

BEFORE THE GOVERNING BOARD OF THE
MOORPARK UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force
Against:

ROBYN LYON,

Respondent.

OAH No.: 2018040171

PROPOSED DECISION

This matter came on for hearing before Glynda B. Gomez, Administrative Law Judge of the Office of Administrative Hearings, at Moorpark, California, on April 20, 2018.

Jeff C. Marderosian, Attorney at Law, represented the Complainant.

Jake Anderson, Regional Staff member of the California Teachers Association, and Roger F. Lyon, Attorney at Law, represented Respondent.

The administrative hearing concluded on April 20, 2018. The record remained open ,for submission of a brief by Respondent on April 23, 2018 and any response by Complainant by April 26, 2018. Respondent's brief was marked and received as Exhibit A and Complainant's brief was marked and received as Exhibit 7.

The Administrative Law Judge now finds, concludes and orders as follows:

SUMMARY

The Governing Board (Board) of the Moorpark Unified School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2018/2019 school year. Respondent Robyn Lyon was the only certificated employee to contest lay off at the administrative hearing. The decision was not related to the dedication or performance of the teacher whose services were proposed to be reduced or eliminated. District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

Parties

1. Complainant Dr. Kelli Hays filed the Statement of Reduction in Force in this proceeding in her official capacity as Superintendent of the District.
2. Respondent Robyn Lyon is a certificated employee of the District.

Reduction of Services

3. On February 27, 2018, the Governing Board of the District, upon recommendation by the Superintendent, adopted and issued resolution number 2017-2018-05 entitled “Reduction To Decrease the Number of Certificated Employees Due to a Reduction in Particular Kinds of Services” (Resolution) to reduce or discontinue particular kinds of certificated services no later than the beginning of the 2018-2019 school year because of a reduction of programs and services.
4. The Resolution specifies the Reduction or Elimination of Particular Certificated Services as follows:

<u>TYPE OF PROGRAM</u>	<u>FTE (Full-Time Equivalent)</u>
Counselors	1.0 FTE
High School Technology Teacher	1.0 FTE
Middle School Social Studies Teacher	1.6 FTE
High School Social Studies Teacher	1.0 FTE
Total	4.6 FTE

5. The services which the District seeks to discontinue or reduce are particular kinds of services (PKS) that may be reduced or discontinued under Education Code section 44955.
6. With regard to services provided by the District, on February 27, 2018, the Board adopted Exhibit A of Resolution No. 2017-2018-05 to determine the order of layoff for those certificated employees with the same date of first paid probationary service.
7. The 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 given the budgetary constraints and other factors considered by the Board, and the manner in which the decision to reduce or discontinue services was reached.

8. Exhibit B of the Resolution provides the Competence Criterion as follows:

A Certificated employee subject to layoff shall be considered competent to perform a service if and only if:

1. The certificated employee has under the appropriate credential performed the service for one complete school year within the last ten (10) years. One complete school year is defined as actual service of at least 75% of the number of days the regular schools of the District are in session; and

2. The certificated employee is "highly qualified" under [No Child Left Behind] NCLB.

(Exhibit 1.)

Notice and Process

9. On February 27, 2018, pursuant to Education Code sections 44949 and 44955, the Governing Board directed that notice be given to Respondent that her services will not be required for the ensuing school year, and stating the reasons therefore.

10. On March 9, 2018, within the deadline set forth in Education Code section 44949, the Respondent was provided written notice by personal service or registered mail of the recommendation that Respondent receive notice pursuant to Education Code sections 44949 and 44955 that her services will not be required for the ensuing school year, and stating the reasons therefore.

11. Respondent timely requested a hearing. Thereafter, a District Statement of Reduction in Force was served upon the Respondent, and the Respondent filed a notice of defense, which was timely or accepted by the District without objection.

Respondent Robyn Lyon

12A. Respondent Robyn Lyon is a full-time certificated employee who possesses a clear single subject credential in computer concepts and applications and a multi-subject credential.

12B. Respondent paid her fees and submitted documentation for a Career Technical Education credential which she expected to be issued the day of the hearing.

13. Respondent's teaching assignment was as a High School Technology Teacher. Her classes included Graphic Arts with Web Design beginning and advanced levels, Introduction and Advanced Game Design, Keyboarding, Computer Applications, Media

Production, and Directed Studies. Respondent's position was designated as 1.0 FTE High School Technology Teacher and as such was designated as a PKS to be eliminated.

14. Respondent's multi-subject teaching credential permits her to teach elementary school in a self-contained classroom. Respondent worked as an elementary school technology teacher and a media specialist at Garvey Elementary School District and White Oak Elementary School District for approximately two years during the period of 2013-2015. However, she has not served as an elementary school teacher teaching a self-contained class in the last ten years, other than as a substitute covering a class for the regular teacher on a few occasions. Therefore, Respondent does not meet the Board's Competency Criteria for "bumping" into an elementary school teaching position.

15A. The District maintains a Seniority List which contains employees' seniority dates, current assignments and locations, credentials, authorizations, and employment status (permanent, probationary or temporary). Respondent's seniority date per the Seniority List is August 17, 2015.

15B. Respondent attended some workshops and training sessions in June of 2015 before the start of the school year and was compensated for her attendance. Respondent asserted at hearing that her seniority date on the Seniority List may be incorrect because it did not account for her compensated time in June of 2015. Respondent failed to prove by a preponderance of the evidence that her seniority date was incorrect or her voluntary attendance at the June 2015 training sessions constituted her first day of probationary service. Nevertheless, a June 2015 seniority date would not change the outcome of this proceeding because Respondent does not meet the Board's competency criteria to "bump" into any of the seven positions held by the certificated employees with seniority dates between June 1, 2015 and August 17, 2015 on the Seniority List which included special education, social science, speech and language, math, and studio art positions.

16. The evidence established that the Seniority List utilized in the layoff process is accurate as to the information contained therein. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

17. Respondent also asserted that there were incoming ninth graders who wished to take the classes that she taught. She also asserted that the 2017-2018 low enrollment in some of her classes was caused by behavior problems of certain students that had been administratively placed in her class. According to Respondent, some of her students transferred out of the class rather than cope with the behavior of those students. District did not rebut her testimony on this point.

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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 notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents by reason of Findings 1-11.

3. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services by reason of Findings 1-8. The Board's decision to reduce or eliminate the identified services set forth in Findings 3-5 and 8 was neither arbitrary nor capricious in that the decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949, by reason of Findings 1-11. Boards of education hold significant discretion in determining the need to reduce or discontinue particular kinds of services, which is not open to second-guessing in this proceeding. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167.) Such policy-making decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and action must be reasonable under the circumstances, with the understanding that "such a standard may permit a difference of opinion." (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) School districts have discretion to define positions in the manner which they will be taught as long as it is done in good faith. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334.)

4. Pursuant to Education Code sections 44845 and 87414 every probationary or permanent employee is deemed to have been employed on the date upon which he or she first rendered paid service in a probationary position.

5. No permanent or probationary employee with less seniority is being retained to render a service for which Respondent is certificated and competent to perform by reason of Findings 1-17.

6. Cause exists to give notice to Respondent that her services will not be required for the 2018/2019 school year by reason of the whole of the Findings herein.

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ORDER

Notice may be given to Respondent Robin Lyon that her services will not be required for the 2018/2019 school year.

Dated: April 27, 2018

DocuSigned by:

Glynda B. Gomez

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings