

**BEFORE THE  
GOVERNING BOARD  
BALDWIN PARK UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA**

**In the Matter of the Reduction in Force of:**

**CERTIFICATED TEACHERS OF THE  
BALDWIN PARK UNIFIED SCHOOL DISTRICT,**

**Respondents.**

**OAH No. 2021040018**

**PROPOSED DECISION**

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video and telephonic conference April 29, 2021.

Jeff C. Marderosian, Esq., represents the Baldwin Park Unified School District (District).

Jonah Lalas, Esq., Rothner, Segall & Greenstone, represented respondents Almaz Gebresellassie, Bounyou Paphatsarang, Linda C. Rodriguez, Derrick Spears, and Josefina A. Thomas.

Marta Hineztrosa and Katherine Favognano provided interpretation services during the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 29, 2021. Respondents' sole exhibit, a memorandum lodged as respondents' exhibit 1, was referenced as exhibit A in the hearing, and will be received as such.

On May 12, 2021, the record was re-opened to receive a stipulation to the effect that the District issued preliminary notices and delivered them to respondents prior to March 15, 2021. The record was again closed on that day. The stipulation shall be identified as exhibit 8 for ease of reference.

The ALJ hereby makes the following factual findings and legal conclusions.

## **FACTUAL FINDINGS**

### **The Parties and Jurisdiction**

1. Froilan N. Mendoza, Ed.D., filed and maintained the Statement of Reduction in Force while acting in his official capacity as Superintendent of the District. He caused each of the respondents identified hereafter to be served with a copy of the Statement of Reduction in Force, along with other related documents.

2. (A) Respondents Edgar A. Cartagena-Cruz, Almaz Gebresellassie, Bounyou Paphatsarang, Linda C. Rodriguez, Derrick Spears, and Josefina A. Thomas are certificated employees of the District. All are assigned to the District's Adult Schools. All of the Respondents submitted a timely Notice of Participation, thereby requesting a hearing.

(B) Shortly before the hearing, Respondent Edgar A. Cartegena-Cruz withdrew his Notice of Participation as part of a settlement between him and the District. Respondent Derrick Spears did not participate in the hearing.

3. The hearing in this matter was originally set for April 14, 2021. The matter was continued, upon the District's request with respondents' concurrence and for good cause, to April 29, 2021.

4. (A) On February 23, 2021, the Governing Board (Board) of the District adopted Resolution #27, 2020-2021, pertaining to the reduction of services within the District (Reduction Resolution). The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2021-2022 school year. Specifically, the resolution requires the reduction of 174.5 hours of service by eliminating or reducing several types of services.

(B) The Reduction Resolution was attached to the operative pleading in this matter (the District's Statement of Reduction in Force) and incorporated therein by reference. The Reduction Resolution was drafted by Dr. Valenzuela, Director of the District's Adult and Community Education program, along with Dr. Gray, the Assistant Superintendent for Human Resources.

5. (A) The particular kinds of services (PKS) to be reduced, and the number of hours of reduction in each category, is as follows:

PKS	HOURS ELIMINATED
Part-Time Evening Counselor	20 hours
Adult Education Teacher, Post-Secondary Instructor:	

Transitions/Testing Center	31.75 hours
Adult Education Teachers Re-entry to the Workforce Program (previously Older Adults):	
General Elective/Clothing Construction All Levels	34 hours
General Elective/Jewelry Casting All Levels	29.5 hours
CTE-General Elective/Intro to Computers All Levels	28 hours
Culinary Arts: Restaurant Skills, Advanced	
Culinary/International Cuisines; Culinary Foundations	11.25 hours
Adult Education Teacher, Transportation Automotive Service Instructor	10 hours
Adult Education Teacher, Culinary: Food Service and Hospitality Program	10 hours

(B) The total hours to be reduced are 174.5. The first five categories, totaling 154.5 hours, are for elimination of programs. The last two categories are a reduction in hours within the two programs identified, and total 20 hours.

6. Prior to March 15, 2021, each Respondent was given written notice by the District that it had been recommended their services would not be required for the 2021-2022 school year.

7. The services the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.<sup>1</sup>

8. 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 given the uncertainty regarding the District's financial resources. The District is facing a budget shortfall.

9. The reduction and 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 as determined by the Board.

10. All jurisdictional requirements have been met.

### **The Competence Criteria and the Seniority List**

11. As part of the Reduction Resolution, the District established competency criteria, as follows:

A certificated employee subject to layoff shall be considered competent to perform a service if, and only if:

The certificated employee, has under the appropriate credential, performed the service for one complete school year within the last ten (10) years. One complete school

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<sup>1</sup> All further statutory references are to the Education Code unless otherwise noted.

year is defined as actual service for at least 75% of the number of days the adult education schools of the District are in session.

(Ex. A to Reduction Resolution.)

12. The District compiled a seniority list, which sets out the seniority date of each of the District's certificated employees who are providing adult education. The list provides other information about the employees, such as whether they are permanent or probationary teachers, their current assignment, their credentials and authorizations, and what degrees they hold.

13. There was no claim made, or evidence adduced, to the effect the Seniority List was inaccurate. Therefore, it is found to be accurate and controlling in this reduction in force process.

### **Respondents' Contentions**

14. Respondents asserted that the reason for the layoffs was because of a decline in enrollment, and that as a result the Board was obligated to proceed with the type of layoff pertaining to a decline in average daily attendance. The District did offer evidence that some of the decision on what services to eliminate was influenced by declining enrollment in some courses, but it pointed to budgetary issues as well. The evidence established that budgetary considerations were a key component of the District's decision to reduce particular kinds of services.

15. Respondents argued that as to some of them, the Reduction Resolution did not clearly cover their position, so they should not be laid off. This assertion was in the main proffered by Respondent Gebresellassie, but argued on Respondent

Thomas's behalf as well. Respondent Linda Rodriguez pointed out that she is currently not teaching, and is acting in a clerical capacity. Mr. Paphatsarang testified that his course continues to have strong enrollment, having 42 students enrolled at this time, whereas he had 40 or more students in recent years.

16. (A) Regarding Respondent Gebresellassie, she holds a Career Technical Education Teaching Credential in Business and Finance and Marketing, Sales, and Service and she holds a Designated Subjects Adult Teaching Credential in Computer Applications, Computer Programming, Computer Systems Operation, and Computer Technology. She is tenured for 28 hours per week. As of October 12, 2020, she was assigned to teach a course titled General Elective/Administrative Assistant, three days per week, totaling 16.5 hours per week. She was also assigned to teach Introduction to Computers/VESL (Vocational English Second Language) in two classes, one in the morning and one in the evening. The total hours for the last two classes was 11.5. Thus, she was teaching 28 hours per week, spread across three classes. Prior to that date, she was teaching the General Elective/Administrative Assistant course for 16.5 hours per week, and two classes entitled English as a Second Language Vocational ESL.

(B) As found above, the Reduction Resolution reduces, by 28 hours, a category described as "CTE-General Elective/Intro to Computers All Levels." (Ex. 1.) CTE stands for Career Technical Education. There is no reference in the Reduction Resolution to reduce courses or classes in "General Elective/Administrative Assistant," the term used by the District to assign Respondent Gebresellassie her courses.

(C) The administrative assistant course teaches students to become office assistants, in part by teaching them to use various computer programs or applications, including Microsoft Office Suite and Adobe. It also provides education in basic

graphics techniques. The course was described as an advanced course by Respondent Gebresellassie, a claim that went unrefuted when Dr. Valenzuela testified in rebuttal.

17. Respondent Thomas holds a Designated Subjects Vocational Teaching Credential in Fashion Marketing and Fashion Manufacturing (Factory and Custom). Her testimony did not focus so much on whether the Reduction Resolution covered her assignments, but on the problems that have arisen in her classes as a result of the Covid 19 Pandemic. For example, her students could not, in many cases, participate remotely, lacking computers or internet access. Four classes she taught were reduced to two classes, and meanwhile, the District could not or would not supply the students with laptops and other technology that would assist in remote instruction.

18. Respondent Rodriguez is tenured at 31.75 hours, and holds a Designated Subjects Adult Education Teaching Credential in Business Education, Health and Safety, Parent Education, and Spanish, Conversational. She is currently assigned to the Assessment Center student outreach, purportedly due to credential limitations. She testified that she has had some sort of clerical position for years, and has not taught in a classroom since 2011.

19. Respondent Paphatsarang holds a Designated Subjects Vocational Education Teaching Credential in Jewelry Making. He is tenured at 29.5 hours and has been assigned all of those hours for General Elective/Jewelry Casting. He is the most senior teacher in the Adult Education Program. As noted above, he testified that enrollment has not declined in his course.

20. There were no claims that junior teachers were being retained to teach the courses taught by any of the respondents. There were no claims that any of the respondents was credentialed and competent to teach courses assigned to more



junior teacher. There were no claims that junior teachers had been improperly retained.

## **LEGAL CONCLUSIONS**

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44929.5, 44949, and 44955, based on Factual Findings 1 through 10.

2. (A) The governing board of a school district may reduce particular kinds of services (PKS) 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 Court of Appeal has made clear that a PKS reduction does not have to lead to fewer classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-85 (*Zalac*); see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 (*San Jose Teachers*) [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

(B) The services to be discontinued by the District are particular kinds of services within the meaning of section 44955. 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 discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. This Legal Conclusion is based on Factual Findings 4, 5, 7, 8, and 9 and the foregoing authorities.

3. (A) Respondents assert that because reduced enrollment has played a part in the District's decision to reduce services, it must proceed with an ADA—Average Daily Attendance—layoff proceeding. That contention must be rejected.

(B) Section 44955, subdivision (b), provides four scenarios that may justify a school district in decreasing the number of permanent or probationary teachers it employs. Those scenarios are:

*Whenever* in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, *whenever* the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, *whenever* a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, *or whenever* the amendment of state law requires the modification of curriculum, . . .

(Emphasis added.)

Thus, one of four circumstances must occur to allow a school district to decrease the number of certificated employees: (1) average daily attendance in all of the schools in a district must have declined in certain respects; (2) it is determined that attendance (not average daily attendance) will decline due to termination of a tuition agreement defined by section 46304; (3) a particular kind of service will be reduced or discontinued; or, (4) where amendments in the law requires a modification of curriculum. Furthermore, one of those four circumstances must be accompanied by the school board's opinion that "it shall have become necessary by reason of *any of these conditions* to decrease the number of permanent employees in the district, . . ." (§ 44955, subd. (b), emphasis added.) At that point 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.

(C) Case law supports the proposition that a school district may respond to budget shortfalls by reducing or eliminating particular kinds of services. In *Zalac, supra*, 98 Cal.App.4th at pp. 853-854, it was held that the district in that case could reduce services in the face of a shortfall of funds. Other cases support the rule that a loss of funds may lead to a reduction in services, without an analysis of average daily attendance. (*Cousins v. Weaverville Elementary School Dist.* (1994) 24 Cal.App.4th 1846; *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167.) Respondents cited no case holding that in cases of declining enrollment, a school district is barred from reducing or eliminating services as a response to such circumstances.

4. (A) A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is

filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) At the same time, a junior teacher may be given retention priority by the District over one or more senior teachers, and that junior teachers may be “skipped”—that is not laid off while more senior employees are laid off—if the junior teacher possesses superior skills or capabilities not possessed by more senior colleagues, which must be necessary to teach a course or course of study that is specifically needed in the District. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831 (*Santa Clara Teachers*).)

(B) There were no contentions that any of the respondents were improperly bumped or that they should have bumped a more junior teacher. The District did not skip any junior teachers.

5. The contentions of respondents Thomas, Rodriguez, and Paphatsarang do not provide defenses in this proceeding. Ms. Thomas mainly provided evidence that the classes she has taught, and taught well, have suffered serious attendance drops. That the District did not respond to the problems caused by the Covid 19 Pandemic as she would have hoped is not a reason to retain her. Ms. Rodriguez is a certificated employee, and the District resolved to eliminate the position she has been employed in. It does not appear that there is a position she can bump into. Mr. Paphatsarang appears to be very good at what he does, and according to his testimony, lack of interest in his course or lack of enrollment in it is not an issue. However, it is within the District’s discretion to decide what sorts of subjects it will provide instruction in, and the ALJ may not substitute his judgment for the Board’s judgment. (See *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 174; *Santa Clara Teachers, supra*, 116 Cal.App. 3d at 845.) Thus, if the District determines to stop

teaching jewelry casting to add courses in computer repair or automotive maintenance, it may do so.

6. (A) The contentions of Respondent Gebresellassie bear closer scrutiny. Essentially, she argues that the Reduction Resolution cannot be read to apply to her. On the issue of the elimination of the two Introduction to Computers/VESL classes, the Reduction Resolution is reasonably clear that courses or instruction on "intro to computers" is contemplated. Such classes were assigned to her effective October 13, 2020. On the other hand, Respondent Gebresellassie has been assigned to teach a course or subject titled "General Elective/Administrative Assistant" since at least July 2020. (Exs. 7, A.) While the evidence was that the students in the administrative assistant class are taught computer skills, there was evidence it is also an advanced class, and not an introductory one. No specific reference is made in the Reduction Resolution to an administrative assistant course.

(B) Essentially, the District would have the ALJ construe the designation in the Reduction Resolution "Introduction Intro to Computers All Levels" to include the Administrative Assistant course because the latter involves computer instruction, and because the Reduction Resolution would eliminate 28 hours, the total of Respondent Gebresellassie's hours. That does not appear to be sufficient. The Board appears to have acted on an inexact resolution, and if the ALJ cannot substitute his judgment for the Board's discretion, he cannot rewrite the pertinent portion of the Reduction Resolution.

(C) In the circumstances, the 11.5 hours allotted to the two courses Introduction to Computers/VESL may be eliminated. However, Respondent's assignment to teach 16.5 hours in Administrative Assistant will not be eliminated. As a result, Respondent Gebresellassie's hours shall be reduced to 16.5.

7. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to perform.

8. The District may lay off respondents Spears, Thomas, Rodriguez, and Paphatsarang. The District may lay off Respondent Gebresellassie to the extent of 11.5 hours, but it must retain her as to 16.5 hours to instruct the course "Administrative Assistant."

## **ORDER**

Final lay-off notices may be issued to respondents Spears, Thomas, Rodriguez, and Paphatsarang. A final lay off notice may be issued to Respondent Gebresellassie to the extent of 11.5 hours for teaching Introduction to Computers/VESL.

DATE: 05/20/2021

*Joseph Montoya*

JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings