

**BEFORE THE  
GOVERNING BOARD OF THE  
BEVERLY HILLS UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA**

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

**CERTIFICATED EMPLOYEES OF THE BEVERLY HILLS UNIFIED  
SCHOOL DISTRICT,**

**SAMANTHA ICKES AND MARISSA TERRANOVA,**

**Respondents**

**OAH No. 2020040035**

**PROPOSED DECISION**

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on May 11, 14-15, and 18, 2020, in Los Angeles, California. The matter was heard by way of telephone due to the COVID-19 pandemic.

The District was represented by Jabari A. Willis and Alexandria Davidson, Esqs., of Atkinson, Andelson, Loya, Ruud, and Romo, PLC. Luke Pavone (Pavone), Executive Director for Human Resources, served as the District's representative and attended each day of hearing.

Respondents Samantha Ickes (Ickes) and Marissa Terranova (Terranova) were represented by Tamra M. Smith, Esq., of Equality Law, LLP. Ickes and Terranova attended each day of hearing. Penny Sevoian, Field Staff, of the California Teachers Association, also attended each day of hearing.

This matter was submitted for decision on May 18, 2020. Immediately prior to the matter being submitted, the parties stipulated that this proposed decision is due no later than June 11, 2020, and that complainant's final notice of layoff is due no later than June 19, 2020. The parties and the ALJ considered and discussed the multiple continuances of previously scheduled hearing dates which were granted in this matter pursuant to Government Code section 11524. The total number of continuance days was counted and considered in connection with Education Code section 44949, subdivision (e), which resulted in the above-stated deadlines.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On March 10, 2020, the Governing Board (Board) of the Beverly Hills Unified School District (District) adopted Resolution number 2019-2020-17, entitled "Resolution to Reduce or Discontinue Particular Kinds of Services" (Reduction Resolution or Resolution). The purpose of the Resolution was to reduce and discontinue particular kinds of certificated services by no later than the beginning of the 2020-2021 school year.

2. The Resolution requires the reduction of 10.8 Full-Time Equivalent (FTE) positions by reducing various types of services. The Resolution did not state the Board's reasons for passing the Resolution. At hearing, the District offered evidence

that it may face a 15 percent loss in revenue from the city of Beverly Hills for the upcoming 2020-2021 school year.

3. The 10.8 FTE positions to be eliminated are set forth in the Resolution as follows:

TK-5 Teacher	2 FTE
TK-5 Music	2 FTE
Grade 6-8 Science	1 FTE
Grade 6-8 Music	1 FTE
Technology	.2 FTE
Grade 9-12 Science	1 FTE
Grade 9-12 Language Arts	.8 FTE
Grade 9-12 Math	1 FTE
Grade 9-12 French	.6 FTE
Coordinator of Medical Science Academy	.2 FTE
Coordinator of Categorical Funding	1 FTE
Total FTE to be reduced:	10.8 FTE

4. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.

5. All jurisdictional requirements have been met.

## **The History of the Case**

6. The initial 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 because of the uncertainty regarding the District's financial resources for the 2020-2021 school year.

7. Pavone credibly testified that the District may lose 15 percent of the funding it receives from the City of Beverly Hills before the 2020-2021 school year. Respondents offered conflicting evidence that suggested the District may not have an actual budget shortfall for the 2020-2021 school year. Pavone testified that the District requires "maximum flexibility" during these uncertain times. The District established that it was acting in good faith and in anticipation of a potential budget shortfall. It was not established that the District acted in an arbitrary and capricious manner in deciding to eliminate the 10.8 FTE teaching positions.

8. The District originally identified and listed 10 teachers for layoff in exhibit 2 ("Recommendation not to Reemploy Permanent or Probationary Employees").

9. The District later rescinded some of the preliminary layoff notices and the District reached settlement with some of the 10 respondents. Prior to the first day of hearing in this matter (or immediately after the hearing was commenced) all issues were resolved as to eight of the 10 teachers listed in exhibit 2.

10. The District rescinded the preliminary notice of layoff for the following teachers: John Castle, Nicole Goshen, Camille Mosby and Nicole Snijdwind.

11. The District reached a settlement with the following teachers, who therefore waived their right to a hearing: Ivan Alcantar, Tanya Guerra, and Deanne Wong.

12. The evidence did not establish whether the preliminary layoff notice was rescinded, or whether the District reached a settlement, with teacher Loredana Mitescuin (Mitescuin), who was also listed as a respondent in exhibit 2. In either case, by March 31, 2020, the District had removed her name from the updated list of respondents, which was attached to the District's "Statement of Reduction in Force Packet" (exhibit 6).

13. The hearing in this matter then proceeded with Ickes and Terranova as the remaining respondents.

### **The District's Schools and Organization**

14. The District currently operates two Transitional Kindergarten (TK)-5th elementary grade schools, one middle school for grades 6-8, and one high school for grades 9-12. Those schools are Beverly Hills High School, Beverly Vista Middle School, and Horace Mann and Hawthorne Elementary Schools. El Rodeo Elementary school is closed.

15. The District recently changed its organizational structure. Prior to the 2018-2019 school year, the District operated three K-8th grade schools and one high school. In 2018-2019, the District transitioned two elementary schools from K-8 to TK-5. Beverly Vista school became a middle school for students in grades 6-8.

## **The Parties' Contentions**

16. The District contends that Ickes' and Terranova's positions are subject to layoff and that they are not credentialed and competent to teach any less senior teacher's class. Ickes is subject to layoff under the category "Grade 6-8 Science" because she teaches Science to grades 6-8. Terranova is subject to layoff under the category "Grade 6-8 Music" because she teaches Music to grades 6-8.

17. The Resolution eliminated .2 FTE Technology position. The District "skipped over" a total of six junior "technology" teachers: five i4coach/Teacher on Special Assignment (TOSA) positions and one makers space position. 28. After the District skipped over the six FTE technology positions described above, the District eliminated .20 Technology FTE of more senior technology teachers, as more fully set forth in factual finding 28. The makers space position is a newly created position for the 2019-2020 school year. The makers space teacher is responsible for developing and teaching new courses to meet state standards in Science, English, Robotics and Coding. The makers space teacher collaborates with the TK<sup>1</sup>-5 classroom teachers in developing ways to integrate technology into the teaching and learning process. For example, if the students were learning how to calculate the time it takes to travel from point A to point B in Math class, while at the same time they were learning about wind power and resistance in Social Studies, those two concepts could be combined by having the students build models with fans and also by teaching the students how to code the computer to process calculations involving time, distance and speed.

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<sup>1</sup> "TK" is the acronym for Transitional Kindergarten.

18. The District contends that these six teachers, each of whom is junior to Ickes and Terranova, were skipped because they have special training and experience which is necessary to teach those positions. The District contends that Ickes and Terranova are not credentialed and competent to teach in any of the six skipped positions.

19. Respondents contend that the District improperly skipped over these six positions and that respondents are competent and credentialed to perform in these positions. Specifically, Ickes contends that she is competent and credentialed to perform in the makers space position. Terranova contends that she is competent and credentialed to perform in an i4coach/TOSA<sup>2</sup> position.

### **The District's Skipping**

20. The Reduction Resolution established "skip criteria" so that certain junior employees could be exempted from layoff. The Resolution's specific language is:

Deviation from Seniority-based Layoffs and Displacement  
Rights

That in selecting those probationary and permanent certificated employees who shall receive notice of termination pursuant to this Resolution, Education Code section 44955 allows the Governing Board to deviate from terminating a certificated employee in order of seniority by

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<sup>2</sup> The i4coach/Teacher on Special Assignment (TOSA) will hereinafter be referenced as "i4coach."

virtue of their competence, credential(s), assignment, and the specific needs of the District and its students.

**That the criteria, which shall be established by testimony and other evidence,** applied to deviate from terminating certificated employees who may otherwise be terminated by order of seniority, are based on the needs of the students of the District, and will ensure that, unless permitted by law, no employee will be terminated while a less senior employee is retained to render service, that the more senior employee is both certificated and competent to render. (Emphasis added.)

21. The Resolution did not state any specific need for personnel to teach a specific course or course of study. The Resolution did not state that the less senior certificated employee being retained has special training and experience necessary to teach a course, or course of study, which other teachers with more seniority do not possess.

22. Instead, the Resolution stated that the skipping criteria “shall be established by testimony and other evidence . . .” As a result, the District’s skipping criteria were revealed for the first time during the hearing.

### **Date of Hire and Seniority**

23. In order to determine which teachers are subject to layoff, the District prepared a seniority list which lists every teacher currently employed by the District. The teachers’ names are listed with the most senior teacher listed as #2 and the most junior teacher listed as #281.



24. The District skipped six teachers who are junior to Ickes and Terranova in the following positions: five FTE i4coach positions and one FTE Makers Space Teacher. The District employs i4coaches as follows: two at the TK-5 level, one at the grade 6-8 level, and two at the high school level, but one floats between middle and high school.

25. Those positions that the District skipped are:

#279	Kelsall-Lagola, Karen	i4coach	Date of Hire 11/4/19
#266	Minicozzi, Nancy	i4coach	Date of Hire 8/8/2019
#252	Citizen, Leticia	i4coach	Date of Hire 9/17/18
#241	Gabreski, Gretchen	i4coach	Date of Hire 8/9/18
#235	Bozin, Alisa	Makers Space	Date of Hire 10/3/17
#234	Bieler, Lisa	i4coach	Date of Hire 9/7/17

26. Ickes and Terranova have dates of hire which are senior to any of the five skipped teachers. Ickes' date of hire is August 10, 2017. Terranova's date of hire is August 6, 2014.

27. Leticia Citizen is an i4coach at Hawthorne Elementary. Gretchen Gabreski is currently the i4coach at Beverly Vista Middle School. Nancy Minicozzi is an i4coach at Beverly Hills High School. Karen Kelsall-Lagola is the i4coach assigned to Beverly Hills High School, but she also "floats" to the middle school. Lisa Bieler is the i4coach at Horace Mann Elementary.

28. After the District skipped over the six FTE technology positions described above, the District eliminated the .20 Technology FTE, identified in the District's

Resolution, by eliminating .10 FTE from #173 Crane, Alexis (Crane) – Date of Hire August 8, 2013, and #166 Castanon, Alana Childs (Castanon) – Date of Hire August 22, 2012. Both of these teachers were 1.1 FTE employees, with the .10 FTE portion being classified as “TOSA” and the 1 FTE being “STEM.”<sup>3</sup>

29. Crane holds a Clear Single Subject credential in Foundational Level General Science, Biology, and she teaches Science at the middle school.

30. Castanon holds a Clear Single Subject credential in Science: Biological Sciences, and she teaches Science at the middle school.

31. It was not established why the .1 FTE positions held by Crane and Castanon were not skipped, as technology TOSA’s. The evidence did not establish what specifically Crane and Castanon did in their .1 FTE positions as TOSA. Nevertheless, neither Crane nor Castanon contested the loss of their .1 FTE positions during the hearing.

32. Pursuant to Education Code<sup>4</sup> section 44955, subdivision (d), the District is authorized to skip specific courses or courses of study.

33. However, the District did not establish that the i4coach position, or the makers space position, are specific courses or courses of study, as described in the statute. In both positions, the teacher does not have a classroom with students

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<sup>3</sup> “STEM” is an acronym for Science, Technology, Engineering, and Mathematics.

<sup>4</sup> All further statutory references are to the Education Code.

assigned to her. The i4coach and makers space position assist classroom teachers with integrating technology into their classrooms and teaching.

34. Code section 51015 provides that "'Course' means an instructional unit of an area or field of organized knowledge, usually provided on a semester, year, or prescribed length of time basis." Code section 51014 states that "'Course of study' means the planned content of a series of classes, courses, subjects, studies, or related activities." It is plain that, as used in Code section 44955, courses are offered to the students of a district, not to other employees of a district.

35. The District may not create justifications for skipping; the only permissible justifications are those set out in Code section 44955, subdivision (d). The District's investment in hiring teachers with outstanding knowledge and experience in technology is laudable. However, that does not allow the District to skip personnel who are not retained to teach a course or course of study. The creation of other justifications for skipping, outside the statutory scheme, would provide discretion to a district outside that authorized by the statute, and it would deprive certificated employees of their seniority rights.

### **The Effect of the District's Improper Skip**

36. If the District had not skipped over the six junior teachers, one of them would have had .2 FTE of her position eliminated. However, that change would not have, in any way, directly improved Ickes' or Terranova's status, because they are not being laid off under the technology category. Rather, their positions are being eliminated under the categories grade 6-8 science teacher and a grade 6-8 music teacher, respectively.

37. Since the District's skip of the i4coaches and makers space positions was invalid, it was established that if either respondent is credentialed and competent to perform the i4coach position or the makers space position, held by junior teachers, they as the senior teachers must be retained. In other words, Ickes and Terranova can "bump into" a less senior teacher's position for which they are credentialed and competent.

## **Bumping and Competency**

38. Education Code section 44955 provides that, ". . . no permanent employee may be terminated . . . while . . . any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render."

39. A senior teacher that is subject to layoff based on their current assignment, can "bump" a less-senior teacher out of their current position if the senior teacher is "certificated and competent" to teach the course currently being taught by the less-senior teacher. (Ed. Code § 44955, subd. (b)).

40. The Reduction Resolution states that "bumping shall be allowed only in cases where the senior employee is both competent and credentialed to assume the whole assignment of the more junior employee."

41. The Reduction Resolution defined competency as follows:

That "competency" as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include: (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 2020-2021 school year; (2) appropriate full (not emergency) EL authorization (if required by the position); (3) in the case of displacing junior employees teaching in a departmentalized setting, single subject credential(s) or subject matter authorization in that subject area; and (4) any training and experience necessary to meet the job requirements of specialized positions (such as Dual Immersion Teachers or Opportunity Teachers) as indicated in the relevant job descriptions.

42. The job descriptions of both the i4coach position (exhibit 16) and the makers space position (exhibit 19) are in evidence. Each job description contains a section entitled “Minimum Qualifications.” These sections describe the required credential and other minimum qualifications that an applicant must possess, as set forth immediately below.

### **Is Either Respondent “Credentialed and Competent” to Perform in the I4coach Position or the Makers Space Position?**

#### **RESPONDENT ICKES – THE MAKERS SPACE POSITION**

43. Ickes contends that she is credentialed and competent to teach in the makers space position. If her contention is correct, Ickes could “bump” the less senior teacher currently in the makers space position and Ickes would avoid layoff.

44. The District’s seniority list states that Ickes is a 1.2 FTE. The evidence presented did not establish in what capacity Ickes serves the extra .2 FTE assigned to her.

45. The Reduction Resolution, as relevant to Ickes, only authorizes the reduction of 1 FTE Science Teacher - middle school. The Resolution did not identify any other position reduction relevant to Ickes.

46. Therefore, Ickes must be retained for .20 FTE portion of her position.

47. The Makers Space job description states that the "Minimum Qualifications" for the position are:

B.A. or B.S. required; Master's Degree preferred (in Technology, Science or Engineering).

Appropriate California Credential (either Multiple or Single Subject with experience in K-5); 3+ years teaching experience serving K-5 students preferred.

Full clearance of TB test, livescan fingerprints, and any other state or federal requirements.

48. Ickes holds a Clear Single Subject credential in Foundational-Level General Science. She also holds a Bachelor of Science degree in Science/Marine Biology. She does not have a master's degree, but a master's degree is only preferred, not required.

49. Ickes taught STEM to grades 6-8 during the 2017-2018 and 2018-2019 school years, her first two years with the District. Ickes received STEM training during the summers of 2017 and 2018. She has performed some small coding projects and she is currently teaching at Beverly Vista middle school.

50. Ickes does not have any experience in performing credentialed teaching to K-5 students. Ickes offered evidence that she has some experience working with K-5 students, but that experience occurred before Ickes obtained her teaching credential. A fair reading of the job description reveals that the experience sought by the District must have been achieved as a credentialed teacher. Therefore, Ickes is credentialed to teach the makers space position, but she is not "competent" as defined in the District's Resolution. Ickes does not have any experience teaching K-5 students since she obtained her credential.

51. Ickes contends that even though all of her teaching experience with the District has been at the 6-8th grade level, her credential nevertheless would allow her to teach grades K-5. Even if this contention is true, it does not change the fact that Ickes does not have all of the minimum qualifications required in order to perform the makers space position.

52. Respondents Ickes is a well-educated and qualified teacher, dedicated to her profession and the District's students. However, because Ickes does not have all of the minimum qualifications to perform the makers space position, she cannot "bump" into the position held by a less senior teacher.

#### **RESPONDENT TERRANOVA – THE I4COACH POSITION**

53. Terranova contends that she is credentialed and competent to teach in the i4coach position. If her contention is correct, Terranova could "bump" the least senior teacher currently in the i4coach position and Terranova would avoid layoff.

54. The i4coach position/(TOSA) job descriptions states that the "Job/Requirements/Qualifications" of the position are:

Experience: A minimum of five (5) years successful classroom teaching experience.

Education: Bachelor of Arts/ Science Degree from an accredited institution of higher learning. Additional study in a technology field and Master's Degree desirable.

Credential: Possession of a valid California Credential authorizing elementary or single subject service.

Other Licenses, Certifications, Bonding, and/ or Testing:

English Learner Development Certificate; Compliance with No Child Left Behind Requirements (Original Documents); Department of Homeland Security I-9 Form completion; TB Test Clearance; Criminal Justice Fingerprint Clearance.

Must possess a valid California Driver's License during the course of employment. Must be insurable at standard rates and maintain such insurability during the course of employment.

55. Much evidence was offered by the District regarding the training, experience, certification, knowledge, and required qualifications that the i4coach position requires. However, a substantial portion of the District's claimed job requirements are not listed in the District's own job descriptions.

56. Dustin Seemann (Seemann), Assistant Superintendent for Education Services, testified that the i4coach position requires additional training and certifications that are not stated in the job descriptions. He testified that the i4coach



job description fails to state all of the required qualifications that an applicant must possess.

57. According to Seemann, the i4coach job requirements “morph” on an almost daily basis due to technology changes. The District’s evidence regarding the required qualifications for i4coaches was offered to justify the District’s skipping over the junior teachers holding these positions and also as the qualifications that the District contends Terranova must satisfy in order for her to perform as an i4coach.

58. It was established that the District has full control over the i4coach job description. That is, the District could have modified the i4coach job description at any time before the hearing.

59. Between 2017 and 2019, the District hired five current i4coaches. Nevertheless, the District did not modify the i4coach job description during that time period. The District asserted that the i4coach position requires that Terranova have far more qualifications and certifications than are stated in the job description. For example, while the job description states that a master’s degree is “preferred,” Seemann testified that a master’s degree is now required.

60. The District’s evidence regarding the additional “requirements” for an i4coach applicant are deemed to be the desirable qualifications (rather than minimum requirements) that the District wants its i4coaches to possess so they can perform at a very high level. If these additional qualifications were viewed by the District as important and substantial additions to the minimum qualifications required of an i4coach applicant, the District would have added them to the required qualifications in the job description, at some point during the past three years, when the District was in the process of hiring the five i4coaches.

61. The District contends that Terranova, who possesses a Music credential, is not qualified to move into an i4coach technology position. This contention, on its face, seems reasonable. However, the i4coach job description does not state that a degree in technology is required. Rather, the job description states that a Bachelor of Arts degree is acceptable. Therefore, Terranova's Bachelor of Arts degree in Music satisfies this element.

62. In order for Terranova to bump into a i4coach position, she must satisfy the minimum requirements specified in the job description, as set forth in factual finding 52.

63. Terranova's position of Grade 6-8 Music is being eliminated. She is a 1.0 FTE employee. After the District's reorganization, Terranova is now assigned to teach TK-5 students.

64. Terranova meets the minimum requirements of the i4coach job description. She holds a Bachelor of Arts in Music and Clear Single Subject credential in Music. Terranova has over five years of successful classroom teaching with the District. She has had significant technology training through the District. Terranova is also currently enrolled in a master's degree technology program.

65. The District did not contend that Terranova lacks any of the required qualifications described in the "Other Licenses, Certifications, Bonding, and/ or Testing" section of the job description.

66. Therefore, Terranova may not be laid off in favor of a junior employee who is in the i4coach position for which Terranova is credentialed and competent.

67. Since the District did not add any of the additional qualifications for the i4coach that the District now contends are required, it is reasonable and fair to use the job description in assessing whether Terranova possesses the qualifications required to perform as an i4coach.

## **LEGAL CONCLUSIONS**

1. Jurisdiction was established to proceed in this matter, pursuant to Education Code sections 44949 and 44955, based on Factual Findings 1-5.

2. The District is properly reducing particular kind of services (PKS) within the meaning of Code section 44955, subdivision (b), as identified in the Reduction Resolution, as set forth in Factual Findings 1-5.

3. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious and was a proper exercise of its discretion, as set forth in Factual Findings 1-7.

4. A senior teacher whose position is eliminated has the right to transfer to another position which 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.)

5. On the other hand, in appropriate cases, a junior teacher may be given retention priority over one or more senior teachers. The junior teacher may be exempted or "skipped" to the detriment of more senior employees, if the District demonstrates a need to teach a course or course of study, and if the junior teacher possesses credentials and skills and training not possessed by more senior colleagues,

which skills and training are necessary to teach that course or course of study.

(*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.).

6. The District's skip of the five i4coach and one makers space positions was improper. The District may only skip over positions where a course, or course of study, is taught by the teacher, which the i4coach and makers space positions do not satisfy, as set forth in factual findings 20-35.

7. It is fundamental that no junior teacher can be retained when there is a senior teacher who is credentialed and competent to fill the junior teacher's position.

8. Ickes' position as a 1 FTE Grade 6-8 Science teacher has been properly reduced and Ickes is not credentialed and competent, within the meaning of Code section 44955, subdivision (b), to perform as a makers space teacher, as set forth in factual findings 43-52. Ickes' must be retained as a .2 FTE for the reasons set forth in factual findings 43-46.

9. Terranova must be retained as a District employee because she is credentialed and competent to perform as an i4coach and she has seniority over the most junior i4coach, as set forth in factual findings 56-67.

## **ORDER**

1. The District may send a final notice of layoff to respondent Samantha Ickes for the 1 FTE Grade 6-8 Science teacher position which she performed during the 2019-2020 school year.

2. The District may not send a final notice of layoff to respondent Samantha Ickes with respect to the .2 FTE assigned to her. Samantha Ickes is retained as a .2 FTE employee.

3. The District may not send a final notice of layoff to respondent Marissa Terranova. Marissa Terranova is retained as an employee of the District.

DATE: June 11, 2020

DocuSigned by:  
*Christopher Ruiz*  
CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings