

BEFORE THE
GOVERNING BOARD
ANAHEIM UNION HIGH SCHOOL DISTRICT

In the Matter of the Reduction
in Force of:

CERTAIN CERTIFICATED EMPLOYEES
OF THE ANAHEIM UNION HIGH
SCHOOL DISTRICT,

Respondents.

OAH No. 2017030178

PROPOSED DECISION

This matter was heard by Carla L. Garrett, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 25, 2017, in Anaheim, California.

Jack M. Sleeth, Jr., Attorney at Law, with Artiano Shinoff, represented Brad Jackson, Assistant Superintendent for Human Resources of the Anaheim Union High School District (District).

Marianne Reinhold, Attorney at Law, with Reich, Adell & Cvitan, represented 22 respondents named in Appendix 1 (Certain Respondents).

Respondent Brian Eager (Respondent Eager), a certificated employee of the District, appeared at the hearing and represented himself.¹

Respondent Alan Garcia (Respondent Garcia), a certificated employee of the District, appeared at the hearing and represented himself.

District has decided to reduce or discontinue certain educational services and has given certain certificated employees notice of its intent not to reemploy them for the 2017-2018 school year. A number of certificated employees requested a hearing for a determination of whether cause exists for not reemploying them for the 2017-2018 school year.

¹ As set forth in more detail below, District submitted a Notice of Withdrawal of Layoff regarding Respondent Eager. As such, this Decision will not address Respondent Eager's challenge to the teacher layoff proceedings.

At hearing, Certain Respondents submitted an Opening Brief, marked as Exhibit Q. Oral and documentary evidence was received. The record remained open until May 1, 2017, in order for the parties to submit closing argument briefs by April 28, 2017 and responsive briefs by May 1, 2017. District and Certain Respondents submitted timely closing briefs, marked as Exhibits 54 and R, respectively, and lodged accordingly. District and Certain Respondents submitted timely responsive briefs, marked as Exhibits 55 and S, respectively. Exhibit S was lodged. Exhibit 55 was admitted for reasons immediately set forth below.

In its responsive brief (Exhibit 55), District represented that, concurrent with the layoff, it had made an offer of Supplemental Retirement Plan (SRP) to its employees. On Friday, April 28, 2017, the District received sufficient acceptances of the SRP to justify the withdrawal of additional layoff notices for 10 respondents:

<u>Teacher</u>	<u>Seniority Date</u>	<u>Credentialed to Teach</u>
1. Apollo, Odette	09/15/14	English
2. Calderon, Courtney	08/28/02	Physical Education
3. Chong, Kelly	08/25/14	Social Science
4. Cooks, Andrea	08/10/15	English
5. Eager, Brian	01/28/15	Math
6. Greene, Jamie	09/06/05	Science
7. Johnson, Mandy	08/10/15	English
8. Shandy, Lisa	09/02/03	Physical Education
9. Slagle, Michael	01/23/15	Social Science
10. Torres, Tony	08/28/02	Physical Education

District submitted copies of Notices of Withdrawal of Layoff for the 10 respondents, accordingly. Consequently, the number of Certain Respondents decreased from 22 to 13, which are set forth in Appendix 2. The teachers now subject to layoff are set forth in Appendix 3.

The matter was submitted for decision on May 1, 2017.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondents are certificated employees of the District.
2. On March 7, 2017, the Governing Board of the District resolved to reduce and eliminate particular kinds of services totaling 47.4 full-time equivalent (FTE) positions at the

end of the 2016-2017 school year, and directed District staff to proceed to layoff certificated staff pursuant to Education Code sections 44949 and 44955 and 8366.²

3. Before March 15, 2017, District staff gave written notice to 80 certificated District employees,³ including respondents, advising them the District's Superintendent had recommended to the Governing Board that notice be given to them that their services will not be required for the 2017-2018 school year. Respondents comprise the 14 individuals who timely requested a hearing to determine if there is cause for not employing them for the next school year.

4. Brad Jackson, in his official capacity as the Assistant Superintendent for Human Resources of the District, filed individual Accusations regarding a reduction in force for each respondent, alleging cause exists to not reemploy each individual respondent for the following school year. Respondents were provided all required documents in a timely manner.

The Layoff Resolution

5. On March 7, 2017, the Governing Board adopted Resolution No. 2016/17-HR-06 (the Resolution), which provides for the reduction or elimination of the following particular kinds of services:

<u>Services</u>	<u>FTE Positions</u>
Management Position	1.00
Counselors	1.00
Multi-Tiered Support Services (MTSS)	19.00
Teachers	25.00
English Learner Literacy Coach	1.00
District Athletic Director	0.40
	=====
Total Full-Time Equivalent Reductions	47.40 FTE positions

² All further statutory references are to the Education Code unless otherwise noted.

³ The District sent out 80 notices because, at the time it was calculating its needs, the District's projected enrollment and specific number of teachers within each credential type were not known. After receiving that information, the District rescinded the layoff notices of approximately 47 employees prior to the day of hearing. On May 1, 2017, the District submitted copies of Notices of Withdrawal of Layoff for 10 respondents and rescinded layoff notices for an additional eight teachers who did not request a hearing.

Certain Respondents' Contention Re: "Teachers" Referenced in the Resolution

6. Certain Respondents contend the Governing Board failed to identify in the Resolution which "particular kinds of service" and/or "particular subject areas and programs" it intends to "reduce or discontinue" within the category of "Teachers." Specifically, the Resolution does not mention whether the "Teachers" will include mathematics, science, history, art, or any other teachers slated to be reduced. Certain Respondents argue that because the Resolution fails to specify which areas of study slated for reduction under the category of "Teachers," "it is virtually impossible for a permanent teacher to determine 'whether or not 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.'" (Opening Brief of Certain Respondents, p. 3, lines 12-17.) Certain Respondents, citing *Burgess v. Bd. of Education* (1974) 41 Cal.App.3d 571, 579 (*Burgess*), stated, "[t]eaching in general' does not constitute a 'particular kind of services' for purposes of section 44949." As such, Certain Respondents contend that by using the generic designation of "Teachers" without additional information concerning particular kinds of service related to the areas of study the District seeks to reduce, a teacher cannot reasonably assess whether he should be re-employed or not in the upcoming school year. Given these factors, Certain Respondents assert that the Resolution's failure to identify the particular kind of services beyond that of "Teachers" renders the Resolution and all subsequent notices fatally defective.

7. Certain Respondents' contention is rejected. While cases exist in which courts have approved the practice of identifying particular types of services to be reduced or eliminated at the junior and senior high school level by the nature of the subject taught (e.g., English, math, science), [(See, e.g., *Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)], the court, notably the same one that decided *Burgess*, has ruled in subsequent cases that the preliminary notice to teachers is sufficiently specific if it designates categories of services to be reduced or discontinued, and the notice need not identify the specific positions to be eliminated. (See, e.g., *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 632; *Santa Clara Federation of Teachers v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.)

Grounds for Layoffs

8. It was established by the testimony of Jennifer Root, Assistant Superintendent of Business, that the Resolution was required as a result of the District's current financial difficulties. Specifically, the economic conditions caused by declining enrollment, increased employer contribution to CalSTRS and CalPERS, and increased employee health and welfare costs have resulted in deficit spending. Such deficit spending has had an adverse impact on the finances of the District. Consequently, the District will be required to reduce its 2017-2018 budget in the amount of 6.2 million dollars.

A. *Declining Enrollment*

9. With respect to declining enrollment, Darrick Garcia, Director of Human Resources, testified that during the first six months of the 2014-2015 school year (base year), the enrollment was 31,519. During the first six months of the 2016-2017 school year, the enrollment was 30,874. The difference in enrollment between the base year and the current year was 654, representing a two percent decline in attendance. The District used the declining enrollment numbers to calculate the level of reduction of FTE employees by multiplying the base year FTE by the percentage of decline, totaling 26.09 FTE employees which the District deemed justified in reducing for the 2017-2018 school year. Based on the declining enrollment numbers, after adjusting for positively assured attrition,⁴ District concluded it was justified in laying off 16.09 FTE employees.

10. Certain Respondents contend the proposed layoff decision is invalid because part of the decision-making included declining enrollment in the District's schools. Certain Respondents' argument is unconvincing. As stated in *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under Education Code section 44955, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." Such a decision may be overruled if proven to be arbitrary or capricious, but a motivation to maintain flexibility in light of financial uncertainty is neither. (*Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808.) As established by the testimony of Ms. Root, as set forth in Factual Finding 8, the instant layoff decision was due to economic conditions caused by a number of factors, including declining enrollment, all of which have resulted in deficit spending. There is nothing in section 44955 prohibiting a decline in student enrollment from being one factor in the overall decision to reduce or eliminate particular kinds of services.

B. *Declining ADA*

11. Mr. Garcia also testified that the average daily attendance (ADA) for the first six months of the 2014-2015 school year (base year) was 30,028.36. During the first six months of 2016-2017 school year, the ADA was 29,528.55. The difference in ADA between the base year and the current year was 499.81, representing a 1.67 percent decline in ADA. The District used the declining ADA numbers to calculate the level of reduction of FTE employees by multiplying the base year FTE by the percentage decline, totaling 21.29 FTE employees which the District deemed justified reducing its staff for the 2017-2018 school year. Based on the declining ADA numbers, after adjusting for positively assured attrition (i.e., reduced by 10 FTE employees due to resignations or retirements),⁵ District concluded it was justified in

⁴ See Factual Finding 14 for more discussion regarding positively assured attrition.

⁵ See Factual Finding 14 for more discussion regarding positively assured attrition.

laying off 11.29 FTE employees, in addition to the 16.09 FTE employees stemming from a reduction in enrollment.

12. Neither the Resolution, the notices sent to employees, nor the individual Accusations referenced a decline in ADA as a basis for layoff. As such, Certain Respondents contend the District is prohibited from laying off employees on the grounds of ADA reduction. Certain Respondents' contention is persuasive. The purpose of the initial termination notice provision is to notify an employee of the probability that his or her services will not be required for the ensuing year so that he or she may consider looking elsewhere for employment. Nothing in the statute relating to the termination of teachers due to a decline in daily average attendance or, in the alternative, a reduction of services (section 44955) prohibits the statement of more than one ground in putting employees on notice that their jobs are in jeopardy. (*Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 653.) However, where the preliminary notices to teachers only specify one ground for layoff, the school district has no power to terminate teachers for any other reason not specified in the notice. (*Karbach v. Board of Education* (1974) 39 Cal.App.3d 355, interpreting the precursor to section 44955.) Conversely, if both statutory grounds are cited in the notice, the school district may proceed on both grounds, and the notice does not need to set forth any more specific information (such as the precise number of teachers to be terminated or the specific positions to be eliminated) other than the statutory reasons. (*Santa Clara, supra*; *San Jose, supra*, at 632.) The notice provision of section 44955 is jurisdictional. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 807, citing *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167.)

13. As set forth above, the notices the District sent to the employees made no reference to a decline in ADA as a basis for termination. This is dispositive. Additionally, the Resolution neither attributed any identified FTEs to the decline in ADA, nor did the Accusations reference any decline in ADA. Under the totality of the evidence, the District did not properly notify respondents of the terminations based upon a decline in ADA. As such, layoffs attributable to a decline in ADA shall be disallowed, and the District shall be prohibited from laying off 11.29 FTE employees, accordingly. However, the District is still permitted to lay off 16.09 FTE employees as reduction of particular kinds of services, as discussed in Factual Findings 8, 9, and 10.

C. *Other Considerations of the Governing Board*

14. The Governing Board considered all positively assured attrition, which included deaths, resignations, retirements, and other permanent vacancies and additional attrition which may occur before the end of the 2016-2017 school year. Mr. Garcia testified there were a total of 10 teachers that were part of positively assured attrition, which the Governing Board considered in reducing services. Notwithstanding the attrition already assured and the attrition anticipated, the Governing Board found it necessary to reduce additional particular kinds of service.

15. The services or programs set forth in the Resolution (Factual Finding 5) are particular kinds of services which may be reduced or eliminated within the meaning of section 44955.

16. The Governing Board's determination to reduce or eliminate the services or programs set forth in Factual Finding 5 was within its sound discretion and was not proven to be arbitrary or capricious. Services will not be reduced below mandated levels. The reduction or discontinuation of services is related to a lack in work, lack of funds, and the welfare of the District and its pupils. It has become necessary to decrease the number of certificated employees, accordingly.

The Seniority List

17. The District maintains a seniority list which contains employees' seniority dates, current assignments and locations, credentials, and authorizations. The seniority list was based on information from the District's human resources records and credentialing records of the California Commission on Teacher Credentialing.

18. Certain Respondents contend that the seniority list neither included information showing for which teachers the District intended to seek final layoff notices nor how many of those teachers had credentials in math, physical education, or English, or any of the other service areas. As such, Certain Respondents argue that the District failed to establish that it was seeking to lay off the least senior teachers holding credentials in the particular services areas the District is seeking to reduce. Certain Respondents' argument is not persuasive. The seniority list is merely a visual aid. Certain Respondents' cited no authority requiring the seniority list to be more comprehensive. The District need only show that it retained no teacher with less seniority for a position that a teacher with more seniority can teach, pursuant to Education Code section 44955.

19. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced or eliminated. The District then determined whether those least senior employees held credentials in another area and were entitled to bump other employees with less seniority. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by known vacancies and determined the impact on incumbent staff in inverse order of seniority.

20. The Resolution determined that as between employees who first rendered paid service on the same date, the order of termination would be based on contract provisions. District proffered no evidence of any applicable contract provisions. At hearing, Mr. Garcia testified that no one facing layoff shared the same seniority date, rendering unnecessary the application of tie-breaking criteria.

21. Despite Mr. Garcia's assertion that no one facing layoff shared the same seniority date, a review of the seniority list shows otherwise. Specifically, the seniority list

shows that four math teachers share the same seniority date of August 10, 2015: David Eng, Michael Le, Eric Okula, and James Zavala. However, the evidence shows that no more junior credentialed math teachers were retained over David Eng, Michael Le, Eric Okula, or James Zavala.

22. A review of the seniority list also shows that three English teachers have the same seniority date of August 10, 2015: Andrea Crooks, Mandy Johnson, and Jamie Pontius (Respondent Pontius). However, on May 1, 2017, the layoff notices were rescinded as to Andrea Crooks and Mandy Johnson, leaving Respondent Pontius as the only one facing layoff, despite the same seniority date. The District presented no evidence showing how contract provisions would order termination between Andrea Crooks, Mandy Johnson, and Respondent Pontius, or presented any other tie-breaking criteria. Without the specific information as to the tie-breaking criteria from the District, it has not been demonstrated, as applied to Respondent Pontius, that the District is not retaining less senior employees in positions Respondent Pontius is certificated and competent to perform. As such, District has not met its burden of demonstrating that cause exists to affirm the proposed layoff of Respondent Pontius. Respondent Pontius shall be retained, and her notice of layoff shall be rescinded, accordingly.

Skippping

23. The District deviated from the seniority list concerning two certificated employees, Kerri Fenton and Susie Ren, and elected to retain those employees, pursuant to Education Code section 44955, subdivision (d). The District contends that it has a special need to maintain two specific courses of study (i.e., the dance program and Mandarin Chinese courses). The District further asserts that Ms. Fenton has the special training and expertise necessary to serve as a dance instructor and choreographer at Cypress High School within the District and as the director of the dance program. It asserts that Ms. Ren has the special training and experience necessary to teach Mandarin Chinese courses and to assist with the District's exchange student program. Specifically, Ms. Ren will be expected to help Chinese exchange students acclimate to American culture and help them to navigate through the F1-Visa program.⁶ The District contends that no senior certificated employee has the special training and experience necessary to teach the specific courses of study that Ms. Fenton and Ms. Ren do.

A. Kerri Fenton

24. Ms. Fenton has been professionally trained in jazz, ballet, tap, hip-hop, modern, and contemporary dance, and currently teaches Dance 1 and 2, and physical education (PE) 1 and 2. She earned a bachelor of fine arts in the area of dance from California State University at Long Beach. She is credentialed to teach PE in California and

⁶ An F1-Visa is a nonimmigrant visa for those wishing to study in the United States. A person must file an F1-Visa application if that individual intends on entering the United States to attend a university or college, high school, private elementary school, seminary, conservatory, language training program, or other academic institution.

Nevada, and is credentialed to teach dance in Arizona. In addition to serving as a District dance director, instructor, choreographer, and PE teacher, Ms. Fenton also serves as a dance instructor at Oxford Academy and Orange County Song & Dance Company. Ms. Fenton has an extensive background in dance, theatre, and modeling, and has been featured as a dancer in a number of films, network television projects, video projects, and theatre projects. Additionally, she has taught in dance studios for more than 20 years. Ms. Fenton has also performed on the Los Angeles Clippers dance team, on the American Spirit Team in Tokyo, Japan, and has served on Pepsi, Mattel, and Body Glove projects.

25. As a dance director for the District, Ms. Fenton is expected to instruct and supervise students in dance performances where they are able to create opportunities for exploration of dance as it relates to social and historical movements in American culture and other cultures in society. Essential duties include: (1) fostering an environment that limits inhibitions and allows students to explore and create through dance; (2) supervise a safe environment; (3) create, design, and provide appropriate choreography, music, and costuming for performances; (4) nurture and guide the development of student dance composition for performance; (5) develop and supervise an appropriate rehearsal schedule to support the performance calendar; (6) produce and direct informal and/or formal performances in theatrical spaces; (7) coordinate the technical elements related to show production, such as sets, lights, sound, special effects, etc.; and (8) participate in and/or attend various festivals, workshops, and master classes with students as available. (Exhibit 51.)

26. In order to qualify as a dance director, the District requires that the dance director have: (1) a California single subject teaching credential; (2) a background in multiple dance genres (i.e., ballet, modern, jazz, tap, ethnic, hip-hop, and ballroom dance, etc.); (3) experience in choreography, performance, and staging; (4) an understanding of show production; and (5) organizational abilities related to show production.

27. On April 20 and 21, 2017, Ms. Fenton recently organized, choreographed, and directed a District dance production involving students in the dance department, highlighting dance and music from the 1990's.

B. Challenge to Skipping Kerri Fenton

28. On September 7, 2004, Steven Scanlon (Respondent Scanlon) first rendered paid service in a probationary position for the District, and since that date has been a certificated employee. Respondent Scanlon is credentialed to teach PE. In his credentialing program, he was required to take some classes in dance, and his PE curriculum for the last 13 years has included a dance component. Specifically, he teaches cultural dancing to his seventh grade PE classes, and country square dancing, modern dancing, and hip-hop to his eighth grade PE classes. Given these reasons, Respondent Scanlon believes he is qualified to teach and run the District's dance program slated for Ms. Fenton, who is more junior than he is.

29. Respondent Scanlon acknowledged he has no special skills in the area of dance, has never taught a dance class, and never taught dances to students that culminated into a dance production or recital. He also acknowledged that he has no skill or ability that is any different from any other PE teacher.

30. In light of the above, Respondent Scanlon has not established that the District improperly skipped Ms. Fenton. The District has met the skipping requirements as to Ms. Fenton, pursuant to Education Code section 44955, subdivision (d).

C. Xi “Susie” Ren

31. Ms. Ren teaches Mandarin Chinese at two District school sites. She was born and raised in China, attended school in Mainland China from preschool through undergraduate school, came to the United States in 2010 to attend graduate school on an F1-Visa, and earned a Masters of Art in Education (Social and Cultural Analysis) in 2012. She is intimately familiar with the inner-workings of Mainland China’s school system, and has the ability to recruit students from China to participate in the District’s exchange program, which is slated to commence at the beginning of the 2017-2018 school year. District contends the student exchange program will help to alleviate the District’s financial crisis, because, through private dollars, the District will receive \$15,000 per exchange student, versus \$11,000 the District currently receives from the state for non-exchange students. The District expects to enroll 120 exchange students for the 2017-2018 school year.

32. Because Ms. Ren underwent and remains familiar with the F1-Visa process, and understands when to contact the consulate or the embassy to address issues, the District believes Ms. Ren will be able to help the exchange students navigate the F1-Visa process. Additionally, the District contends Ms. Ren will be able to assist the exchange students adjust culturally to American living by sharing her experiences, directing the students, and bridging the language gap.

D. Challenge to Skipping Xi “Susie” Ren

33. On September 4, 2007, Chia-Chi “Carol” Chai (Respondent Chai) first rendered paid service in a probationary position for the District, and since that date has been a certificated employee. She is credentialed to teach a foreign language and has also earned a master’s degree in Education, with emphasis in the areas of curriculum and instruction. Respondent Chai teaches Mandarin Chinese for the District at two school sites, and previously taught Mandarin Chinese at ABC Unified School District, for a total of more than 10 years of teaching Mandarin Chinese in public schools. Respondent Chai serves as a Mandarin Chinese language translator for both District school sites in which she teaches, and provides mentoring and outreach services for the students who require her translation services. Respondent Chai asserts she can perform the assignment the District has slated for Ms. Ren, based on her qualifications and experience, and her more senior status as a District employee.

34. Respondent Chai contends that although she has yet to see any advertisements for the position in which Ms. Ren will be serving during the next school year, particularly in relation to assisting foreign exchange students acclimate to American culture and navigating the F1-Visa program, Respondent Chai believes she can effectively perform such duties and is willing and able to do so. Respondent Chai, who did not attend school in China, visits her family in China every year, and she believes the school system in Mainland China has some similarities to that of Taiwan, where she attended school from kindergarten to third grade. After third grade, Respondent Chai attended school in the United States. Respondent Chai has no personal experience with the F1-Visa program, and has no experience working with the consulate or embassy. Given these factors, Respondent Chai lacks the specialized training and experience to support the special course of study for incoming Chinese exchange students, particularly regarding the assistance they will require in the F1-Visa application process.

35. In light of the above, Respondent Chai has not established that the District improperly skipped Ms. Ren. The District has met the skipping requirements as to Ms. Ren, pursuant to Education Code section 44955, subdivision (d).

Other Individual Challenges to Layoffs⁷

A. Kimberly Kocol

36. On August 9, 2016, Kimberly Kocol (Respondent Kocol) first rendered paid service in a probationary position for the District, and since that date has been a certificated employee. She earned a bachelor's degree in drama and in English from the University of California at Irvine (UCI), has a single subject credential in English, and teaches English at Ball Junior High School (Ball). Although Respondent Kocol does not teach any drama classes at Ball, she believes she should be exempted from layoff (i.e., "skipped") in order to teach drama, as she not only majored in drama, but also has industry experience. Specifically, Ms. Kocol can sing, dance, and act, and has performed in a number of productions at the Chance Theater, the Camino Real Playhouse, the Kelley Theater, and the Murrieta Valley Theater. In addition to receiving acting and vocal training from UCI, she received acting training at the Kelly Theater Summer Acting Program, and received four years of voice lessons covering most styles and participated in 12 years of choir. Additionally, Respondent Kocol has received dance training, including 19 years of ballet at nine schools in five states and two countries, two years of jazz, two years of character, and one year of tap. Moreover, Respondent Kocol has experience playing the flute, the piano, and the recorder, has served as a costume designer and wardrobe mistress in a few films, and performed in at least seven theater productions. Finally, Respondent Kocol served as a

⁷ As set forth in above, District submitted a Notice of Withdrawal of Layoff regarding respondents Odette Apollo, Michael Slagle, Lisa Shandy, Courtney Calderon, Tony Torres, Brian Eager, and Kelly Chong. As such, this Decision will not address their respective challenges to the teacher layoff proceedings.

visiting drama teacher at La Sierra University in 2011 and taught a costume design workshop for the District in March 2017.

37. Despite Respondent Kocol's impressive qualifications in the area of drama, the District offered no evidence of the need for a drama teacher. As such, no grounds exist to exempt or skip Respondent Kocol from layoff.

B. Matthew Corcoran

38. On August 8, 2016, Matthew Corcoran (Respondent Corcoran) first rendered paid service in a probationary position for the District, and since that date has been a certificated employee. He earned a bachelor's degree in English, with emphasis on rhetoric and composition, from California State University at Long Beach, has a single subject credential in English. He teaches one section of sophomore English at John F. Kennedy High School (JFK), two sections of Advance Placement (AP) English Language Composition, one section of journalism, and runs JFK's school newspaper with a full staff. While he did not major in journalism, Respondent Corcoran asserts he should be skipped in order to continue teaching journalism for the District, as he has substantial experience as a journalist. Specifically, he has served as a journalist for the Orange County Register, worked as a layout editor, served as the Director of Social Media at California State University at Fullerton, and has obtained journalism experience in connection with Major League Baseball. The interim principal at JFK, Jennifer L. Brown, wrote a letter recommending that Respondent Corcoran remain employed with the District and lauded him as "a gifted teacher, dedicated advisor, consummate professional, active member of the Professional Learning Community and supporter of all students on [JFK's] campus." (Exhibit K.)

39. The District did not offer evidence of the need for a journalism teacher or a need to skip Respondent Corcoran for any other cause. As such, no grounds exist to exempt or skip Respondent Corcoran from layoff.

C. James Zavala

40. On August 10, 2015, James Zavala (Respondent Zavala) first rendered paid service in a probationary position for the District, and since that date has been a certificated employee. Respondent Zavala holds a full clear credential in mathematics, has an English Learner Authorization, and is bilingual in Spanish. Respondent Zavala earned his bachelor's degree in pure mathematics from the University of California at Los Angeles, and a master's degree in mathematics with an emphasis on education from California State University at Long Beach. Respondent has taught all courses ranging from remedial Pre-Algebra to AP Statistics and AP Calculus, has served as a department chair, has led professional developments for colleagues, and has taught at a middle or high school for the past 10 years. Respondent Zavala disagrees with his position on the rehire list and believes he should be exempted from layoff because he could teach college courses from which District students could benefit, should the District wished to pursue such a program. Respondent Zavala's principal commented in his performance evaluation that Respondent Zavala "is an excellent

teacher and the district should do all it can to keep [Respondent Zavala] on our staff.” (Exhibit M, p. 8.)

41. Respondent Zavala presented no evidence establishing that the District erred in its decision to initiate layoff proceedings against him or otherwise exempt him from layoff.

K. Melanie Harvey

42. On August 8, 2016, Melanie Harvey (Respondent Harvey) first rendered paid service in a probationary position for the District, and since that date has been a certificated employee. Respondent Harvey is credentialed in music and serves as the choir teacher at Cypress High School, where she teaches multiple levels of vocal music and prepares the advanced show choir to compete at show choir competitions and to perform at multiple community events. Prior, from 2014 to 2016, Respondent Harvey served as a choir and drama teacher at South El Monte High School, and she built a thriving choir program, performed throughout the community, competed at festivals, and directed multiple drama shows and musicals. During the 2013-2014 school year, Respondent Harvey served as a long-term substitute teacher at Santiago High School where she ran choir rehearsal, designed and taught choreography, taught music theory, planned and executed a concert program, and directed choir festivals. Respondent has served as a live audio and stage manager at California State University at Fullerton from 2011 to the present, where she has gained experience setting up and tearing down sound systems. Additionally, Respondent Harvey has partnered with the department chair for special education to create a music appreciation class for special education students. For the above reasons, Respondent Harvey asserts she should be exempted from layoff (i.e., “skipped”) in order to teach choir, as she possesses specialized training and experience to do so.

43. Despite Respondent Harvey’s impressive qualifications in the area of music, the District offered no evidence of the need for a choir teacher. As such, no grounds exist to exempt or skip Respondent Harvey from layoff.

M. Alan Garcia

44. On February 22, 2016, Alan Garcia (Respondent Garcia) first rendered paid service in a probationary position for the District, and since that date has been a certificated employee. Respondent Garcia is credentialed in K-12 music and directs the choir at Magnolia High School. Respondent Garcia asserts that he took a tumultuous music program and made it better, and he received the teacher of the year award in his first year of teaching. Respondent Garcia is a professional singer and can help students in their pursuit of music.

45. Despite Respondent Garcia’s impressive qualifications in the area of music, the District offered no evidence of the need for a choir teacher. As such, no grounds exist to exempt or skip Respondent Garcia from layoff.

Conclusion

46. School districts have authority and discretion to “make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.” (Ed. Code, § 44955, subd. (c).) With exception to Respondent Pontius as discussed in Factual Finding 22, and the appropriate skipping of Ms. Fenton and Ms. Ren, the evidence in this case shows that no respondent is credentialed and competent to perform any assignment held by less senior employees being retained.

LEGAL CONCLUSIONS

1. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) As no other law or statute requires otherwise, the standard of proof in this case requires proof by a preponderance of the evidence. (Evid. Code, § 115.) Therefore, the District bears the burden of establishing cause to affirm the proposed layoff decisions by a preponderance of the evidence.

2. All notice and jurisdictional requirements of sections 8366, 44949, and 44955 were met. (Factual Findings 1 through 4.)

3. The services identified in the Resolution are particular kinds of services that may be reduced or eliminated pursuant to sections 8366 and 44955. The Governing Board’s decision to reduce or eliminate the identified services was neither arbitrary nor capricious and was a proper exercise of discretion. Services will not be reduced below mandated levels. Cause for the reduction or elimination of those particular services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949. (Factual Findings 5 through 35, and 46.)

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and elimination of particular kinds of services. (Factual Findings 5 through 35, and 46.)

5. Taking into account the above findings and conclusions, no junior certificated employee is scheduled to be retained to perform services that a more senior employee subject to layoff is certificated and competent to render. (Factual Findings 5 through 35, and 46.)

ORDER

The Accusations regarding the Reduction in Force are sustained against all 14 remaining respondents set forth in Appendix 3, with the exception of Respondent Jamie Pontius, and skipped employees Kerri Fenton and Xi Ren. The District shall issue a final

notice of layoff to each of the remaining respondents, advising that their services will not be required for the 2017-2018 school year. These layoffs shall be deducted from the 16.09 FTE District is entitled to apply as reduction of particular kinds of services. Layoffs attributable to a decline in ADA shall be prohibited.

Dated: May 11, 2017

DocuSigned by:

Carla L. Garrett

CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearing

Appendix 1: Certain Respondents as of Date of Hearing (April 25, 2017)

1. Apollo, Odette
2. Calderon, Courtney
3. Chai, Chia-Chi
4. Chong, Kelly
5. Corcoran, Matthew
6. Crooks, Andrea
7. Eng, David
8. Fenton, Kerri
9. Greene, Jaime
10. Harvey, Melanie
11. Hernandez, Peter
12. Johnson, Mandy
13. Kocol, Kimberly
14. Le, Michael
15. Okula, Eric
16. Pontius, Jamie
17. Ren, Xi
18. Scanlon, Steve
19. Shandy, Lisa
20. Slagle, Michael
21. Torres, Tony
22. Zavala, James

Appendix 2: Certain Respondents as of May 1, 2017

1. Chai, Chia-Chi
2. Corcoran, Matthew
3. Eng, David
4. Fenton, Kerri
5. Harvey, Melanie
6. Hernandez, Peter
7. Kocol, Kimberly
8. Le, Michael
9. Okula, Eric
10. Pontius, Jamie
11. Ren, Xi
12. Scanlon, Steve
13. Zavala, James

Appendix 3: Teachers Subject to Layoff as of May 1, 2017

	<u>Teacher</u>	<u>Seniority Date</u>	<u>Credentialed to Teach</u>
1.	Chai, Chia-Chi	09/04/07	Chinese (Mandarin)
2.	Corcoran, Matthew	08/08/16	English
3.	Eng, David	08/10/15	Math
4.	Fenton, Kerri (skip)	09/06/05	Physical Education
5.	Garcia, Alan	02/22/16	Music
6.	Harvey, Melanie	08/08/16	Music
7.	Hernandez, Peter	09/02/15	Social Science
8.	Kocol, Kimberly	08/09/16	English
9.	Le, Michael	08/10/15	Math
10.	Okula, Eric	08/10/15	Math
11.	Pontius, Jamie	08/10/15	English
12.	Ren, Xi (skip)	08/10/15	Chinese (Mandarin)
13.	Scanlon, Steve	09/07/04	Physical Education
14.	Zavala, James	08/10/15	Math