

BEFORE THE
STATE ADMINISTRATOR
INGLEWOOD UNIFIED SCHOOL DISTRICT

In the Matter of the Statement of Reduction
in Force Against:

OAH No. 2017030924

THE CERTIFICATED EMPLOYEES OF
THE INGLEWOOD UNIFIED SCHOOL
DISTRICT NAMED IN THE APPENDIX,

Respondents.

PROPOSED DECISION

This matter was heard by Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 17, 2017, in Inglewood. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Sharon J. Ormond, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented the Inglewood Unified School District (District).

Carlos R. Perez, Esq., Reich, Adell & Cvitan, represented the respondents named in the Appendix.

At the hearing, the parties stipulated that the District timely served all notices upon respondents and all jurisdictional requirements have been met.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The District is currently under the authority of a State Administrator, Dr. Vincent C. Matthews, who was appointed by the California Superintendent of Public Instruction, and has assumed all legal rights, duties and powers of the District's Board of Education, in accordance with Education Code section 41326.¹

2. Respondents are certificated employees of the District.

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

3. As described in more detail below, the State Administrator resolved to reduce and eliminate particular kinds of services totaling 27.50 full-time equivalent (FTE) positions and directed District staff to proceed to layoff certificated staff pursuant to sections 44949, 44955 and 8366.

4. On March 9, 2017, District staff gave written notice to 25 certificated District employees, including respondents, advising them it had been recommended to the State Administrator that notice be given to them that their services will not be required for the 2017-2018 school year. Respondents comprise the 18 individuals who timely requested a hearing to determine if there is cause for not employing them next school year.

5. The Statement of Reduction in Force was made and filed by Nora Roque in her official capacity as the District's Executive Director of Human Resources, alleging cause exists to not reemploy respondents for the following school year. Eighteen individuals timely submitted Notices of Participation, which contained requests for a hearing to contest the proposed layoffs, or were deemed by the District as having done so. Respondents were provided all required documents in a timely manner.

The Layoff Resolution

6. On March 8, 2017, the State Administrator adopted Resolution No. 25/2016-2017 (the Resolution), which provides for the reduction or elimination of the following particular kinds of services:

<u>Services</u>	<u>FTE Positions</u>
Reduce Elementary School Teaching Services	19.00
Reduce Secondary English Teaching Services	3.00
Reduce Secondary Math Teaching Services	1.00
Reduce Secondary Social Studies Teaching Services	1.00
Reduce Morningside High School Computer Applications Teaching Services	1.00
Reduce Secondary Counseling Services	1.00
Reduce PM Preschool Teaching Services	1.50
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Total Full-Time Equivalent Reductions	27.50 FTE positions

7. It was established by Executive Director Roque's testimony that the Resolution was required by the District's current financial difficulties, including that the District must pay back a multi-million dollar loan it received from the State which prompted the District to be placed under the authority of the State Administrator. The annual loan payments are \$1.9 million. The District is still engaged in deficit spending. More than 80 percent of the District's current budget is related to staff compensation and benefits. In addition, student enrollment in the District has decreased by 500 students per year.

8. The services or programs set forth in Factual Finding 6 are particular kinds of services which may be reduced or eliminated within the meaning of section 8366 and 44955.

9. The State Administrator's determination to reduce or eliminate those services or programs was within his sound discretion and was not proven to be arbitrary or capricious. Services will not be reduced below mandated levels. The reduction or discontinuation of services is related to lack of work, lack of funds and the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees.

The Seniority List and Layoffs

10. The District maintains a seniority list which contains employees' seniority dates, current assignments and locations, credentials, and authorizations. The seniority list was based on information from the District's human resources records, as well as information from the Los Angeles County Office of Education (LACOE) and credentialing records of the California Commission on Teacher Credentialing.

11. The Resolution defined that "competency," for purposes of bumping as described in section 44955, includes: (1) possession of a valid clear or preliminary credential in the subject(s) or grade level to which the employee will be assigned at the beginning of the 2017-2018 school year; (2) appropriate full (not emergency) EL authorization (if required by the position); (3) in the case of displacing junior employees teaching in a departmentalized setting, single subject credential(s) or subject matter authorization in that subject area; and (4) any training and experience necessary to meet the job requirements of specialized positions (such as Dual Immersion Teachers or Opportunity Teachers). This definition of competency was not challenged by respondents.

12. Attached to the Resolution are criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the District on the same date. The State Administrator resolved that such criteria would best serve the needs of the District and its pupils. Although the tie-breaking criteria was used in developing the seniority list and impacted some respondents, no challenge was made to the tie-breaking criteria and it otherwise appeared to be reasonably related to the welfare of District pupils. For those instances in which the tie-breaking criteria did not resolve the issue, a lottery was used, impacting three of the preschool teachers. No challenge was made to the tie-breaking criteria and it otherwise appeared to be reasonably related to the welfare of District pupils.

13. In the Resolution, the State Administrator also articulated a specific need to hire and retain teachers who possess special training and experience to teach classes in the Dual Immersion program. Therefore, Ms. Roque was authorized to deviate from terminating certificated employees in order of seniority (skipping) in instances where the less senior employee possesses special training and experience to teach classes in the Dual Immersion program and will be assigned to do so in the 2017-2018 school year.

14. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced or eliminated. The District then determined whether those least senior employees held credentials in another area and were entitled to bump other employees with less seniority. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by known vacancies and determined the impact on incumbent staff in inverse order of seniority.

15. The District properly considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered.

Individual Challenges

16. A. Vincent Simpson: Mr. Simpson teaches music classes at Crozier Middle School. He holds a bachelor's and master's degree in music education. Mr. Simpson is able to teach all instruments (wind, percussion, and string), as well as vocal (choir and chorale.) He was bumped by a more senior teacher who holds a credential in music. This individual has been teaching computer application classes. It was not established that the more senior teacher who bumped Mr. Simpson has as much experience teaching music as Mr. Simpson or that he has Mr. Simpson's breadth and depth of instrumental and vocal knowledge.

B. Alicia Martinez: Ms. Martinez is a child development center teacher who provides all-day preschool teaching services. The District's preschool teachers have either a morning assignment (8 a.m. to 11 a.m.), an afternoon assignment (12:30 p.m. to 3:30 p.m.) or an all-day assignment (7:30 a.m. to 5:30 p.m.) The Resolution called for reducing the afternoon preschool teaching services by 1.50 FTE Ms. Martinez, Ramona Rocha and Bonnie Williams currently teach all-day preschool assignments. They are junior to all of the other preschool teachers who currently teach morning only or afternoon only assignments. Ms. Martinez, Ms. Rocha and Ms. Williams were given notice that, for the 2017-2018 school year, they would be given a morning preschool assignment only; they were informed that their services would not be required in 2017-2018 for the all-day preschool assignments they currently hold. Each of the three teachers faces a reduction of 0.05 FTE Ms. Martinez contended that since only the afternoon preschool assignments must be reduced, those individuals currently teaching afternoons only should have been given notice that their services would not be required for the 2017-2018 school year, despite their seniority.

C. While the arguments made by Mr. Simpson and Ms. Martinez elicit sympathy, they do not establish a basis to rescind their layoff notices. The District has discretion to perform its assignments and reassignments as it deems appropriate, so long as it acts in good faith.² The State Administrator has discretion to determine whether and how the

² School districts have discretion to define positions in the manner which they will be taught as long as it is done in good faith. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334.) A governing board has the discretion to determine to reduce services by determining that proffered services shall be reduced in extent because fewer

needs of the District's students will be met. No evidence presented indicates the District or the State Administrator have acted in bad faith.

17. Teachers who provide instruction in a language other than English are required to receive a bilingual teaching authorization. In California the bilingual authorization is called the Bilingual, Cross-cultural, Language and Academic Development (BCLAD) credential. Respondents' attorney queried whether a more senior teacher with a BCLAD credential could bump a junior teacher currently teaching in the Dual Immersion program. In the Resolution, the State Administrator articulated a specific need to hire and retain teachers who possess special training and experience to teach classes in the Dual Immersion program. The Dual Immersion teachers have classroom experience and receive special training provided in-house and through LACOE. No respondent holding a BCLAD credential established that he or she has the special training and experience possessed by those currently teaching in the Dual Immersion program. Therefore, the District is authorized to deviate from terminating certificated employees in order of seniority, enabling the District to skip those teaching in the Dual Immersion program who will be assigned to do so in the 2017-2018 school year.

18. School districts have authority and 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." (Ed. Code, § 44955, subd. (c).) In this case, no respondent is credentialed and competent to perform any assignment held by less senior employees being retained.

LEGAL CONCLUSIONS

1. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) As no other law or statute requires otherwise, the standard of proof in this case requires proof by a preponderance of the evidence. (Evid. Code, § 115.) Therefore, the District bears the burden of establishing cause to affirm the proposed layoff decisions by a preponderance of the evidence.

2. All notice and jurisdictional requirements of sections 8366, 44949 and 44955 were met. (Factual Findings 1-5.)

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employees are made available to deal with the pupils involved. (*Rutherford v. Board of Administrators* (1976) 64 Cal.App.3d 167, 178-179.) In determining whether the decision of a governing board is reasonable or in good faith, its action 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 v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

3. The services identified in the Resolution are particular kinds of services that may be reduced or eliminated pursuant to sections 8366 and 44955. The State Administrator's decision to reduce or eliminate the identified services was neither arbitrary nor capricious, and was a proper exercise of his discretion. Services will not be reduced below mandated levels. Cause for the reduction or elimination of those particular services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. (Factual Findings 6-9.)


4. Cause exists to reduce the number of certificated employees of the District due to the reduction and elimination of particular kinds of services. (Factual Findings 1-9.)

5. Taking into account the above findings and conclusions, no junior certificated employee is scheduled to be retained to perform services that a more senior employee subject to layoff is certificated and competent to render. (Factual Findings 1-18.)

ORDER

The Statement of Reduction in Force is sustained against respondents. The District may give a final notice of layoff to all respondents. Notice shall be given to respondents that their services will not be required for the 2016-2017 school year, and such notice shall be given in inverse order of seniority.

Dated: April 28, 2017

DocuSigned by:

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LAURIE R. PEARLMAN
Administrative Law Judge
Office of Administrative Hearing

Appendix: The Respondents

General Education Program:

1. Aguirre, Maria
2. Amini, Ali
3. Autrey, Deborah
4. Butler, Cordiya
5. Cantu, Melissa
6. Caro, Maria
7. Chavez, Marc
8. Chestnut, Shandra
9. Green, Toyin
10. Jones, Cayana
11. Ojelabi, Timothy
12. Schmidt, Kristofor
13. Simpson, Vincent
14. Sosa, Eric
15. Tran, Hoa

Preschool Program:

16. Martinez, Alicia
17. Rocha, Ramona
18. Williams, Bonnie