

BEFORE THE
LOS ANGELES COUNTY
SUPERINTENDENT OF SCHOOLS

In the Matter of the Reduction in Force of:

CERTIFICATED EMPLOYEES OF THE
LOS ANGELES COUNTY OFFICE OF
EDUCATION

OAH No. 2016030341

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on April 13, 2016, in Downey, California. Los Angeles County Office of Education (LACOE) was represented by Jennifer A. Chamberlain, Deputy General Counsel. Carlos Perez, with Reich, Adell & Cvitan, represented all Respondents appearing at the hearing, who are identified as follows:¹ Raymond Alcala; Giovanni Boskovich; John C. Clayton; Gary S. Di Pierro; Michelle Dong; Carol Ann Eadens; Robert A. Earl (rescinded); David O. Ejimole; Linda Engholm; Karen L. Epport; Jane Weddington Flagg; Valeria Garcia (rescinded); Kathryn Kaatz George; Laura Gottlieb; Danny Hong; Mary C. Hubbell; Patricia M. Jacobs; Annika Jacobsen; Diane D. Jimenez; Maria C. Kawashima; Kyle S. Kelley; Amy L. Kutis; Beatrice B. Lambert; De Ana Lizardo; Susie C. Lochhead; Tamara A. Lopez; Cecilia L. Lowenthal; Kathy Magana Gomez; Katrina Gillard O'Connor; Vivian Okoro; Martin Navaroli; Jude C. Okwuokei; Raymond Olivas; Felicia Mercado Perez; Roshawn Perkins; Regina C. Ravare; Jessica V. Reed; Brandon Rivas; Jenifer C. Roberts; Jeannie Robinson; John Rodriguez; Toni Salisbury; Dyanelle Sanford; Patricia Lynn Scepan; Wendy Tsukamoto; Judy Warner; Paul Wecker; Jane Weddington; Karla Vanessa Williams; and Gayle Woods.

Oral and documentary evidence was received. After testimony concluded on April 13, 2016, the matter was continued until April 22, 2016, for the submission of closing briefs. Pursuant to Education Code sections 44949, subdivision (c), and 44955, subdivision (c), the continuance extended the deadline for submission of the proposed decision until May 16, 2016.

¹ Respondents' counsel identified his clients to be those Respondents listed in Exhibit 106, except for those whose names had a handwritten check mark next to them. Two of the listed clients, Mr. Earl and Ms. Garcia, had notations next to their names that their layoff notices had been rescinded. Testimony at the hearing confirmed the rescissions.

LACOE's Closing Brief was marked as Exhibit 30 and was lodged. Respondents' Closing Brief was marked as Exhibit 107 and was lodged. The record was closed, and the matter was submitted for decision on April 22, 2016.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Darren McDuffie, Ed.D., Chief Human Resources Officer of the Los Angeles County Superintendent of Schools, filed the Statement of Reduction in Force in his official capacity.

2. Respondents are certificated employees of LACOE.

3. On March 8, 2016, Arturo Delgado, Ed.D., the Los Angeles County Superintendent of Schools (Superintendent) adopted Resolution No. 1-S to reduce and discontinue particular kinds of services for the 2016-2017 school year, thereby reducing or eliminating 145 full time equivalent (FTE) positions.

4. The Superintendent further determined it necessary, by reason of the reductions or discontinuances in particular kinds of services, to decrease the number of certificated employees for the 2016-2017 school year by a corresponding number of FTE positions, and directed Dr. McDuffie or his designees to take all actions necessary and proper to accomplish the purposes of Resolution No. 1-S and to notify the appropriate employees of a recommendation not to reemploy them in accordance with Education Code sections 44949 and 44955.

5. In accordance with Education Code sections 44949 and 44955, on March 10, 2016, Dr. McDuffie gave the Superintendent notice of a recommendation that notices be given to Respondents that their services would not be required for the following school year due to reduction or discontinuation of particular kinds of services enumerated in Resolution No. 1-S.

6. On or before March 15, 2016, under Resolution No. 1-S and the provisions of sections 44949 and 44955, Dr. McDuffie gave written notice to Respondents that he had recommended to the Superintendent that notice be given to them that their services would not be required for the 2016-2017 school year. Respondents were provided with all required documents. Respondents requested a hearing to determine whether there is cause for not employing them for the 2016-2017 school year.

7(a). Some certificated employees had provided services while holding a provisional credential and were non-re-elected for that reason under Superintendent's Resolution No. 4-S, independent of this layoff process. LACOE notified those certificated employees as a precaution so that they could participate and exercise any claimed rights in this matter.

7(b). Some certificated employees provided services under temporary contract with LACOE and were non-reelected for that reason under Superintendent's Resolution No. 2-S, independent of this layoff process. LACOE notified those employees as a precaution, so that they could participate and exercise any claimed rights in this matter.

Reduction and Elimination of Particular Kinds of Services

8. Resolution No. 1-S provides for the reduction or elimination of the following particular kinds of services:

EDUCATIONAL PROGRAMS

A.	Division of Student Programs	FTE
	1. Principal on Special Assignment	1.0
	2. Senior Program Specialist	1.0
	3. Counselors	2.0
	4. Teacher CCS	3.0
	5. Teacher JCS	24.0
	6. Teacher SDC	5.0
	7. Literacy Specialist	1.0
	8. Resource Specialist	1.0
	9. Pregnant Minor	2.0
	Subtotal	40.0

EDUCATIONAL SERVICES

A.	Division of Accountability, Support and Monitoring	FTE
	1. Project Director III	1.0
	2. Coordinator II	2.0
	Subtotal	3.0
B.	Division of Curriculum and Instructional Services	FTE
	1. Project Director III	3.0
	2. Consultant II	7.0
	3. Senior Program Specialist	1.0
	Subtotal	11.0

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C.	Division of Special Education	FTE
1.	SELPA Director III	1.0
2.	Teacher APE	7.0
3.	Teacher DHH	2.0
4.	Teacher ED	8.0
5.	Teacher ID DH	3.0
6.	Teacher LSS	69.0
7.	Teacher VH	1.0
	Subtotal	91.0
	TOTAL	145.0

9. The services identified in Resolution No. 1-S are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. (See also Legal Conclusion 2.)

10. Specifically, speech and language pathology services and adapted physical education services were reduced because school districts for which LACOE had been providing such services had given LACOE notice that they were taking back those positions and directly providing speech and language pathology and adaptive physical education services to their students.

11. The decision to reduce or discontinue the identified particular kinds of services was neither arbitrary nor capricious, and constituted a proper exercise of discretion. (See also Legal Conclusion 3.)

12. The reduction or elimination of the identified particular kinds of services relates solely to the welfare of LACOE and its students. (See also Legal Conclusion 4.)

13. LACOE properly considered all known attrition in determining the number of layoff notices to be served on its employees as of March 15, 2016.

14. There was no evidence that reduction or elimination of the 145 FTE positions would reduce services below mandated levels. (See also Legal Conclusion 5.)

15(a). LACOE maintains a seniority list which contains employees' seniority dates, current assignments and locations, credentials, and authorizations.

15(b). Except as indicted in Factual Findings 34 and 35, the information on the seniority list is accurate.

15(c). Using the information on the seniority list, LACOE identified the most junior employees working in a particular kind of service being reduced or discontinued and determined which employees would receive layoff notices.

16. The Superintendent adopted criteria to be used in determining the order of termination of certificated employees who first rendered paid service to LACOE in a probationary position on the same date. The order of termination of those employees was determined by applying tiebreaker criteria set forth in Resolution No. 3-S. The Superintendent determined that such criteria best served the needs of the programs administered by LACOE and of its students.

17. Respondents did not challenge the tiebreaker criteria.

Skipping

18. The Superintendent established criteria to retain certificated staff in particular kinds of services, regardless of seniority, who have special training and experience necessary to teach a course or course of study, which was determined by meeting criteria set forth in Resolution No. 5-S as follows:

a. Probationary or permanent certificated employees who have experience teaching and specialized training in the Road to Success Academy's customized curriculum for female incarcerated high school students.

b. Probationary or permanent certificated employees who have experience teaching and specialized training in the Civic Democracy Initiative customized curriculum for female incarcerated high school students.

c. Probationary or permanent certificated employees who are currently assigned to Challenger Memorial Youth Center and have received specialized training and have experience in the facility wide implementation of the Positive Behavior Interventions and Supports (PBIS) pursuant to the requirements of the *Casey A.* Court Order and Settlement Agreement section 5.

d. Probationary or permanent certificated employees who are currently assigned to the Challenger Memorial Youth Center and have received specialized training and are experienced in the facility wide implementation of the Advance Path program and/or other specialized programs/courses of study pursuant to the requirements of the *Casey A.* court order and Settlement Agreement.

e. Pursuant to (d)(2), and as a separate ground, probationary or permanent certificated employees who are currently assigned to Challenger Memorial Youth Center whose assignment is necessary to maintain and achieve compliance

with constitutional requirements relating to equal protection, consistent with the *Casey A.* Court Order and Settlement Agreement.

19. LACOE is the local educational agency charged with providing educational services to students in juvenile halls and probation camps in Los Angeles County.

20. The Challenger Memorial Youth Center (Challenger) is a camp operated by the Los Angeles County Probation Department serving male juvenile offenders. LACOE operates Christa McAuliffe High School (McAuliffe), which provides educational services to the Challenger residents.

21. The Road to Success Academy at Camp Scott Scudder (RTSA at Scudder) is an all-girls school comprised of female juvenile offenders. The camp is operated by the Probation Department, and RTSA at Scudder is operated by LACOE.

The Challenger/McAuliffe Training & Experience

22. LACOE was party to a federal court class-action lawsuit entitled *Casey A., et al., v. Delgado, et al.*, case no. CV10-00192GHK(FMO) (C.D. Cal.). The lawsuit alleged that the rehabilitative and educational programs at Challenger/McAuliffe were constitutionally deficient. LACOE entered into a settlement agreement, which was enforced by order of the federal district court. Respondents were not parties to that litigation, and were not involved in the settlement.

23. The settlement agreement required implementation of a detailed action and compliance plan to address 13 areas of reform (Leadership, Administration, and Management; Data Management; Instruction; Literacy; Positive Behavior Support; Special Education; Career and Technical Education; Special Activities; Transition and Aftercare; Partnerships; Safety and Crisis Training; Discipline and Special Housing Unit; and Sustainability and Quality Assurance). The settlement agreement also required ongoing monitoring by a Technical, Compliance, and Advisory Team (TCA Team) and periodic reporting by that TCA Team to the district court to certify that McAuliffe staff was receiving continuous training and consistently implementing the detailed action plan.

24. McAuliffe staff has received extensive training and obtained experience offered in specialized areas and unique programs to ensure compliance with the settlement agreement. The action plan also required implementation of Positive Behavior Intervention Support (PBIS) to ensure the student population at McAuliffe would receive appropriate educational support. PBIS, which focuses on productively responding to negative behaviors, is implemented systemically and comprehensively as a component of the educational program at McAuliffe. The specialized training of McAuliffe staff affects the delivery of instruction to students by offering systemic incorporation of PBIS.

25. McAuliffe staff is currently working at the Tier I level in the PBIS training process. McAuliffe is one of only two LACOE sites working on PBIS Tier I training, and training with PBIS experts. (RTSA at Scudder is the other site.)

26(a). Some PBIS training and curriculum is offered at other LACOE sites, but it is not implemented comprehensively in the same intensive manner as at McAuliffe. No Respondent offered testimony of comparable training or experience implementing PBIS.

26(b). Respondents presented testimony of witnesses who asserted that, with the passage of Assembly Bill 420 (AB 420), which aims to have schools avoid suspension or expulsion of students when dealing with problem behaviors, all teachers are undergoing some training in positive behavior intervention. However, the evidence established that PBIS training at McAuliffe is more structured than the AB 420 behavior intervention being introduced and implemented at other LACOE sites.

27. Respondents not assigned to McAuliffe do not possess the same training and experience as those certificated employees assigned to McAuliffe.

28. Peter Leone, Ph.D., a member of the TCA Team charged with monitoring the implementation of the settlement agreement, testified credibly at the hearing. Dr. Leone opined that it is critical for McAuliffe staff to be highly trained because “it is no ordinary school,” but also involves the probation setting and mental health issues. Working in such an environment requires special skills and ongoing training. In the years following implementation of the settlement agreement, McAuliffe has continued to improve and has complied with the action plan, which Dr. Leone attributed to the positive impact of trained staff. Dr. Leone’s last formal report as monitor occurred in April of 2015, after which the *Casey* settlement terms concluded. However, Dr. Leone visited McAuliffe in March of 2016, under a consultation contract with LACOE, to ensure that McAuliffe’s reforms are sustained. Improvements have continued.

The RTSA at Scudder Training & Experience

29. RTSA at Scudder is similar to McAuliffe in that the student population requires specialized education unique to the juvenile justice system. Based on RTSA at Scudder students’ specialized needs, LACOE developed a thematic, interdisciplinary, project-based curriculum with content and support specific to the juvenile justice system population. The RTSA program is an extremely different program, incomparable to any other program in the nation, because it joins all three approaches, incorporating social-emotional themes through interdisciplinary content and project-based learning.

30. RTSA at Scudder was the pilot program for this unique course of study. The RTSA program was subsequently introduced at all LACOE sites which are at various stages of training and implementation. While some of the specialized training and curriculum from RTSA at Scudder are now available at other LACOE sites, the other sites have not yet systemically integrated the RTSA program into their course of study. RTSA at Scudder also

differs from the fledgling RTSA programs at other LACOE sites in that RTSA at Scudder is in its sixth year of implementation, has been fully certified for a year, and all staff at Scudder have been fully trained.² Within LACOE, only the staff at RTSA at Scudder has been fully trained and is currently experienced at implementing the course of study at that site.

31. RTSA at Scudder is one of only two LACOE sites working on PBIS Tier I training, and training with PBIS experts. (McAuliffe is the other site.)

32. RTSA is also the only LACOE site chosen to implement the California Democracy School Civic Learning Initiative (California Civic Democracy Initiative). This grant-funded program systemically incorporates civics in the curriculum provided at RTSA. RTSA's California Civic Democracy Initiative training has been ongoing for three years, including summer training and an on-site consultant monthly to work with staff.³ After three years of training and implementation, RTSA is on track to be certified as a Civic Democracy School.

33. Untrained senior staff members not assigned to RTSA at Scudder do not possess the same training and experience as staff members at RTSA.

Respondents Seeking to Change their Seniority Date

34. At the hearing, Respondent Diane Jimenez's seniority date on the seniority list (initially set forth as July 1, 2000) was changed to September 1, 1999. The correction was made because she was credited for the time she served on a provisional certificate. Despite the changed seniority date, Respondent Jimenez remained subject to layoff.

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² Two staff members retained at Scudder, Bea Rulli (#397) and Charlie Phelps (#265), have been fully trained in the RTSA program.

³ California Civic Democracy Initiative training, including summer training, has been attended by RTSA staff members Rulli and Phelps.

35(a). Respondent Maria Kawashima (#241) contested her listed seniority date of September 1, 2003. Respondent Kawashima was hired on September 5, 1997, under a variable term waiver while working on her credential.⁴ She served under a variable term waiver from September 5, 1997, until December 2004, when she received her permanent credential. Respondent Kawashima believes that September 5, 1997 is her correct seniority date because she served continuously without any break in service since that date. On cross examination, Respondent Kawashima recalled receiving a notice of non-reelection in 2003, at the end of the 2002-2003 school year. However, the evidence did not establish that this notice of non-reelection caused a break in her service since Respondent Kawashima returned in the Fall of 2003 for the 2003-2004 school year.

35(b). Respondent Kawashima's employment contracts were not presented in evidence, and LACOE's employment classification for her under those contracts was not established. Instead, LACOE points to Respondent Kawashima's variable term waiver and asserts that she was a temporary employee from 1997 through 2003. Although a variable term waiver is less than a full credential, this addresses Respondent Kawashima's credential status and does not address her status or classification as an employee.⁵ It is improper for LACOE to classify Respondent Kawashima as temporary simply because she had less than a full credential.⁶ LACOE incorrectly cites Education Code section 44911 as a basis to discredit Respondent Kawashima's assertion of a prior seniority date. LACOE argued, "California Education Code § 44911 states that 'service by a person under a provisional credential shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district.'" Thus, Ms. Kawashima's employment under variable-term waivers from 1997 to 2003 does not entitle her to service time credit when computing her eligibility as a permanent employee of LACOE." (LACOE's Closing Brief, p. 9.) This argument does not establish Respondent Kawashima's temporary status from 1997 through 2003. A similar argument (that provisionally credentialed employees were not truly probationary due to Education Code section 44911) was considered by the Court in *California Teachers Assn. v. Vallejo City Unified School Dist.* (2007) 149 Cal.App.4th 135, and the Court found that argument unpersuasive, instead holding that teachers with emergency permits can be classified as probationary employees. (*Id.* at pp. 148-149.)

⁴ A Variable Term Waiver is a document issued by the California Commission on Teacher Credentialing for employers who meet the waiver criteria when a fully credentialed teacher is not available for the assignment. It allows the employer to fill the assignment while searching for a fully credentialed teacher in the subject area of the assignment and gives the employee/waiver holder additional time to complete requirements.

⁵ (*California Teachers Assn. v. Vallejo City Unified School Dist.* (2007) 149 Cal.App.4th 135, 148-150.)

⁶ (*Bakersfield Elementary Teachers Assn. v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1282-1283.)

35(c). In its Closing Brief, LACOE also asserted, “Based on the temporary nature of the variable-term waiver and need for fully credentialed employees, Ms. Kawashima was dismissed for cause at the end of each school year from 1997 to 2003.” There was no evidence that Respondent Kawashima was ever dismissed for cause as opposed to being subject to release/non-reelection due to layoff. Moreover, LACOE presented no evidence to establish any non-reelection during Respondent Kawashima’s employment with LACOE, other than her admission to receiving a notice of non-reelection in 2003. LACOE did not establish that, as of that date, Respondent Kawashima was properly classified as a temporary employee. The District did not establish that at any point after September 5, 1997, and prior to September 1, 2003, Respondent Kawashima was properly classified as a temporary employee.⁷ By default, Respondent Kawashima is presumed to have been serving as a probationary employee since September 5, 1997.⁸ Consequently, her seniority date for purposes of layoff should be adjusted to her first date of paid probationary service, which was September 5, 1997.⁹

Speech and Language Pathologists

36(a). A large number of speech and language pathologists received notices that their services would not be required for the 2016-2017 school year. Several testified at the hearing, including Kathy Magana-Gomez (#166; seniority date 2/8/99), Karen Eppert (#320; seniority date 9/17/07), Toni Salisbury (#339; seniority date 9/1/08), Beatrice Lambert (#294; seniority date 9/7/06), Maria Kawashima (#241; seniority date 9/1/03), Patricia Jacobs (#175; seniority date 9/1/99), and Mary Hubbell (#254; seniority date 9/1/04).

⁷ “Even if an employee agrees in writing to be hired as a temporary employee, such a written agreement is not determinative unless the classification is authorized by statute. A school district may not classify a person as a temporary employee unless the position in which he or she is employed is ‘a position the law defines as temporary.’” (*Stockton Teachers Assn. v. Stockton Unified School Dist.* (2012) 204 Cal.App.4th 446, 457 (citing *Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1277).) As pointed out in *Stockton*, the Education Code specifically authorizes a temporary classification in only a few instances. (*Id.* at p. 456.)

⁸ “If a teacher does not satisfy the statutory grounds for a temporary classification, the default or catch-all provision of [Education Code] section 44915 mandates the district classify the teacher as a probationary employee.” (*Vasquez v. Happy Valley Union School Dist.* (2008) 159 Cal.App.4th 969, 983 (citing *California Teachers Assn. v. Vallejo City Unified School Dist.* (2007) 149 Cal.App.4th 135, and *Bakersfield, supra.*); see also, *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916-917.)

⁹ An employee’s employment date is the date in which the employee first rendered paid service in a probationary position. (Ed. Code, § 44845.)

36(b). Many of the speech and language pathologists who testified believed that the layoff of so many speech and language pathologists would impact the students who had been receiving their services. However, as set forth in Factual Findings 10, 11, 12, and 14 above, the reduction of such services was related to districts' "take back" of these services, and there was no evidence that reduction of the positions would reduce services below mandated levels.

36(c). LACOE's speech and language pathology assignments are generalized and do not distinguish between various specialized areas of that field. The collective testimonies of several speech and language pathologists revealed that although speech and language pathologists are general practitioners by credential, most of them work in specialized areas for which they have self-qualified through additional education and experience (e.g., alternative augmentative communication). The witnesses noted that senior speech and language pathologists who are retained after this layoff may have to fill positions in specialized areas in which they have little experience. Nevertheless, their testimonies did not establish that any of the retained senior speech and language pathologists were not certificated and competent to render the speech and language pathology services for which they were retained. The collective testimonies also failed to establish that any of the junior speech and language pathologists identified for layoff should be skipped pursuant to any of the Superintendent's skipping criteria.

Individual Respondents' Assertions

37. Respondent Magana-Gomez is a speech and language pathologist who serves in the auditory-oral program.¹⁰ This program prepares children through fifth grade to either be subsequently mainstreamed into general education or placed in the total communication program which requires fluency in sign language. Respondent Magana-Gomez noted that Samantha Fogel, who is more senior to her, was being retained as a speech and language pathologist. Respondent Magana-Gomez also noted that Ms. Fogel is a total communication speech pathologist, fluent in sign language, who may have some experience in auditory-oral therapy but not as much as Respondent Magana-Gomez. She conceded that LACOE does not have a separate job assignment for auditory-oral therapists. Respondent Magana-Gomez did not establish that any junior certificated employee is being retained to perform services that she is certificated and competent to render and that she should bump into any assignment. Respondent Magana-Gomez also did not establish that she should be skipped pursuant to the Superintendent's skipping criteria.

38. Respondent Gary DiPierro (#335; seniority date 9/1/08) is an Adapted Physical Education (APE) specialist who is subject to layoff. He asserted that Tonya Moore (#340; seniority date 9/1/08) should not be retained over him. However, the evidence

¹⁰ The general findings in Factual Finding 36 apply to Respondent Magana-Gomez as well. However, her individual claims are addressed here since she challenged the retention of a specific speech and language pathologist in relation her layoff.

established that, based on tiebreaker criteria, Ms. Moore was assigned to a position of lesser seniority than Respondent DiPierro and that she was being laid off as well. Respondent DiPierro did not establish that any junior certificated employee is being retained to perform services that he is certificated and competent to render and that he should bump into any assignment. Respondent DiPierro also did not establish that he should be skipped pursuant to the Superintendent's skipping criteria.

39. Respondent Ray Alcala (#271; seniority date 9/7/05) is physical education teacher who is subject to layoff. He teaches physical education to LACOE students on the host campus of California State University, Los Angeles. He asserted that his assignment is unique in that he has incorporated new technology (including fitness software) and involves knowing how to collaborate with the university classes and programs which use the same facilities. Respondent Alcala did not establish that any junior certificated employee is being retained to perform services that he is certificated and competent to render and that he should bump into any assignment. Respondent Alcala also did not establish that he should be skipped pursuant to the Superintendent's skipping criteria.

40(a). Respondent Patricia Scepan (#220; seniority date 2/18/02) holds a multiple subject credential and teaches at the Barry J. Nidorf Compound School, which is a juvenile court school (JCS). Respondent Scepan believes she should bump into the literacy specialist position held by Laura Macias (#285; seniority date 7/24/06) at the Glenn Rockey Camp. The literary specialist position requires a reading certificate as well as a teaching credential. Respondent Scepan acknowledged that Ms. Macias holds a reading certificate, which Respondent Scepan does not have.

40(b). However, Respondent Scepan asserted that Ms. Macias is not working in a literary specialist position and that she only serves four morning hours in a multiple subject classroom and then teaches Reading 180 (a reading intervention program). It was unclear from Respondent Scepan's testimony how she had obtained her information regarding the duties Ms. Macias is performing; Ms. Macias did not testify to verify or deny Respondent Scepan's assertions. Respondent Scepan feels she can fill Ms. Macias' job assignment because she believes she has more years of experience teaching and that only a small amount of training is needed to teach Reading 180. Dr. Sarah Niemann, Coordinator III with the Supervisor's Human Resources Department, confirmed that Ms. Macias was assigned and being retained as a literary specialist. The evidence did not establish that Ms. Macias was not performing any duties as a literary specialist, even if she was performing additional duties such as teaching Reading 180.

40(c). Respondent Scepan did not establish that Ms. Macias is being retained to perform services that Respondent Scepan is certificated and competent to render and that Respondent Scepan should bump into Ms. Macias' assignment.

41(a). Respondent Martin Navaroli (#255; seniority date 9/1/04) is a teacher at I-Poly on the campus of California State Polytechnic University, in Pomona. He has a single subject credential in Social Science. He believes that his training surpasses that of Mr.

Phelps and Ms. Rulli, who are assigned to RTSA at Scudder and have the training and experience discussed in Factual Findings 29 through 33. Respondent Navaroli has completed training which included attending Constitutional Heritage for 21st Century Citizens in 2008 and has presented at the American History Weekend Institute series and the American History Convention in 2009. Respondent Navaroli has also worked on problem-based learning (PBL) since 2004, was a collaborator in 2009-2011 at I-Poly's PBL workshops, and helped create curriculum for LACOE to teach PBL. He asserted that his trainings were "where RTSA came out of," and that "the trainer is being bypassed by the students he taught." However, Respondent Navaroli admitted that he never attended trainings under the RTSA title and did not receive any training under the California Democracy Initiative title. He is aware that PBL is only one component of RTSA but asserts that he has experience with the social-emotional component; he teaches high school "where social and emotional issues are going on at all times." Respondent Navaroli did not establish that he possesses the same training and experience as staff members at RTSA.

41(b). Respondent Navaroli did not establish that any junior certificated employee is being retained to perform services that he is certificated and competent to render and that he should bump into any assignment. Respondent Navaroli also did not establish that he should be skipped pursuant to the Superintendent's skipping criteria.

42. Taking into account the changes described above, no junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The services identified in Resolution No. 1-S are particular kinds of services which may be reduced or discontinued pursuant to Education Code section 44955.

3. The decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of the Board's discretion.

4. Cause for the reduction or discontinuation of services relates solely to the welfare of LACOE and its students within the meaning of Education Code sections 44955.

5. Services will not be reduced below mandated levels.

6. Cause exists to reduce the number of certificated employees of LACOE due to the reduction and discontinuation of particular kinds of services.

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7. Education Code section 44955, subdivision (b), provides, in pertinent part:

[T]he services of no permanent employee may be terminated . . . 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.

8(a). Education Code section 44955, subdivision (d)(1), allows the District to deviate from terminating a certificated employee in order of seniority, if the District demonstrates that there is 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.

8(b). In this case, LACOE demonstrated a specific need for certificated personnel at McAuliffe and RTSA at Scudder to deliver unique courses of study utilizing the methodologies in which they have been extensively trained and have developed a special degree of experience. The special training and experience of the McAuliffe and RTSA at Scudder staff is integral to delivery of the unique courses of study offered at those two sites. Consequently, the Superintendent's skipping criteria for McAuliffe and RTSA were appropriate because the skipped personnel possess special training and experience to teach the unique courses of study at those sites which more senior LACOE personnel do not possess.

9(a). Cause was established to adjust the seniority dates of the following Respondents: Respondent Diane Jimenez, whose seniority date was adjusted from July 1, 2000, to September 1, 1999; and Respondent Maria Kawashima, whose seniority date was adjusted from September 2, 2003, to September 5, 1997.

9(b). The evidence established that despite the changed seniority date, Respondent Jimenez remains subject to layoff. However, LACOE shall be ordered to determine if the adjusted seniority date of Respondent Kawashima will no longer subject her to layoff, and if so, the Statement of Reduction in Force against her shall be dismissed.

10. Prior to or during the hearing, LACOE rescinded the preliminary layoff notices issued to Respondents Robert A. Earl and Valeria Garcia. The Statements of Reduction in Force against them will be dismissed.

11. Except as set forth in the Legal Conclusions above and the resulting orders below, no junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

12. Cause exists within the meaning of Education Code section 44955 for terminating or reducing the remaining Respondents' employment for the 2016-2017 school year, as set forth in Factual Findings 1 through 42, and Legal Conclusions 1 through 11.

ORDERS


1. The Statements of Reduction in Force against respondents Robert A. Earl and Valeria Garcia are dismissed. LACOE shall not issue those Respondents final layoff notices for the 2016-2017 school year.

2(a). LACOE's seniority dates for the following Respondents shall be adjusted: Respondent Diane Jimenez - seniority date adjusted from July 1, 2000, to September 1, 1999; and Respondent Maria Kawashima - seniority date adjusted from September 2, 2003, to September 5, 1997.

2(b). LACOE shall determine whether Respondent Kawashima is no longer subject to layoff given her adjusted seniority date. If she is no longer subject to layoff, the Statement of Reduction in force against her shall be dismissed, and LACOE shall not issue Respondent Kawashima a final layoff notice for the 2016-2017 school year.

3. The Statement of Reduction in Force is sustained against the remaining Respondents who have not yet had their layoff notices rescinded. LACOE may issue final notices of layoff to those Respondents. Notice shall be given to those 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 29, 2016

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JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings