

BEFORE THE  
BOARD OF TRUSTEES  
SISKIYOU JOINT COMMUNITY COLLEGE DISTRICT  
COUNTY OF SISKIYOU  
STATE OF CALIFORNIA

In the Matter of the District Statement of  
Reduction in Force of:

OAH No. 2015040059

JUAN ROBERTO MAZARIEGOS,

Respondent.

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Karl S. Engeman, State of California, Office of Administrative Hearings, on April 13, 2015, in Weed, California.

Eileen O'Hare-Anderson, Attorney at Law, Liebert Cassidy Whitmore, represented the Siskiyou Joint Community College District (District).

Donald A. Selkie, Jr., Attorney at Law, appeared on behalf of Juan Roberto Mazariegos (respondent), who was also present.

Evidence and testimony were received, and the matter was submitted for decision on April 13, 2015.

**FACTUAL FINDINGS**

1. Scotty Thomason is the President and Superintendent of the District. On March 10, 2015, President Thomason gave notice to the District's Board of Trustees (Governing Board) of his recommendation that notice be given to respondent that his services will not be required for the 2015-2016 academic year.

2. On March 10, 2015, the Governing Board adopted Resolution No. 2014-15-08, entitled "In the Matter of the Reduction or Discontinuance of Certain Particular Kinds of Services for the 2014-2015 School Year" (PKS Resolution). Pursuant to the PKS Resolution, the Governing Board determined that it was necessary and in the best interests of the District to eliminate the equivalent of a 1.0 Full Time Equivalent (FTE) 175-day Spanish Instructor and to decrease a corresponding number of District academic employees no later

than the beginning of the 2015-2016 academic year. The PKS Resolution directed the District President/Superintendent or his designee to initiate and pursue procedures necessary to not reemploy the equivalent of 1.0 FTE academic employee (175-Day Spanish Instructor) of the District in accordance with Education Code sections 87740 and 87743.<sup>1</sup>

3. On March 10, 2015, respondent was served with the recommendation regarding reduction/discontinuance of services and that his services would no longer be required. The preliminary layoff notices informed respondent of his right to request a hearing, and enclosed a copy of the PKS Resolution, sections 87740 and 87743, and a blank request for hearing form. In response to the preliminary layoff notice, respondent filed a Notice of Participation, including a request for a hearing, on April 6, 2015. On April 2, 2015, the District served the Accusation/District Statement of Reduction in Force, copies of relevant sections of the Education and Government Codes, and form Notice of Defense on respondent.

#### *Sufficiency of the PKS Reduction*

4. Respondent is the District's only Spanish Instructor. In the fall of this school year, he taught a combined Spanish III and IV course (Intermediate Spanish) and a Spanish I course (Elementary Spanish). This semester, he has been teaching two "on-line" Spanish I courses and a face-to-face Spanish II (second semester of Elementary Spanish) course. The District administration determined to reduce the Spanish offerings because of the small number of students enrolled in the classes. This was part of an overall survey of courses to assess the cost-effectiveness of the curriculum. There are only four Spanish majors enrolled in the college, and District will find alternatives, such as on-line courses at other institutions, to help them complete their required community college course work for a Spanish degree.

5. Despite the Governing Board's Resolution reciting the elimination of 1.0 Full-Time Equivalent Faculty (FTEF), District has scheduled respondent to teach an on-line Spanish course (Spanish I) in the fall of the 2015-2016 school year and another (Spanish II) in the spring. Thus, the actual PKS reduction is approximately .7 FTEF of Spanish Instruction, with respondent retaining approximately .3 FTEF of his position.

#### *Bumping Rights*

6. Education Code section 87743, quoted in its entirety below, describes the causes for laying off tenured employees, including those noticed based on a reduction or discontinuance of particular kinds of service. The District's authority to do so is limited by the sentence that reads:

However, the services of no tenured employee may be terminated under this section while any probationary employee,

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

or any other employee with less seniority, is retained to render a service in a faculty service area in which the records of the district maintained pursuant to Section 87743.5 reflect that the tenured employee possesses the minimum qualifications prescribed by the board of governors and is competent to serve under district competency criteria.

7. Respondent has identified three positions to which he asserts his bumping rights. They are (1) positions held by various temporary part-time faculty members working in the District's Critical Skills Lab; (2) the Yreka Site Supervisor; and (3) the Men's' and/or Women's Head Soccer Coach. The factual findings regarding each position are recited below and respondent's entitlement to bump into any of them is discussed in the Legal Conclusions.

#### *Critical Skills Lab*

8. The District offers a non-credit course, EDU 0670, Critical Skills Lab, in the Academic Success Centers of the Weed campus and the Yreka campus for students requiring additional instruction in English (Reading and Writing), Mathematics, Computer Skills, and researching. Students enroll at any time (open enrollment) and sign in on a computer to confirm attendance. Prior to this school year, all of the instructors were temporary part-time faculty with a master's degree (or equivalency) in one or more of the remedial subjects. Their schedules varied, depending on the individual instructor's availability and the needs of students. They were paid by the hours worked at half the rate for adjunct faculty because this is a lab rather than a conventional class. District limits their hours to maintain the instructors' part-time status and avoid the expense of benefits such as health care. The labs are open for most of normal business hours from Monday through Friday while school is in session. This school year, approximately 10 temporary instructors worked in the lab course at the Weed campus and at least two temporary instructors worked in the lab course at the Yreka campus. The labs also used student tutors and instructional aides to assist students.

9. There was a change in staffing the Weed lab this school year. In addition to the temporary instructors, at least three full time faculty members were assigned for periods of time. Two full time instructors, including respondent, were assigned to the lab because of low enrollment in their respective courses. The lab hours supplemented their regular teaching assignments to reach a full load. The number of hours that respondent was assigned to the lab was not established, nor were the hours that the other two instructors worked in the lab. The other instructor who has been assigned to the lab this year to make up for low enrollment is Michael Read. He holds bachelor's degrees in civil engineering and physics and a master's degree in civil engineering. His teaching disciplines are astronomy, computer science, engineering, engineering technology and physical science. The third full time faculty member assigned to the lab was Ms. Heath. She holds a bachelor's degree in biochemistry and a master's degree in agricultural and environmental chemistry. Her teaching discipline is chemistry. One of Ms. Heath's classes had low enrollment and she intended to take a pregnancy leave-of-absence. She was assigned to the lab for two weeks

before the beginning of her pregnancy leave. The District's President/Superintendent has determined that next school year, the District will not assign full time faculty to the lab to supplement teaching hours when enrollment is low. The college will return to the former practice of staffing the labs exclusively with temporary part-time instructors and ancillary tutors.

10. Respondent was observed in the skills center on multiple occasions by Dennis Weathers. Mr. Weathers is the Interim Dean of Liberal Arts and Sciences and one of respondent's three performance evaluators. On the occasions that Mr. Weathers observed respondent, respondent was working independently on a computer. Respondent, in testimony at the hearing, described his role in the course as the "instructor of record," with the responsibility of directing students to appropriate specialists based on a student's declared deficiencies. The evidence did not establish whether the District counts enrollment in the lab as part of its "apportionment," or entitlement to state funding based on full-time equivalent students.

11. District has defined one Faculty Service Area for its instructors: teaching.<sup>2</sup> Competencies for full-time faculty require faculty members to meet one of three criteria: (1) satisfying the minimum qualifications established by the Board of Governors of the California Community Colleges; (2) Possession of a Community College teaching credential in the discipline; or (3) Equivalence in the discipline as established by the District's Equivalency Committee and application for such equivalency submitted to Human Resources no later than February 15 of the academic year.<sup>3</sup> The relevant minimum qualifications for lab instructors are discussed in the Legal Conclusions.

#### *Yreka Site Supervisor*

12. District has a satellite campus in Yreka, California. Before this academic year and for a period of time not established by the evidence, the position of Yreka Site Supervisor had been filled by a District administrator. This school year, Steven Reynolds, a full time faculty member, was assigned to the position. According to the MOU between District and the Faculty Association, the Site Supervisor reports to the Vice President for Academic Affairs and generally oversees the operations of the Yreka campus, including supervision of personnel assigned there. Mr. Reynolds's discipline is English and he holds a bachelor's degree in human relations and organizational behavior, a master's degree in English, and a doctorate in educational administration. His date of hire is August 11, 2011, so he is junior to respondent whose date of hire is August 9, 1996.

13. The District intends to return to staffing the Yreka Site Supervisor position with a District administrator next school year. No evidence was presented regarding the

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<sup>2</sup> Article 20, section 20.1 of the Collective Bargaining Agreement between District and District's Faculty Association (MOU).

<sup>3</sup> Article 20, section 20.2 of the MOU.

manner in which the previous District administrator performed his or her Site Supervisor duties or the manner in which such duties shall be performed by the administrator assigned to the position in the ensuing academic year. However, District and the Faculty Association felt it necessary to enter into an MOU specifying Mr. Reynolds' duties this academic year, including hours allocable to the position (and those allocable to Mr. Reynolds' other role as "Accreditation Liaison" position) and incorporated a Site Supervisor duty statement tailored to Mr. Reynolds. This strongly suggests that the manner in which Mr. Reynolds has performed the services are not identical to those of administrators previously assigned to such duties or those to be assigned the administrator assuming the role in the ensuing academic year.

### *Men's and Women's Head Soccer Coaches*

14. The District's coaches are faculty members. District intends to revive its soccer teams next school year which will be coached by faculty members. District advertised for a Women's head soccer coach and a Men's head soccer coach on its website. On April 5, 2015, respondent addressed a letter to District's Human Resources Department expressing his interest in "the soccer position." He recited his semi-professional experience as a soccer player in Guatemala for several years before emigrating to the United States and his participation on a pre-Olympic Guatemala soccer team training for the 1976 Olympics. Respondent also noted that he took several soccer theory classes at Canãda College in Redwood City, California, in the fall of 1987 and advanced soccer classes at CSU-Chico during the fall of 1989 and spring of 1990. He was the Assistant Coach of District's women's soccer team during the 1997 and 1998 seasons. This was a volunteer position.

15. On a date not established by the evidence, but after respondent's April 5, 2015 letter, District took down the on-line advertisements for a men's and women's head soccer coaches. District decided to combine soccer coaching duties with a teaching assignment in the discipline of kinesiology and will advertise for the position in the future.

## LEGAL CONCLUSIONS

### 1. Section 87743 reads:

No tenured employee shall be deprived of his or her position for causes other than those specified in Sections 87453, 87467, and 87484, and Sections 87732 to 87739, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Section 87740 except in accordance with the provisions of Section 87463 and Sections 87743 to 87762, inclusive.

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which

school is in session shall have declined below the corresponding period of either of the previous two school years, or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of the district it shall have become necessary by reason of either of these conditions to decrease the number of tenured employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the employees of the district, tenured as well as probationary, at the close of the school year. However, the services of no tenured employee may be terminated under this section while any probationary employee, or any other employee with less seniority, is retained to render a service in a faculty service area in which the records of the district maintained pursuant to Section 87743.4 reflect that the tenured employee possesses the minimum qualifications prescribed by the board of governors and is competent to serve under district competency criteria.

Notice of the termination of services either for a reduction in attendance or reduction or discontinuance of a particular kind of service to take effect not later than the beginning of the following school year, shall be given before the 15th of May in the manner prescribed in Section 87740 and services of the employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with Sections 87413 and 87414. In the event that a tenured or probationary employee is not given the notices and a right to a hearing as provided for in Section 87740, he or she shall be deemed reemployed for the ensuing school year.

The board shall make assignments and reassignments in a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.

(Emphasis added.)

2. The District complied with all notice and jurisdictional requirements set forth in sections 87740 and 87743.

#### *PKS Reduction Issue*

3. Spanish Instructor services identified in the PKS Resolution is a particular kind of service that may be reduced or discontinued under section 87743. The Governing Board's decision to reduce or discontinue this service was neither arbitrary nor capricious,

and was a proper exercise of its discretion. Cause for the reduction or discontinuance of these services relates solely to the welfare of the District's college and its students within the meaning of section 87740.

4. While the Governing Board's Resolution reflects a reduction of 1.0 full-time equivalent (175-day Spanish Instructor), the evidence established that the actual reduction in Spanish is approximately .3 FTEF. Therefore, a "corresponding percentage" of employees that may be noticed is .7 FTEF.<sup>4</sup>

### *Bumping Issues*

#### *Critical Skills Lab*

5. Next year, no full time faculty will be assigned to the Critical Skills Lab, but respondent's rights to continued employment are superior to the temporary part-time instructors who will continue to be employed in the lab (*Daniels v. Shasta-Tehama-Trinity J. Community College Dist.* (1989) 212 Cal. App.3d 910, 920.) Thus, respondent's right to occupy positions held by one or more of them to regain his .7 FTEF position depends upon whether he meets the minimum qualifications specified for the faculty service area and his competency under District competency criteria. In this case, satisfaction of minimum qualifications also establishes competency by virtue of MOU article 20, section 20.2.1.

6. Minimum qualifications are defined by the Board of Governors of the California Community Colleges and described in regulations promulgated by the Chancellor's Office. There are two regulations that include minimum qualifications that may pertain to the Critical Skills Lab instructors.

7. California Code of Regulations, title 6, section 53415, reads:

The minimum qualifications for service as a learning assistance or learning skills coordinator or instructor, or tutoring coordinator, shall be either (a) or (b) below:

(a) the minimum qualifications to teach any master's level discipline in which learning assistance or tutoring is provided at the college where the coordinator is employed; or

(b) a master's degree in education, educational psychology, or instructional psychology, or other master's degree with emphasis in adult learning theory.

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<sup>4</sup> The .3 FTEF was the District's rough approximation of the portion of the respondent's Spanish Instructor assignment that will remain with a single Spanish course taught in each of the fall (Spanish I) and spring (Spanish II) semesters next academic year.

Minimum qualifications do not apply to tutoring or learning assistance for which no apportionment is claimed.

8. California Code of Regulations, title 5, section 53412, subdivisions (a), (b) and (c),<sup>5</sup> read:

Except as provided elsewhere in this article, the minimum qualifications for service as a faculty member teaching a noncredit course shall be the same as the minimum qualifications for credit instruction in the appropriate discipline, or as follows:

(a) For an interdisciplinary noncredit basic skills course, a bachelor's in any social science, humanities, mathematics, or natural science discipline or in liberal studies, as appropriate for the course.

(b) For a noncredit basic skills course in mathematics, a bachelor's in mathematics.

(c) For a noncredit basic skills course in reading and/or writing, either: a bachelor's degree in English, literature, comparative literature, composition, linguistics, speech, creative writing, or journalism; or a bachelor's degree in any discipline and twelve semester units of coursework in teaching reading.

9. California Code of Regulations, title 5, section 53415, lists the minimum qualifications for service as a “learning assistance or learning skills coordinator or instructor, or tutoring coordinator.” Respondent did not function as a learning skills coordinator, learning skills instructor, or tutoring instructor in the lab. Although respondent described his role in the course as the “instructor of record,” he limited his responsibilities to directing students to appropriate specialists. The evidence did not clearly establish respondent’s designated role, if any, in the lab this school year. As noted in the Factual Findings, he was observed in the lab working independently on a computer and not assisting students. More importantly, it was not established that such a position even existed in the lab this year or will exist in the next academic year.

10. Even if respondent’s duties met the descriptions of those to whom Regulation 53415 applies, by its terms the regulation does not apply to “tutoring or learning assistance for which no apportionment is claimed.” California Code of Regulations, title 5, section 58170, prescribes the conditions for apportionment based on student attendance in tutoring courses. Several of the requirements are not satisfied by District’s course including the

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<sup>5</sup> The remaining subdivision relate to courses that are taught in the Critical Skills Lab.



required course designation and referrals of students only by a counselor or instructor that includes identified deficiencies. The requirements also include a designated supervisor meeting the requirements of Regulation 53415. Thus, while the District's administrators who testified were not sure if District has claimed apportionment for the Critical Skills Lab students, it is reasonable to assume it has not. In summary, Regulation 53415 does not impose any minimum qualifications on instructors or supervisors assigned to teach in the Critical Skills Lab that might bar respondent from bumping into positions occupied by the part-time temporary instructors.

11. The Critical Skills Lab is, however, a non-credit course and the minimum qualifications for instructors in non-credit courses are set out in California Code of Regulations, title 5, section 53412. The minimum qualifications for non-credit versions of for-credit courses are the same as those for credit courses in the same discipline. The regulation also establishes minimum qualifications for non-credit basic skills courses. For an interdisciplinary non-credit basic skills course, faculty must hold a bachelor's in any social science, humanities, mathematics, or natural science discipline or in liberal studies, as appropriate for the course. For basic skills courses in mathematics or reading, faculty must hold a bachelor's degree in mathematics for the former and the latter requires a bachelor's degree in English, literature, comparative literature, composition, linguistics, speech, creative writing, or journalism or a bachelor's degree in any discipline plus twelve semester units in coursework in teaching reading.

12. Respondent holds a bachelor's and master's degree in Spanish which falls within the humanities discipline. However, his discipline is not "appropriate for the course," because the lab provides individual instruction in the targeted subjects of English, including reading and writing, mathematics, use of a computer, and research. Respondent's discipline does not include any of the requisite skills to tutor students in any of the remedial areas.

13. Finally, while District assigned respondent to the Critical Skills Lab this school year, this action does not obviate the District's obligation to adhere to the standards required by the Board of Governors of the California Community College system. Section 87743 expressly requires that a faculty member seeking to occupy a position of a retained junior employee must meet the minimum qualifications established by the California Community Colleges' Board of Governors. Respondent does not meet the minimum qualifications in Regulation 53412 and is therefore unable to bump into any position in the lab tentatively assigned to one or more temporary part-time instructors for the next academic year.

#### *Yreka Site Supervisor*

14. Next year, the District will staff this position with an administrator. Thus, there will be no position held by a junior faculty member which respondent could occupy by virtue of his seniority. District may provide the service in a different manner without eliminating it as PKS. Cases interpreting section 44955, the analogous statutory provision for layoffs in school districts, have held that school districts have the discretion to determine

particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 812;; *Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571, 1582–1585; *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal. App.4th 334, 343.) Here, the District and the Faculty Association were required to prepare and execute a separate MOU for Mr. Reynolds’ role as the Yreka Site Supervisor. The MOU incorporated a duty statement tailored to Mr. Reynolds and outlining his authority and responsibilities. These acts reflect that the services required of Mr. Reynolds are unique to him, and not identical to those of District administrators occupying the position.

#### *Men’s and Women’s Head Soccer Positions*

15. While there was considerable evidence and argument presented by the parties regarding this issue, there is currently no soccer team for either gender, and no coaches have been hired for the next academic year when the teams are expected to begin play. Thus, there are no soccer coaching positions tentatively assigned to junior faculty members that respondent can point to as possible bumping opportunities. Once the position, or multiple positions, are established, respondent may apply based on his qualifications and seniority. He may also exercise any reemployment rights he possesses pursuant to Education Code section 87744.

#### RECOMMENDATION

Notice may be given to respondent Juan Roberto Mazariegos that approximately .7 FTEF of his services as a Spanish Instructor will not be required for the 2015-2016 academic year.

DATED: April 20, 2015

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/s/  
KARL S. ENGEMAN  
Administrative Law Judge  
Office of Administrative Hearings