

**BEFORE THE
GOVERNING BOARD OF THE
CULVER CITY UNIFIED SCHOOL DISTRICT**

In the Matter of the Statement of Reduction in Force

Involving:

JORDAN YASSINE,

Respondent.

OAH No. 2024040082

PROPOSED DECISION

Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on April 24, 2024, at Culver Park High School in Culver City, California.

Aaron V. O'Donnell, Attorney, Atkinson, Andelson, Loya, Ruud & Romo, represented the Culver City Unified School District (District).

Jordan Yassine (Respondent) represented himself and was present during the hearing.

At the start of the hearing, the District's counsel, Mr. O'Donnell, informed the ALJ that Dr. Kimberly Indelicato, Coordinator School and Family Support Services, had not been issued a layoff notice because she agreed to be reassigned to another position and would be retained in that new position. Dr. Indelicato's reassignment to a

new position accounts for the reduction in Coordinator School and Family Support Services under the Governing Board’s Resolution, discussed below. The hearing proceeded only as to Respondent’s layoff by the District.

Testimonial and documentary evidence was received, and argument was heard. The record closed and the matter was submitted for decision on April 24, 2024.

FACTUAL FINDINGS

Board Resolution

1. Jose Alarcon, Assistant Superintendent, Human Resources, made and filed the Statement of Reduction in Force in his official capacity.

2. On March 12, 2024, the Governing Board of the District (Board) adopted Resolution No. 36-2023/2024(HR) (Resolution), which proposed a layoff of certificated employees corresponding to 2.0 full-time equivalent (FTE) positions. (Exh. 1.) The Board determined that such action is in the best interest of the District and the welfare of the District’s schools and students. The Resolution provided for the reduction or discontinuance of the following particular kinds of services:

| <u>PARTICULAR KINDS OF SERVICE</u> | <u>FTE Reduction</u> |
|--|----------------------|
| Board Certified Behavior Analyst (BCBA) | 1.0 |
| Coordinator School and Family Support Services | <u>1.0</u> |
| Total FTE Reduction | 2.0 |

3. The Resolution established criteria for an employee serving in a position identified for reduction or discontinuance to bump into a position held by an employee with less seniority. (Exh. 1, p. A1.) Specifically, the senior employee must be both credentialed and competent to render the service currently being performed by the junior employee pursuant to Education Code Sections 44955, 44956, and 44957. The Resolution defines "competency" for purposes of bumping as follows:

Competent for reassignment into a position currently held by a junior employee, if the senior employee: (a) currently possesses a clear or preliminary credential which authorizes assignment in the position currently held by the junior employee; and (b) has previously served in the District in the position currently held by the junior employee for one complete school year. In no event may a senior employee displace a junior employee unless the senior employee is both competent and credentialed for the entire assignment of the junior employee.

(Exh. 1, pp. A1-A2.)

4. The Resolution was implemented at the discretion of the District pursuant to its authority under Education Code section 44955. The Board is authorized under the relevant law to reduce or discontinue a particular kind of service not later than the beginning of the following school year, and exercise its discretion that a decrease in the number of employees by the close of the school year is necessary.

Layoff Notice to Respondent

5. On March 13, 2024, the District served Respondent with written notice (March 13 notice) that it had been recommended notice be given to him pursuant to Education Code sections 44949 and 44955 that his services would not be required for the ensuing 2024-2025 school year. (Exh. 9.) The March 13 notice explained the reasons for the recommendation and notified Respondent of his right to request a hearing to determine if there is cause for not reemploying him for the 2024-2025 school year.

6. Respondent is a permanent certificated employee of the District. He is identified by his Seniority Date, April 1, 2022, on the District's seniority list. (Exh. 12, p. A95.) Respondent has been employed with the District as a BCBA since April 1, 2022, and is the only employee in the District currently serving as a BCBA, which is a service identified for discontinuance in the Resolution.

7. On March 14, 2024, Respondent timely submitted a written request for a hearing to determine if there is cause for not reemploying him for the 2024-2025 school year. (Exh. 10.) On April 10, 2024, the District timely served a Statement of Reduction in Force with required accompanying documents on Respondent. On April 10, 2024, the District received a timely Notice of Participation form from Respondent. (Exh. 4.) The District served a Notice of Hearing and a Notice of Continued Hearing on Respondent. (Exhs. 5 and 6.)

Seniority List

8. The District maintains a seniority list which includes all the District's certificated probationary and permanent employees, and excludes temporary employees. The seniority list includes the employee's seniority date (i.e., the first day of

paid service in a probationary position), the credentials held by each employee, and their current assignment. (Exh. 12.) The District's Board adopted the seniority list for applying the bumping criteria as part of the Resolution. (Factual Finding 3.)

9. Respondent had the opportunity to review his information on the seniority list and request corrections. Respondent did not report any errors with his information on the seniority list.

10. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in each of the particular kinds of services being reduced. Respondent was identified as the only employee currently assigned to the service, BCBA, being reduced.

11. The position of school psychologist with the District requires a school psychologist credential, which Respondent possesses. However, the District found that Respondent did not satisfy the criteria for reassignment to a school psychologist position currently held by an employee with less seniority than Respondent. Respondent was hired by the District as a BCBA and was only employed in that capacity. Respondent did not meet the Board's competency standard, as defined in the Resolution, because he has not served as a school psychologist within the District for at least one complete school year. (Factual Finding 3.) The District established at hearing Respondent's employment as a BCBA with the District does not satisfy the required competency criteria established by the Resolution, specifically that Respondent "has not "previously served in the District in the position [school psychologist] currently held by the junior employee for one complete school year." (Exh. 1, pp. 1-2.)

12. At hearing, the District acknowledged there was some overlap in the functions and duties of Respondent as a BCBA and the District's school psychologists. (Testimony of Jose A. Alarcon and Dr. Diana Fannon, Director of Special Education.) According to Mr. Alarcon, the BCBA duties currently performed by Respondent were being incorporated into the duties of other retained District employees, such as the junior school psychologists.

Respondent's Testimony

13. At hearing, Respondent asserted that because Mr. Alarcon's hearing testimony demonstrated he could not accurately and fully describe Respondent's duties in his BCBA position with the District, Mr. Alarcon did not properly evaluate whether Respondent satisfied the competency criteria to bump a junior school psychologist. Respondent assertion that his duties as a BCBA should be considered as equivalent of those of a District school psychologist is not relevant to this proceeding.

14. Respondent argued that because the District was advertising for open positions one day prior to the hearing, the District's basis for his layoff was improper. (Exh. A.) Respondent's argument of future employment positions available at the District does not establish the Board acted unfairly or improperly in making a decision to reduce or discontinue his BCBA position. (*Rutherford v. Bd. of Trustees of Bellflower Dist.* (1976) 64 Cal.App.3d 167.)

15. Respondent's testimony reflected his belief that he was competent to fill the role of a District school psychologist. Respondent's skills and performance as a District BCBA and as a holder of a school psychologist credential are not at issue. Rather, the issue is whether Respondent has previously served in the District in a school psychologist position held by a junior employee for one complete school year.

Because Respondent did not hold such a position for the requisite time, he does not have the requisite "competency" (as defined in the Resolution) for reassignment into a school psychologist position currently held by a junior employee, and cannot therefore displace or bump a junior employee. Accordingly, Respondent was properly identified as an employee subject to layoff to account for the 1.0 FTE reduction in BCBA.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1-7.)

2. The services identified in the Resolution are particular kinds of services which may be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services was not arbitrary or capricious and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and students within the meaning of Education Code section 44949.

3. A Board of Education has significant discretion to determine the need to reduce or discontinue particular kinds of services and the services to be affected and is not open to second-guessing in this proceeding. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The Board's 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.) The Board's decisions and action 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.)

4. Cause exists, pursuant to Education Code section 44949 and 44955, to reduce Respondent, a certificated employee of the District, due to the reduction or discontinuation of particular kinds of services as a BCBA. The District properly identified the certificated employee, Respondent, providing the particular kinds of services, that of a BCBA, the Board directed be reduced or discontinued.

5. Respondent is the District's only employee currently in the position of a BCBA, which is the service identified for discontinuance in the Resolution. Pursuant to Education Code section 44955, in order to bump or displace a junior employee, a senior employee is required to not only be certificated for the assignment of the junior employee, but also be "competent" within the reasonable criteria defined by the governing board of the employing school district. The Board has established such criteria in the Resolution. (Factual Finding 3.) It is within the Board's discretion to establish such criteria, which must be upheld and applied so long as they are reasonable. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565.) Such determinations involve discretionary decisions which are within the special competence of the school districts. (*Id.*, citing *Martin v. Kentfield Sch. Dist.* (1983) 35 Cal.3d 294, 299.) A board's definition of competency is reasonable when it considers the skills and qualifications of the employee threatened with layoff. (*Id.*) The Board adopted such criteria in this instance and judged the qualifications of prior experience in a school psychologist assignment was necessary and in the interests of the students of the District. The competency criteria was exercised at the discretion of the District's Board and is reasonable as a matter of law. Respondent did not establish during the proceedings he satisfied the Resolution's definition of "competency" such that he

satisfied the criteria to bump or displace a junior employee in the position of a District school psychologist.

6. No junior certificated employee is scheduled to be retained to perform services that Respondent is certificated and competent to render.

ORDER

Notice shall be given to Respondent Jordan Yassine, who is occupying the 1.0 full-time equivalent certificated position of a Board Certified Behavior Analyst, that his services will not be required for the 2024-2025 school year because of the reduction and discontinuance of the particular kinds of service.

DATE: 04/29/2024

Irina Tentser

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings