

BEFORE THE
STATE ADMINISTRATOR
INGLEWOOD UNIFIED SCHOOL DISTRICT

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

OAH No. 2016030792

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

Respondents.

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 20, 2016, 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).

Marianne Reinhold, Esq., and Chuong Nguyen, Esq., Reich, Adell & Cvitan, represented the respondents named in the Appendix, except for Robert Anyiam, who did not ask to be represented and did not appear at the hearing.

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 36.40 full-time equivalent (FTE) positions and directed District staff to proceed to layoff certificated staff pursuant to sections 44949 and 44955.

4. On or before March 15, 2016, District staff gave written notice to 28 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 2016-2017 school year. Respondents 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, Human Resources, alleging cause exists to not reemploy respondents for the following school year. Respondents 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 9, 2016, the State Administrator adopted Resolution No. 16/2015-2016 (the Resolution), which provides for the reduction or elimination of the following particular kinds of services:

<u>Services</u>	<u>FTE Positions</u>
Eliminate Executive Director of School Improvement Grant	1.00
Eliminate Instructional Coach – Math (SIG)	1.00
Eliminate Instructional Coach – ELA (SIG)	2.00
Eliminate Instructional Coach – Professional Development	1.00
Reduce K-6 Elementary Teaching Services	6.00
Eliminate Read 180 Teaching Services	3.80
Reduce 7-8 Study Skills Teaching Services	.20
Reduce 7-8 English Teaching Services	2.00
Reduce 7-8 Social Science Teaching Services	2.00
Reduce 7-8 Math Teaching Services	2.00
Reduce 7-8 Art Teaching Services	1.00
Reduce 7-8 Computer Teaching Services	1.00
Reduce 7-8 Music Teaching Services	1.00
Reduce 9-12 English Teaching Services	3.00
Reduce 9-12 Social Studies Teaching Services	2.00
Reduce 9-12 Math Teaching Services	3.80
Reduce 9-12 Physical Education Teaching Services	2.60
Reduce 9-12 Dance History Teaching Services	.40
Reduce 9-12 Psychology Teaching Services	.40

Reduce 9-12 Robotics Teaching Services

.20

=====

Total Full-Time Equivalent Reductions

36.40 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 the \$55 million loan it received from the State which prompted the District being placed under the authority of the State Administrator. The annual loan payments are approximately \$1.8 million. In addition, approximately 85 percent of the District's current budget is related to staff compensation and benefits.

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 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 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 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 2016-2017 school year; (2) "highly qualified" status under the No Child Left Behind Act; (3) appropriate full (not emergency) EL authorization (if required by the position); (4) 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 (5) 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.

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 and to provide counseling services. 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 or to provide counseling services and will be assigned to do so in the 2016-2017 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.

16. A. Respondents argue one of the District's bumping decisions resulted in layoffs impacting more senior teachers than was necessary. Specifically, respondents point to a series of bumps related to Denise Gardner, who taught a .60 FTE position in PE and a .40 FTE position in Dance History. Both of those assignments were eliminated by the Resolution. Because she has a PE credential and enough seniority, the District bumped Ms. Gardner into a PE position held by a less senior teacher, who was then laid off. Respondents argue because Ms. Gardner has a PPS counseling credential, she is competent to bump into a counselor position held by a less senior employee. For that reason, they contend bumping Ms. Gardner into a position held by the least senior counselor would have resulted, in the aggregate, with less senior counselor(s) being laid off and more senior PE teacher(s) being retained.

B. Respondents' argument is not convincing. There is no law requiring a school district to minimize the aggregate overall seniority of those impacted by layoffs. The law simply requires no junior teacher be retained for a subject or service which a laid off employee is credentialed and competent to teach or render. 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, the District correctly points out that no respondent is credentialed and competent to perform any assignment held by less senior employees being retained.

///

///

C. In addition, the State Administrator specifically decided to skip counselors from the layoff process, as articulated in the Resolution. Bumping Ms. Gardner into a PE assignment rather than a counselor position was consistent with the Resolution and permissible by the law allowing districts “to deviate from terminating a certificated employee in order of seniority . . . [when] the district demonstrates a specific need for personnel to . . . provide services authorized by a services credential with a specialization in . . . pupil personnel services . . . , which others with more seniority do not possess.” (Ed. Code, § 44955, subd. (d)(1).) Respondents contend if sparing counselors was important enough to create a skipping provision, Ms. Gardner should have been bumped into a counselor position instead. However, this situation is unique, since Ms. Gardner’s credentials were such that she could have, technically, bumped either a less senior PE teacher or counselor. Under the circumstances, it was reasonable for the District to honor the Resolution by skipping over all the counselors, whose positions were not reduced or eliminated, and instead allow Ms. Gardner to bump a less senior teacher whose assignment was being reduced. In fact, to do otherwise would have been tantamount to disregarding the Resolution’s skipping provision and inviting arbitrary and capricious decision-making.

Individual Challenges

17. A. Deirdre Grimes. Ms. Grimes teaches 7/8 grade computer classes at Crozier Middle School. She testified there will only be four business teachers in the entire District if she is laid off. She fears that, in this digital age, eliminating her position will mean students in the District will not have exposure to digital technology (including computers) until they reach high school.

B. Denisha Williams. Ms. Williams teaches 8th grade algebra at the La Tijera Academy of Excellence Charter School. She recently obtained unique technology training, which was funded by the State. She testified that if she is laid off all the training she recently received will go to waste and that the remaining teacher at her school site will not be able to implement it.

C. The arguments made by Ms. Grimes and Ms. Williams, while sympathetic, are not cause 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 technology, computer

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 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.)

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

18. John Schubert. Mr. Schubert does not challenge the District's layoff decisions. Rather he testified about the District's need to better promote its ability to teach pupils residing within the District who may be tempted to attend a charter school.

19. 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.

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 44949 and 44955 were met. (Factual Findings 1-5.)

3. The services identified in the Resolution are particular kinds of services that may be reduced or eliminated pursuant to section 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 1-19.)

///

///

///

///

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 25, 2016

DocuSigned by:



E08381E7779D4F0...

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearing

Appendix: The Respondents

1. Alaniz, Robert M.
2. Anyiam, Robert
3. Avila, Nancy
4. Ebs, Diane
5. Grimes, Deirdre
6. Lopez, Lourdes
7. O’Kain, Timothy
8. Ortolano, Jr., Ralph
9. Schubert, John
10. Wade, Christopher
11. Williams, Denisha