

BEFORE THE GOVERNING BOARD OF THE
AZUSA UNIFIED SCHOOL DISTRICT

In the Matter of the District's Statement of
Reduction in Force Against:

OAH No. 2018030808

Sharon K. Both, Lynda Angelique Clenney,
Kevin Knight, Alexandra Laszlo, Oscar
Ramirez, Robert Ranger, and Roland Souza,

Respondents.

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, State of California, on April 26, 2018, at the Azusa Unified School District Offices in Azusa, California. Sharon J. Ormond, with Atkinson, Andelson, Loya, Ruud & Romo, represented the Azusa Unified School District (District). Hannah S. Weinstein with Rothner, Segall & Greenstone, represented all Respondents appearing at the hearing, who are identified as follows: Sharon K. Both; Lynda Angelique Clenney; Alexandra Laszlo; Robert Ranger; and Roland Souza.¹

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on April 26, 2018.

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¹ Respondents Kevin Knight and Oscar Ramirez were not present at the hearing.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondents are certificated employees of the District.

2. On February 20, 2018, the Governing Board (Board) of the District adopted Resolution Number 17-18:49 (Resolution) to reduce or discontinue the following particular kinds of services provided by the District no later than the beginning of the 2018-2019 school year:

<u>Services Being Reduced or Eliminated</u>	<u>Number of Full-time Equivalent (FTE) Positions</u>
JROTC Teaching Services	2.0 FTE
High School Business Teaching Services	1.0 FTE
High School Home Economics Teaching Services	2.0 FTE
Middle School English Language Arts Teaching Services	1.0 FTE
Secondary Math Teaching Services	2.0 FTE
Middle School Social Science Teaching Services	1.0 FTE
Middle School Science Teaching Services	2.0 FTE
Music Teaching Services	1.0 FTE
Total FTE Reduction:	12.0 FTE

3. The Board further determined that the reduction or discontinuance of particular kinds of services necessitated a decrease in the number of certificated employees by a corresponding number of FTE positions. The Board directed the Superintendent or her designee to take all actions necessary and proper to accomplish the purposes of the Resolution and to notify the appropriate employees that their services would not be required for the 2018-2019 school year.

4. On February 23, 2018, Ramiro Rubalcaba, the District's Assistant Superintendent of Human Resources, filed the Statement of Reduction in Force while acting in his official capacity.

5A. On February 26, 2018, the District served each Respondent with a Notice of Recommendation Not to Reemploy for the 2018-2019 School Year (preliminary layoff notice), informing him/her that his/her services would not be required for the ensuing 2018-2019 school year.

5B. On that same date, the District served each Respondent with the Statement of Reduction in Force, Statement to Respondent, blank Request for Hearing and Notice of

Participation form, and copies of pertinent provisions of the Government and Education Codes.

6. Respondents each timely submitted a signed Request for Hearing and Notice of Participation.²

7. On March 26, 2018, the District served a Notice of Hearing on Respondents.

Propriety of Reduction of Particular Kinds of Services

8. The services identified in the Resolution and set forth in Factual Finding 2 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. (See also Legal Conclusion 2.)

9. The decision to reduce the particular kinds of services was based in part on fiscal solvency concerns, including the District's need to maintain the required amount in reserve. The Board decided to reduce its budget next year, in part by reducing particular kinds of services. The decision to reduce particular kinds of services also took into account student course requests and the District's objective to offer programs which align with criteria for college and career readiness.

10. The Board's 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.)

11. The reduction or elimination of the identified particular kinds of services relates solely to the welfare of the schools in the District and its students. (See also Legal Conclusion 6.)

12. There was no evidence that reduction or elimination of the FTE positions would reduce services below mandated levels. (See also Legal Conclusion 4.)

13. Prior to the adoption of the Resolution, the District considered all known attrition in determining the number of layoff notices to be served on its employees.³

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² Shannon Mixer and Gabriela Rodriguez were served with preliminary layoff notices and with the District's Statement of Reduction in Force packet. However, neither submitted any Request for Hearing and Notice of Participation, and they therefore waived their right to a hearing.

³ In a layoff proceeding like this, a governing board need only consider positively assured attrition which occurs prior to the March 15th layoff notice deadline, not thereafter. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 635.)

Seniority List and Tiebreaking Criteria

14A. The District maintains a seniority list which contains employees' seniority dates, current assignments, and credential and certificate information.

14B. The information on the seniority list is accurate.

15A. The District used the seniority list with seniority dates to develop a proposed layoff list of the least senior employees currently assigned in the various particular kinds of services being reduced. The District also considered each teacher's credentials and certifications.

15B. Using the information on the seniority list, the District 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. On November 7, 2017, the Board adopted Resolution Number 17-18:24 (Tie Breaker Resolution) establishing tiebreaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The District applied the tiebreaker criteria to determine the order of termination of certificated employees who first rendered paid service to the District in a probationary position on the same date.⁴

17. Respondents did not challenge the tiebreaker criteria or their application.

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⁴ Education Code section 44955, subdivision (b), provides, "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."

Competency Criteria

18. The Board's Resolution also established a definition of competency for purposes of allowing an employee currently assigned in a position subject to layoff to "bump" a less senior employee holding another position not subject to layoff.⁵ For bumping purposes, an employee meets the definition of "competency" by:

- (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 2018-2019 school year;
- (2) possession of an appropriate full (not emergency) EL authorization (if required by the position);
- (3) in the case of displacing junior employees teaching in a departmentalized setting, possession of a single subject credential(s) or subject matter authorization in that subject area; and
- (4) any training and experience necessary to meet the job requirements of specialized positions (such as AVID⁶).

In no event may a more senior employee displace a more junior employee unless the more senior employee is both competent and credentialed for the entire assignment of the more junior employee.

(Exhibit 3.)

19A. In drafting the competency criterion which requires possession of a single subject credential or subject matter authorization (subdivision (3), above), the District sought to maintain the standards it had applied under the federal No Child Left Behind Act (NCLB). NCLB had required a teacher to hold a single subject credential or a subject matter authorization in order to be deemed highly-qualified. A supplemental authorization was insufficient to be considered highly-qualified under NCLB. A supplemental authorization differs from a subject matter authorization in that its acquisition requires completion of 20 semester units, whereas a subject matter authorization requires 32 semester units. After the repeal of NCLB several years ago, the District continued to utilize the same standards in order to retain the most qualified teachers for its students. Although the California

⁵ A senior teacher whose position is discontinued has the right to replace, or "bump," into the position of a junior employee who is providing a service which the senior teacher is certificated and competent to fill, thus allowing the senior teacher to avoid layoff. (Ed. Code, § 44955, subd. (b); *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

⁶ AVID is the acronym for Advancement Via Individual Determination.

Commission on Teacher Credentialing (CTC) authorizes a teacher with a supplemental authorization to teach in grades 9 and below, the District requires a teacher to meet the former NCLB “highly-qualified” standards (i.e., possession of a single subject credential or subject matter authorization). The Resolution’s competency criteria reflect the “highly-qualified” NCLB requirement.

19B. Regarding the competency criterion, subdivision (4), although AVID can be taught by a teacher with any credential, the teacher must be AVID-trained and AVID-certified.

19C. The competency criterion requiring that a senior employee bumping a junior employee be competent and credentialed “for the entire assignment of the more junior employee” took into account that it is atypical and challenging to assign a teacher to only part of an assignment.

20A. Respondents challenged the competency criteria, arguing that the criteria were arbitrary and unreasonable. For the reasons set forth in Legal Conclusion 7, Respondents’ assertions are not persuasive.

20B. The District’s competency criteria are deemed reasonable. (See Legal Conclusion 7.) Therefore, the District’s definition of competency in determining bumping rights is upheld.

21. The District analyzed potential bumping rights of teachers subject to layoff, and the District determined that nobody less senior than Respondents was being retained to render services which Respondents are certificated and competent to render.

Respondent Lynda Angelique Clenney

22A. Respondent Lynda Angelique Clenney (#80 on seniority list; seniority date 2/4/1992) teaches Home Economics, specifically Fashion Design and Interior Design, in the Career Technical Education (CTE) program. She asserts that she is certificated and competent to teach middle school English Language Arts. Respondent Clenney holds a single subject clear credential in Home Economics and a supplemental authorization in English that allows her to teach English in grades 9 and below. For acquisition of her supplemental authorization in English, Respondent Clenney completed 20 semester units, and she needs 12 additional units to obtain her subject matter authorization.

22B. Respondent Clenney asserts that she should bump into the positions held by the following middle school English Language Arts teachers: Peggy Harris (#232; seniority date 9/2/1999) who holds an introductory subject matter authorization in English; Johnny Rico (#249; seniority date 8/31/2000), who holds a subject matter authorization in English; and Jennifer Colleen Gutierrez (#250; seniority date 8/31/2000), who holds a subject matter authorization in English and who also teaches AVID. Respondent Clenney asserts that she could teach AVID because “in order to get AVID training, you have to be assigned to teach

AVID,” and AVID training occurs over the Summer or in the Fall just prior to commencement of classes.

22C. Respondent Clenney does not currently have a subject matter authorization to meet the District’s competency criteria for teaching middle school English, nor does she have prior AVID training or certification. Although she could obtain the requisite subject matter authorization by completing 12 additional units, and she could later obtain AVID training and certification, since these would be secured after March 15, she cannot now use anticipated certification to assert bumping rights.⁷ Respondent Clenney did not establish that she meets the competency criteria required to bump into a middle school English Language Arts position or an AVID position.

Respondent Sharon Both

23A. Respondent Sharon Both (#97 on seniority list; seniority date 9/2/1993) teaches Home Economics, specifically Fashion Design and Foods, in the CTE program. She asserts that she is certificated and competent to teach middle school English Language Arts. Respondent Both holds a single subject clear credential in Home Economics and a supplemental authorization in English that allows her to teach English in grades 9 and below.

23B. Respondent Both asserts that she should bump into the positions held by the following middle school English Language Arts teachers: Peggy Harris (#232; seniority date 9/2/1999) who holds an introductory subject matter authorization in English; Johnny Rico (#249; seniority date 8/31/2000), who holds a subject matter authorization in English; and Jennifer Colleen Gutierrez (#250; seniority date 8/31/2000), who holds a subject matter authorization in English and who also teaches AVID; and Julie Camacho (#287; seniority date 8/29/2002), who holds an introductory subject matter authorization in English.

23C. Respondent Both has received AVID training, and she previously taught AVID for two years. She asserts that she should bump junior employees teaching AVID. Fifteen employees less senior than Respondent Both teach partial assignments of AVID:

⁷ “[C]redentials recorded after March 15 cannot be used by a teacher to assert bumping or reassignment rights.” (*Vassallo v. Lowrey* (1986) 178 Cal.App.3d 1210, 1217 (citing *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 815).) The reasoning behind the March 15 deadline was the districts’ requirement to consider credentials in determining to whom to send layoff notices. The *Vassallo* Court noted that, although the employee had a credential which would have entitled her to bump into another assignment, the credential was not recorded with the county board of education in time for the school district to consider it. Pursuant to statute, districts were required to “send all termination notices by March 15 of the preceding academic year. Since such districts cannot add to the layoff list after March 15, sometime before that date such districts must consider the seniority and credentials of all employees to be laid off, reassigned, or ‘bumped.’” (*Id.* at pp. 1216-1217.) The same analysis can be applied to training and certification obtained after the March 15 deadline.

Heather Neal (#99) who teaches .8 French, .2 Yearbook, and .2 AVID; Andrew Alvarez (#173) who teaches .6 History and .4 AVID; Ms. Gutierrez (#250) who teaches .6 high school English and .4 AVID; Brad Wong (#255) who teaches .8 Science and .2 AVID; Griselda Berry (#296) who teaches .6 History and .4 AVID; Douglas Dolter (#312) who teaches .6 Anatomy and Physiology, .2 Biology and .2 AVID; Nolan Sinclair (#327) who teaches .8 Physical Education and .2 AVID; Laura Camarena (#328) who teaches .8 Math and .2 AVID; Aracely Velasco (#345) who teaches .8 Math and .2 AVID; James Shea (#359) who teaches .4 Physics, .4 Chemistry, and .2 AVID; Michelle Garcia (#366) who teaches .4 Math and .6 AVID; Stanley Baik (#370) who teaches .8 Math and .2 AVID; Whytnie Grennan (#378) who teaches .4 Expository Reading and Writing Course, .2 Yearbook, and .4 AVID; Nena Martinez (#400) who teaches .6 high school English, .4 Leadership, and .2 AVID coordinator; and Lanae Harper (#420) who teaches .2 high school English, .4 English Language Development, and .4 AVID.

23D. Respondent Both does not currently have a subject matter authorization to meet the District's competency criteria for teaching middle school English. Additionally, while she has prior AVID training and experience and could teach partial assignments of AVID currently being taught by junior employees, she does not hold any credentials to teach the remaining portions of those junior employees' assignments. Consequently, Respondent Both does not meet the District's competency criterion that she be "competent and credentialed for the entire assignment of the more junior employee." (See also Legal Conclusion 7.) Respondent Both did not establish that she meets the competency criteria required to bump into a middle school English Language Arts position or AVID position.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.
2. The services identified in the Resolution 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. Services will not be reduced below mandated levels.
5. Cause exists to reduce the number of certificated employees in the District due to the reduction and discontinuation of particular kinds of services.
6. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code sections 44955.
- 7A. 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.

7B. A school district has the authority and the discretion to establish competency criteria for purposes of determining bumping rights. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 563-567.) This discretion is limited only by a reasonableness standard (i.e. a district's criteria must be reasonable, and not fraudulent, arbitrary or capricious). (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 808.) "[A] board's definition of competency is reasonable when it considers the skills and qualifications of the teacher threatened with layoff." (*Duax, supra*, at p. 565 [approving a recency requirement of "one year of teaching in the last ten," but opining that a "one in the last two or three [years]" standard "too narrowly defines competency."].)

7C. Respondents challenged the competency criteria, arguing that the criteria (requiring a subject matter authorization and requiring prior AVID training and certification) were arbitrary and unreasonable. Respondents contend that the District crafted the competency criteria so narrowly that senior teachers slated for layoff could not exercise any bumping rights. They also argued that the training requirement for AVID was "arbitrary" and "based on conduct in the past." (Counsel's oral closing argument.) The District argued that it has the authority and discretion to require qualifications for competency which rise above the minimal credentialing established by the CTC. The District further argued that there is nothing unreasonable in establishing competency criteria to maintain the highly-qualified standards and to assure the highest quality of teachers for its students. The District's argument was more persuasive.

7D. The competency criteria established by the District were within the District's discretion and related to the qualifications of the teachers subject to layoff. For example, while Respondents Clenney and Both held the minimum CTC credentialing to allow them to teach middle school English Language Arts, they did not have (nor were they ever prevented from obtaining) the requisite educational qualifications (i.e., a subject matter authorization) to meet the competency criteria.

7E. Respondents further argued that the District, through its competency criteria, should not be able to preclude bumping into a partial assignment. However, the District's criterion requiring that a senior teacher seeking to bump into an assignment be able to assume the entire position held by the junior employee is reasonable and well within the discretion of the District to define positions within the District and to establish requirements for employment. (See *Martin v. Kentfield School Dist.* (1983) 35 Cal.3d 294, 299-300; *Duax, supra* at p. 565.) "Education Code section 44955, which gives preference to qualified employees based on their relative seniority, does not compel a district to split a full-time

position held by an employee with less seniority.” (*Hildebrandt v. St. Helena Unified Sch. Dist.* (2009) 172 Cal. App. 4th 334, 342–43.)

7F. Given the foregoing, the District’s competency criteria were reasonable and were not arbitrary or capricious.


8. No certificated employee junior to any Respondent is being retained to perform any services which any Respondent is certificated and competent to render.

9. Cause exists within the meaning of Education Code section 44955 for terminating or reducing Respondents’ employment for the 2018-2019 school year, as set forth in Factual Findings 1 through 23 and Legal Conclusions 1 through 8.

ORDER

The Statements of Reduction in Force served on all Respondents are sustained. Notice may be given to all Respondents, in inverse order of seniority, that their services will not be required for the 2018-2019 school year.

Dated: May 2, 2018

DocuSigned by:

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JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings