

BEFORE THE
BOARD OF TRUSTEES
SIERRA UNIFIED SCHOOL DISTRICT
COUNTY OF FRESNO, STATE OF CALIFORNIA

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

NANCY GASEOR,

Respondent.

OAH No. 2015030535

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, State of California, on April 8, 2015, in Prather, California.

Jason C. Parkin, Attorney at Law, Fresno County Office of Education, Legal Services Department, represented the Sierra Unified School District.

Joshua F. Richtel, Attorney at Law, represented respondent Nancy Gaseor.

Testimony and documentary evidence were received, and oral closing arguments were made. The record was closed, and the matter was submitted for decision on April 8, 2015.

FACTUAL FINDINGS

1. Melissa Ireland, Ed.D. is the Superintendent of the Sierra Unified School District (District). The actions of Superintendent Ireland, and those of the District's staff and Governing Board (Board), were taken solely in their official capacities.

2. Nancy Gaseor (respondent) is a certificated permanent employee of the District.

3. On February 9, 2015, Superintendent Ireland recommended to the Board, pursuant to Education Code sections 44949, 44955, and other applicable provisions of law, that notice be given to respondent that her services will not be required for the ensuing 2015-2016 school year, and stating the reasons therefor.

4. On February 9, 2015, the Board adopted Resolution No. 11-14/15, reducing or eliminating particular kinds of services (PKS) of the District, and affecting 3.5 Full Time Equivalent (FTE) certificated positions.

5. The Resolution states that it will be necessary to reduce the following PKS of the District, and to decrease a corresponding number of certificated employees in the District no later than the beginning of the 2015-2016 school year:

SERVICE	FTE
Elementary Multiple Subject Position	1.0
History/Social Science Single Subject Position	1.0
Agriculture Single Subject Position	1.0
Art Single Subject Position	0.5
Total	3.5

6. The services set forth in the PKS Resolution are “particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. There was no evidence that the Board’s decision to reduce or discontinue the identified services was arbitrary or capricious. The reduction or elimination of the services set forth in the PKS Resolution constituted a proper exercise of the Board’s discretion, within the meaning of section 44955.

7. As a result of the above PKS reductions and/or eliminations, the Board determined that it was necessary to decrease 3.5 FTE positions for certificated employees in the District at the close of the 2014-2015 school year, in accordance with Education Code section 44955.

8. On March 9, 2015, Superintendent Ireland gave respondent written notice, pursuant to Education Code sections 44949 and 44955 of her recommendation to the Board that respondent’s services would be reduced for the ensuing school year, and the reasons therefor.

9. Respondent timely filed a Request for Hearing to determine whether there was cause for not reemploying her full-time for the 2015-2016 school year.

10. On March 17, 2015, Superintendent Ireland made and filed the District’s Statement of Reduction in Force, and caused it to be served on respondent. On March 18, 2015, respondent timely filed a Notice of Participation requesting a hearing in this matter.

11. Jurisdiction for the subject proceedings exists pursuant to Education Code sections 44949 and 44955.

Respondent's Contentions

12. Assignment to Digital Video Courses. Respondent holds a Single Subject Art credential. In addition, she holds designated subject credentials for Retail Sales and Fashion Merchandising. Her District seniority date is August 18, 1997. She is a permanent full-time District employee assigned to teach District alternative education and high school Art courses. The District does not offer courses in Retail Sales or Fashion Merchandising.

13. James Chance is a District probationary employee. His District seniority date is August 19, 2014. Mr. Chance is assigned to teach Career Technical Education (CTE) courses in Digital Video and Advanced Digital Video. Mr. Chance holds a CTE credential in Arts, Media, and Entertainment.

14. Respondent has suggested that she is certificated and competent to teach the CTE Digital Video and Advance Digital Video courses taught by Mr. Chance.

15. Barbie Cummings is the District's Director of Personnel Services. She is responsible for making sure that teachers are properly credentialed for their assigned classes. She also determined whether senior teachers affected by the PKS reductions may be reassigned and/or retained in positions in which their seniority and qualifications entitle them to serve. She testified at hearing.

16. Ms. Cummings indicated that the .50 FTE reduction in Art resulted in respondent's position being decreased by half. Ms. Cummings determined that respondent was not certificated and competent to teach the CTE courses in Digital Video and Advanced Digital Video. She explained that these two courses are coded as 5716, which means that they fall within the class of courses requiring instructors to hold a CTE credential. Ms. Cummings noted that teachers holding a Single Subject Art credential may teach courses where the primary focus is on Art. However, the CTE courses under code 5716 emphasize vocational and industrial applications of video production.¹ Art is not a primary focus of these courses.

Ms. Cummings sought and received confirmation from the Commission on Teacher Credentialing that a CTE credential is required to teach the Digital Video and Advanced Digital Video courses. She also noted that a Program Grant Management System (PGMS) grant is being used to fund the CTE courses. The PGMS grant is conditioned upon the District staffing each class with "qualified CTE teachers" who "[p]ossess a standard secondary, single subject or designated subject credential that authorizes the teaching of the

¹ Code 5716 Video Production is described as follows: "Students in video production will examine the multiple uses of video technology in various entertainment and industry sectors. They will receive task oriented training in pre and post production jobs and competencies, current and emerging technologies, and the collaborative nature of the creative process involved in video production. Students will examine the technological interface of lighting, sound, recording and computer modification involved in digital production."

CTE course(s) to which they are assigned; and can document employment experience, outside of education, in the career pathway addressed by the program or other evidence of equivalent proficiency.”

17. Respondent is not certificated and competent to teach the CTE Digital Video and Advanced Digital Video courses. Neither her Single Subject Art credential nor her designated subject credentials for Retail Sales and Fashion Merchandising qualify her to do so. She presented no other evidence that she is qualified to teach these courses.

18. Other Courses. Respondent has identified three other courses assigned to junior employees that she believes should be reassigned to her. These include Yearbook, Homework Club, and Leadership. These courses do not appear to require a special credential. One course, Homework Club, is currently assigned to individuals (Utecht and Walker) who do not hold any credential. Respondent contends that the District should reassign a combination of these courses up to .50 FTE to restore her to a full-time position.

19. Education Code section 44955, subdivision (b), provides: “Except as otherwise provided by statute, the 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.”

Education Code section 44955, subdivision (c), further provides: “The governing board shall 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.”

20. Respondent contends that as a District employee with seniority dating back to 1997, she is entitled to bump junior employees currently assigned to services which she is certificated and competent to render. The District contends that it is not required to engage in the type of “piecemeal” reassignment of courses to restore respondent to a full-time position with the District.

21. Here, the District could have noticed the junior employees assigned to the three courses up to .50 FTE, and reassigned respondent to a combination of these courses. Such would have been entirely consistent with its obligations under section 44955. However, the District also had discretion not to engage in such reassignment. The decision in *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, while factually inapposite, is instructive. In *Hildebrandt*, the appellate court relied on a school district’s wide discretion in the manner in which it defines the services provided by certificated employees when it concluded that Education Code section 44955, subdivision (b), cannot be used to force a school district to split a full-time position held by a junior employee to accommodate two senior employees’ desire for two part-time positions. The appellate court explained:

Appellants' sole contention is that Hildebrandt is entitled to bump Commanday as to a .8 FTE position, and that Wood–DeGuilio is entitled to bump Commanday as to a .2 FTE position, in effect requiring the district to split Commanday's full-time position into two part-time positions. While the fortuitous circumstance that between them the two appellants held a total of one full-time position (.8 FTE plus .2 FTE) may suggest that permitting appellants to compel the district to replace Commanday should cause no administrative problems (putting aside programmatic disadvantages), this happenstance masks the difficulties that acceptance of their contention would entail. If a part-time employee with seniority were entitled to displace a junior full-time employee as to a part-time equivalent position, the full-time employee may be unwilling to continue employment in a part-time position and the district might be unable to provide the full-time service. In the present case, for example, if Wood–DeGuilio were to withdraw her demand and Hildebrandt alone were to seek retention in her .8 FTE position, Commanday might be unwilling to continue in a .2 FTE position, and the district might be unable to fill such a position, thus being left with only a .8 FTE school psychologist when it wished to have a psychologist available on a full-time basis. Other potentially problematic scenarios can easily be imagined.

(*Id.* at pp. 345 – 346.)

22. Applying the same reasoning here, the District has divided the three courses (Yearbook, Homework Club, and Leadership) among at least three individuals. The District may be unwilling to reassign respondent into “pieces” of their assignment if the junior employees would then be unwilling to continue in their reduced positions. (*Ibid.*) Other problematic scenarios might arise were the additional assignments at different school sites, or during times which conflict with respondent's remaining Art classes. Although no evidence was presented on these points, it nevertheless demonstrates that such matters best remain within the discretion of a school district. As noted in *Hildebrandt*, the discretion properly exercised by school districts is rather wide:

School districts have broad discretion in defining positions within the district and establishing requirements for employment. [Citations omitted.] This discretion encompasses determining the training and experience necessary for particular positions, so long as the district does not impose requirements for reemployment under section 44956 that are not imposed on other employees who have not been subject to layoff. [Citation omitted.] Similarly, school districts have the discretion to determine particular kinds of services that will be eliminated,

“even though a service continues to be performed or provided in a different manner by the district.” [Citations omitted.]

[¶] ... [¶]

This conclusion is consistent with the Legislature’s finding in section 35160.1 that “school districts ... have diverse needs unique to their individual communities and programs.... [I]n addressing their needs, common as well as unique, school districts ... should have the flexibility to create their own unique solutions.” (*Id.*, subd. (a).) The Legislature has stated explicitly its intention to “give school districts ... broad authority to carry on activities and programs ... which, in the determination of the governing board of the school district ... are necessary or desirable in meeting their needs.” (*Id.*, subd. (b).)

(*Id.* at pp. 343 – 344.)

23. For all the above reasons, the District’s decision not to reassign respondent to any one or combination of the three courses in order to restore her to a full-time position, was a proper exercise of its discretion. There was no evidence that such decision was either arbitrary or capricious.

Welfare of the District and Its Students

24. The cause for not re-employing certificated employees relates solely to the welfare of the District’s schools, programs and the pupils thereof within the meaning of Education Code section 44949. The Superintendent’s designee correctly identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. Except as noted above, no junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

25. Any other assertions raised by the parties at hearing which are not addressed above are found to be without merit.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955. All notices and other jurisdictional requirements of sections 44949 and 44955 were met.

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.) The burden is on the District to demonstrate that the reduction or elimination of the particular kinds of services is reasonable and that the District carefully considered its needs before laying off any certificated employee. (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 807-808.)

3. The services identified in PKS Resolution No. 11-14/15 are particular kinds of services that may be reduced or discontinued pursuant to sections 44949 and 44955. The description of services to be reduced, both in the Board’s Resolution and in the notice, adequately described particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838; see, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

4. Legal cause exists to reduce or eliminate 3.5 FTE of particular kinds of services offered by the District as set forth in detail in the Factual Findings. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the District’s schools and pupils within the meaning of Education Code section 44949.

5. Cause exists for the reduction of the particular kinds of services and for the reduction of full-time equivalent certificated positions at the end of the 2014-2015 school year pursuant to Education Code sections 44949 and 44955. Except as set forth in Findings 18 through 23, no employee with less seniority than respondent is being retained to render a service which respondent is certificated and competent to render. The District’s Board of Trustees may give final notice to respondent, that her services will be reduced up to .50 FTE for the ensuing school year, 2015-2016.

RECOMMENDATION

Cause exists for the reduction of 3.5 full-time equivalent certificated positions at the end of the 2014-2015 school year. Notice shall be given to respondent that her services will be reduced up to .50 FTE for the ensuing school year, 2015-2016, because of the reduction and discontinuance of particular kinds of services. Notices shall be given in inverse order of seniority.

DATED: April 10, 2015

/s/
JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings