

BEFORE THE
GOVERNING BOARD
OXNARD SCHOOL DISTRICT

In the Matter of the Layoff of:

CERTIFICATED EMPLOYEES OF THE
OXNARD SCHOOL DISTRICT,

Respondents.

OAH No. 2019040071

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 24, 2019, in Oxnard, California.

Erika D. Anderson, Attorney at Law, appeared and represented complainant Cesar Morales, Superintendent for the Oxnard School District (District).

Brett B. McMurdo, Attorney at Law, appeared and represented all respondents, namely: Pedro Aguilar Belmontes; Lyndsi Alvarez; Kristina Amstutz; Gardy Borromeo Cruz; Karli Chessani; Allison Clark; Alexis DiCicco; Martin Gandara Hernandez; Joy Hammel; Elizabeth Hatakeyama; Melissa Lorenz; Michael Lozano; Katherin Mares; Allison Martin; Jovan Mosby; Carolyn Mullan; Patricia Peterson; Patrick Price; Blanca Ramos; Erin Somers; June Tiffany; and Erica Turnbull. All respondents were present at the hearing, except Kristina Amstutz.

The parties presented evidence and argument at the hearing. At the conclusion of the hearing, the administrative law judge closed the record and took the matter under submission.

FACTUAL FINDINGS

Background and Jurisdictional Facts

1. Respondents are certificated employees of the District.
2. On March 14, 2019, Dr. Jesus Vaca, Assistant Superintendent with the District, mailed to all respondents by certified United States mail, with return receipt requested, a written notice that he would be recommending to the Board that notice be given

to each respondent that his or her services may not be required in the 2019-2020 school year, and that each respondent had the right to request a hearing pursuant to Education Code sections 44949 and 44955. (Ex. 3.)

3. On April 3, 2019, complainant filed the District Statement of Reduction in Force in his official capacity as the Superintendent for the District.

4. On April 9, 2019, respondents acknowledged service of the District Statement of Reduction in Force and delivered to the District an Amended Notice of Participation requesting a hearing.¹

5. On April 9, 2019, the District filed and served on each respondent a Notice of Hearing.

Reduction Resolution

6. On February 20, 2019, the Governing Board (Board) of the District adopted Resolution No. 18-25, Reduction or Discontinuation of Particular Kinds of Service (Reduction Resolution). The purpose of the Reduction Resolution was to reduce or discontinue particular kinds of certificated services no later than the beginning of the 2019-2020 school year. Specifically, the resolution required the reduction of 58 Full Time Equivalent (FTE) positions by reducing various types of services. The FTE positions that the Board determined to reduce or discontinue are described as follows:

<u>Kind of Service</u>	<u>FTE positions</u>
K-6 Multiple Subject Teachers	24.0
Single Subject – Math	2.0
Single Subject – English Language Arts/ Language Arts	4.0
Single Subject – Physical Education	3.0
Single Subject – Social Science	3.0
Single Subject – Science	2.0
Teacher on Special Assignment – Music	1.0

¹ The evidence did not establish when the initial notice of participation was filed. Because the District did not object on the grounds of untimeliness, a reasonable inference is made that the Amended Notice of Participation modified a notice of participation filed within five days of service of the District Statement of Reduction in Force.

Teacher on Special Assignment – Art	1.0
Teacher on Special Assignment – English Learners (District Office)	5.0
Teacher on Special Assignment – English Learners (Newcomers)	1.0
Teacher on Special Assignment – Technology	2.0
Instructional Specialist – Math	1.0
Instructional Specialist – Science	1.0
Assistant Principals	6.0
Director, Educational Services	1.0
Nurse Coordinator	1.0
TOTAL FTE POSTITIONS	58.0

7. The services which the District seeks to reduce or discontinue are particular kinds of services that may be reduced or discontinued under Education Code section 44955. Except as otherwise provided by law, the services of a permanent employee may not be terminated under the provisions of Education Code section 44955 while any probationary employee, or any other employee with less seniority, is retained to render a service which the permanent employee is certificated and competent to render. (Legal Conclusion 6.)

8. Included in its Reduction Resolution, the Board determined that the District has a specific need for personnel to teach specific courses of study or provide pupil personnel or health services, and to retain certificated employees possessing the special training and experience needed to teach such courses or provide such services that other employees with greater seniority do not possess (Skipping Criteria). The Board determined to exclude from the Reduction Resolution any permanent or probationary certificated employee who satisfied the Skipping Criteria. Specifically, the Board determined to retain the employment of any certificated employee in the particular kind of services identified in the Reduction Resolution, regardless of seniority, to the extent the certificated employee possessed either of the following credentials and was assigned within the scope of that credential for the 2019-2020 school year:

- (A) A credential authorizing the teaching of special education classes; or
- (B) A Bilingual Cross-Cultural Language and Academic Development (BCLAD) certificate.

9. Included in its Reduction Resolution, the Board adopted criteria to distinguish among certificated employees who first rendered paid probationary services on the same date (Tiebreaking Criteria). Specifically, the Board established a point system based on various criteria relating to the employee's credentials and experience as of March 15, 2019, including the employee's possession of credentials authorizing service, subject matter authorizations, possession of a BCLAD certificate, column placement on the salary schedule, and other similar criteria. For purposes of the Reduction Resolution, employees with a greater number of points would be considered more senior than employees with a fewer number of points. By granting more seniority to those teachers who scored more points based on teaching credentials and experience, the District established Tiebreaking Criteria that served the needs of the District and its students. The Board further determined that if the application of the Tiebreaking Criteria failed to resolve a tie among two or more employees, the employee with the earliest date of issuance of a preliminary or permanent clear credential would be considered the more senior employee (Supplemental Tiebreaker).

10. Included in its Reduction Resolution, the Board determined that the District shall retain employees who are certificated and competent to render services over more senior employees who are not certificated and/or competent to render the same services. (Bumping Rights.) For these purposes, the District defined "competent" as follows: "(1) The employee has actually rendered instruction or service in the subject matter area in which s/he claims to be entitled to render instruction or service in or after the 2009-2010 school year, whether for the District or another school district; and (2) the employee possesses a BCLAD, CLAD, SB 1969, or other certificate authorizing him/her to instruct English Learner students." (Ex. 2, p. 7.)

11. The Reduction Resolution was furnished to each respondent with the notification mailed on March 14, 2019, described at Factual Finding 2. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion. The reduction and discontinuation of services are 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 Board.

Implementation of Reduction Resolution

12. Edd Bond, Director of Certificated Resources for the District, testified about the actions taken by the District to carry out the Reduction Resolution.

13. The District created a seniority list, taking into account each certificated employee's first date of paid service, job class description, school assignment, and permanency status. (Ex. 9.) The seniority list ranked District employees, including respondents, in order of seniority. After applying the Tiebreaking Criteria to the seniority list, Mr. Bond created a chart of the employees whose services would be terminated pursuant to the Reduction Resolution. (Ex. 10.)

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14. Mr. Bond determined that Elizabeth Montoya should be excluded from the layoff process and retained pursuant to the Skipping Criteria because she possesses a credential authorizing her to teach special education. Jessica Vizents had greater seniority in the listed subject matter, but does not possess a credential that satisfied the Skipping Criteria. Before March 15, 2019, the District notified all employees subject to layoff as provided at Factual Finding 2, including Jessica Vizents and excluding Elizabeth Montoya. (Ex. 4.) Thereafter, Mr. Bond realized that Elizabeth Montoya's assignment was not within the scope of her special education credential, as required by the Skipping Criteria, and that excluding her from the layoff process was in error. Accordingly, Mr. Bond rescinded the layoff notification delivered to Jessica Vizents on April 3, 2019. (Ex. 10.) Elizabeth Montoya was not subject to the layoff process because timely notice could not be given pursuant to Education Code section 44949, subdivision (a). (Legal Conclusion 2.) Neither Elizabeth Montoya nor Jessica Vizents is a respondent in this case.

15. Martin Gandara Hernandez is an employee subject to the scheduled layoff pursuant to Mr. Bond's analysis of the Reduction Resolution. Mr. Hernandez testified that the District should exclude him from the layoff process and retain him as an employee on the following grounds: He is presently assigned to teach 3rd-4th-5th grade at the McKinna School. On April 19, 2019, Mr. Hernandez took the final examination for the BCLAD certification and was informed on the day of the examination that he had passed. His BCLAD certification has not been formally issued, but he has been informed it will be issued on or about May 15, 2019.

16. No certificated employee junior to any respondent was retained by the District to render a service for which a respondent was certificated and qualified to render. Except as hereinabove provided, no respondent claimed bumping rights in accordance with Factual Finding 10. Respondents offered no evidence to dispute the tiebreaking analysis made by Mr. Bond.

LEGAL CONCLUSIONS

Statutory Framework

1. The teacher layoff process, also referred to as a reduction in force, is governed in large part by Education Code sections 44949 and 44955.

2. Education Code section 44949, subdivision (a), states in pertinent part: "No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Education Code section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor."

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3. Notice to the employee is sufficient “when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.” (Ed. Code, § 44949, subd. (d).)

4. A respondent must file his or her notice of participation, if any, within five days after service of the District Statement of Reduction in Force. (Ed. Code, § 44949, subd. (d).)

5. The parties complied with the notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 as set forth in Factual Findings 1 through 5.

Reduction Resolution

6. Generally, a school district cannot terminate the services of a permanent or probationary employee for causes other than those specified in the Education Code. (Ed. Code § 44955, subd. (a).) Education Code section 44955, subdivision (b), authorizes a school district to terminate the services of permanent or probationary teachers under the following circumstances and subject to the following conditions:

Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. 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.

7. A school district may reduce services within the meaning of Education Code 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.)

8. Boards of education hold significant discretion in determining the need to reduce or discontinue particular kinds of services. (*Rutherford v. Board of Trustees, supra*, 64 Cal.App.3d 167.) Such policy-making decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (*California*

Teachers Assn. v. Huff (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and actions must be reasonable under the circumstances with the understanding that “such a standard may permit a difference of opinion.” (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831, 845.) The process of implementing layoffs is very flexible and school districts retain great flexibility in carrying out the process. (*Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838.)

9. The Board’s decision to reduce services was a proper exercise of the District’s discretion. No evidence was presented to show that the proposed reductions in services violated any statutory or regulatory requirement governing the District. The services to be discontinued are particular kinds of services within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and the District has acted reasonably and within the scope of its flexible authority in carrying out the process. The reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of Education Code section 44949.

Tiebreaking Criteria

10. Education Code section 44955, subdivision (b), further states:

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

11. In this case, the Board established a point system that gave more seniority to those employees who scored more points on a point system that served the needs of the District and its student. By sending a copy of the Reduction Resolution to each respondent at the time of the notification described at Factual Finding 2, the District properly furnished respondents with a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. No evidence was produced to dispute the analysis made by Mr. Bond in applying the Tiebreaking Criteria to the seniority list and creating a chart of those

employees who would not be reemployed pursuant to the Reduction Resolution. Accordingly, the Board complied with Education Code section 44955, subdivision (b), in establishing the Tiebreaking Criteria to distinguish among certificated employees who first rendered paid probationary services on the same date.

Skipping Criteria

12. Education Code Section 44955, subdivision (d), provides additional requirements when a school district proposes to skip teachers from the layoff process. It states in pertinent part:

Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study . . . , and that the certificated employee has special training and experience necessary to teach that course or course of study . . . , which others with more seniority do not possess.

13. Junior teachers may be given retention priority over senior teachers if the junior teacher possesses the special training and experience that is necessary but is not possessed by their more senior colleagues. (Ed. Code, § 44949, subds. (b) and (d)(1); *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399.)

14. By limiting the Skipping Criteria to special education training and BCLAD certification, the District has demonstrated a specific need to exclude from the layoff process and retain a junior employee to teach a specific course or course of study. Accordingly, the District complied with Education Code section 44955, subdivision (d), in establishing the Skipping Criteria to retain certificated employees possessing the special training and experience needed to teach such courses, or provide such services, that other employees with greater seniority do not possess.

15. In essence, Mr. Hernandez argued that, despite the absence of an issued BCLAD certificate, he complied with the spirit of the Skipping Criteria by passing the final BCLAD certification examination. Although Mr. Hernandez may be issued a BCLAD certification by the beginning of the 2019-2020 school year, he did not possess the certification on March 15, 2019 as required by the Reduction Resolution, which has been determined to be neither arbitrary nor capricious, and a proper exercise of the Board's discretion. (Factual Finding 11, Legal Conclusion 9.) Accordingly, the District did not abuse its discretion by declining to exclude Mr. Hernandez from the Reduction Resolution in applying the Skipping Criteria established by the Board.

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Bumping Rights

16. According to Education Code § 44955, subdivision (b), a school district is prohibited from terminating the services of a permanent employee while retaining any probationary employee, or any other employee with less seniority, to render a service which the permanent employee is “certificated and competent to render.” (Legal Conclusion 6.) Accordingly, if a school district notifies a senior teacher that his or her position is subject to reduction or discontinuance, the senior teacher has the right to transfer to a continuing position which he or she is certificated and competent to fill.

17. The term “certificated” is defined by the provisions of the Education Code pertaining to credentials, but “competent” is not specifically defined. School districts have broad discretion to establish competency standards for purposes of exercising bumping rights, limited by a reasonableness standard. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 564-65.) Competency may be defined in terms of skills and special qualifications for a position. (*Forker v. Board of Trustees* (1994) 160 Cal.App.3d 13.)

18. In this case, the Board’s definition of competence was reasonable and related to the special qualifications of the position. No evidence was presented to show that the District made any decisions with respect to a senior employee’s Bumping Rights that were fraudulent, arbitrary, or capricious. To the extent Mr. Hernandez asserted any Bumping Rights by his testimony, the evidence does not establish that he has a credential that authorizes him to teach in a position that is not being reduced or eliminated. No other respondent established that they had the right to bump a junior employee pursuant to the Reduction Resolution. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

Disposition

19. Cause exists under Education Code sections 44949 and 44955 for the reduction of the particular kinds of service set forth in the Reduction Resolution, which cause relates solely to the welfare of the District’s schools and pupils. (Factual Findings 6-16.) The District may lay off the respondents, in reverse order of seniority, in order to reduce services, based on all the foregoing.

ORDER

1. The District Statement of Reduction in Force is sustained as to respondents Pedro Aguilar Belmontes, Lyndsi Alvarez, Kristina Amstutz, Gardy Borromeo Cruz, Karli Chessani, Allison Clark, Alexis DiCicco, Martin Gandara Hernandez, Joy Hammel, Elizabeth Hatakeyama, Melissa Lorenz, Michael Lozano, Katherin Mares, Allison Martin, Jovan Mosby, Carolyn Mullan, Patricia Peterson, Patrick Price, Blanca Ramos, Erin Somers, June Tiffany, and Erica Turnbull.

2. Notice shall be given to respondents in reverse order of seniority that their services will not be required for the 2019-2020 school year because of the reduction or discontinuance of particular kinds of services. Where necessary, that notice shall indicate if less than a full time equivalent position is affected.

DATED: May 3, 2019

DocuSigned by:
Matthew Goldsby
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MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings