively referred to as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2012-2013 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2012-2013 school year.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Superintendent Crawford filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.

3. On March 7, 2012, the Governing Board of the District (Governing Board) adopted Resolution Number 12-18, reducing or discontinuing the following services for the 2012-2013 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
Self-Contained Classroom Instruction, Grades K-6	12.0
Technology Specialist	1.0
Curriculum Specialist	4.0
Departmentalized Programs	
Math	3.0
English	3.0
Science (Biological, Health, General)	3.0
Social Science	<u>3.0</u>
Total	29.0

4. Superintendent Crawford thereafter provided written notice to the Governing Board and to Respondents that he recommended the termination of Respondents' services for the 2012-2013 school year due to the reduction of particular kinds of services.

5. On March 9, 2012, and on March 12, 2012 with respect to Respondents Lara and Roquemore, the District provided notice to Respondents that their services will not be required for the 2012-2013 school year due to the reduction of particular kinds of services. Respondents filed timely requests for hearing.

6. On March 26, 2012, the District filed and thereafter served the Accusation and other required documents on Respondents. Respondents filed timely Notices of Defense, seeking a determination of whether cause exists for not reemploying them for the 2012-2013 school year.

7. All prehearing jurisdictional requirements have been met.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.²

¹ Full-time equivalent position.

² All further statutory references are to the Education Code.

9. The decision to reduce or discontinue the particular kinds of services set forth in factual finding number 3 is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

10. The reduction or discontinuation of the services set forth in factual finding number 3, in the context of potential revenue declines and the need to continue providing services to students if such losses materialize, is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

11. Respondent Holloway has a seniority date of August 14, 2006, and holds a multiple subject credential with a supplemental authorization in English. She teaches Sixth Grade.

12. Respondent Roquemore has a seniority date of August 13, 2007, and she holds a multiple subject credential with supplemental authorizations in Math and English. She teaches Seventh Grade Math.

13. Respondents Holloway and Roquemore are credentialed and competent to teach language arts classes that two other certificated employees, Lynn San Miguel (San Miguel) and Connie Leija (Leija), were retained to teach. San Miguel has a seniority date of August 14, 2006, and Leija has a seniority date of August 6, 2008. Respondents Holloway and Roquemore argue that they should be able to displace, or bump, the retained employees. Because San Miguel is senior to Respondent Roquemore, there is only one position to which one of the two respondents could bump into, that of Leija. Since Respondent Holloway is senior to Respondent Roquemore, she would be the one able to displace, or bump, Leija.

14. The District did not retain Respondents Holloway or Roquemore because it concluded that they were not "highly qualified" within the meaning of the "No Child Left Behind" federal law. The District is concerned that retaining teachers who do not meet the requirement of the law would lead to loss of federal funding. However, the District did not show that Respondents Holloway and Roquemore would not be "highly qualified" for any of the District's existing positions. Nor did the District show that a penalty or actual loss of funds would result from the retention of either respondent if such retention were required by State law. In any event, the Governing Board did not adopt any competency criteria that included compliance with No Child Left Behind as a factor in the layoff, and did not otherwise inform Respondents that they may be subject to termination or layoff if deemed not highly qualified with reference to No Child Left Behind.

15. With the exception of Respondent Holloway, the District did not retain any certificated employee junior to any Respondent to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are particular kinds of services that may be reduced or discontinued pursuant to section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 10.

4. Section 44955, subdivision (b), provides, in pertinent part: “[t]he services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is *certificated and competent* to render.” (Emphasis added.) “Certificated” is defined by the provisions of the Education Code pertaining to credentials, but “competent” is not specifically defined. In *Forker v. Board of Trustees* (1994) 160 Cal.App.3d 13, 19, the Court defined the term in a reemployment proceeding under section 44956, in terms of the teachers’ skills and qualifications, specifically, as “relating to special qualifications for a vacant position, rather than relating to the on-the-job performance of the laid-off permanent employee.” In doing so, the Court noted that courts in reduction in force cases, namely *Brough v. Governing Board* (1981) 118 Cal.App.3d 702, 714-15, and *Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 654-55, had interpreted the term in a similar manner.

Courts in analogous layoff and reemployment contexts, construing provisions similar to section 44955, have recognized that school districts have discretion to establish rules to define teacher competency. Thus, after reviewing earlier cases, the Court in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565, wrote: “Hence, from these authorities we conclude that a board’s definition of competency is reasonable when it considers the skills and qualifications of the teacher threatened with layoff.” (See also *Martin v. Kentfield School District* (1983) 35 Cal.3d 294, 299-300; *Forker v. Board of Trustees*, *supra*.) In this case, the Governing Board did not establish any criteria defining teacher competency.

Respondents Holloway and Roquemore established that they are certificated and competent to render language arts services which two other teachers were retained to render. However, because of the seniority of one of the individuals involved, San Miguel, only one position is available into which the respondents could bump, that of Lejia. As the most senior of the respondents, Respondent Holloway may bump into that position. Therefore, cause does not exist to terminate the services of Respondent Holloway for the 2012-2013 school year.

5. Cause exists to terminate the services of Respondents Chudy, Dotson, Girguis, Huff, Lara, Mashburn, Ozuna, and Roquemore for the 2012-2013 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 15, and legal conclusion numbers 1 through 4.

ORDER

1. The Accusation is sustained in part and the District may notify Respondents Chudy, Dotson, Girguis, Huff, Lara, Mashburn, Ozuna, and Roquemore that their services will not be needed during the 2012-2013 school year due to the reduction of particular kinds of services.

2. The Accusation is dismissed with respect to Respondent Holloway, who shall be retained for the 2012-2013 school year.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings