

BEFORE THE
SUPERINTENDENT OF SCHOOLS
LOS ANGELES COUNTY OFFICE OF EDUCATION
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving:

Certificated Employees of the Los Angeles
County Office of Education,

Respondents.

Case No. 2018030097

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 16, 2018, in Downey, California.

Patrick Saldaña, Deputy General Counsel, represented Vibiana Andrade (Complainant), Acting Chief Human Resources Officer, Los Angeles County Office of Education (LACOE), County of Los Angeles, State of California.

Carlos R. Perez, Attorney at Law, represented Karen Collier, Mary Cruz-Boddie, David Ejimole (Ejimole), Francis Gordon, Lisa Harrington, Jacqueline Levine, Dolores Medina, Barbara Moore, Abimbola Ogbecie, Shoshana Payne, Maria Ruiz, Teresa Sandoval, and Nye Sanipe-Ihediwa (Respondents).

Debra Duardo, M.S.W., Ed.D., LACOE Superintendent of Schools (Superintendent), has decided to reduce or discontinue certain educational services and has given Respondents and others notice of her intent not to reemploy them for the 2018-2019 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2018-2019 school year.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing, and the matter was submitted for decision on April 16, 2018.

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FACTUAL FINDINGS

1. Complainant filed the Statement of Reduction in Force in her official capacity.
2. Respondents are certificated employees of the LACOE.
3. On February 20, 2018, the Superintendent adopted Resolution No. 1-S, entitled “Resolution to Reduce or Discontinue Particular Kinds of Services” (Resolution), reducing or discontinuing the following services for the 2018-2019 school year:

<u>Service</u>	<u>FTE¹ Positions</u>
Division of Student Programs/LA County Court Schools SELPA	
Counselor	5.0
Educational Audiologist	1.0
Resident Teacher on Assignment	1.0
School Psychologist	3.0
Teacher APE	1.0
Teacher JCS	5.0
Teacher ED	1.0
Teacher ISP	1.0
Teacher LSS	1.0
Division of Accountability, Support and Monitoring	
Project Director III	2.0
Coordinator II	1.0
Consultant II	1.0
Division of Curriculum and Instructional Services	
Project Director III	1.0
Consultant II	1.0
Division of Special Education	
Assistant Director	1.0
Assistant Principal	8.0
Coordinator II	3.0
Counselor	1.0
Director II	1.0
Educational Audiologist	5.0
Principal	1.0

¹ Full-time equivalent.

Regional School Psychologist	1.0
School Nurse	6.0
School Psychologist	12.0
Teacher APE	4.0
Teacher Autism	13.0
Teacher CAR	4.0
Teacher DHH	23.0
Teacher DIS HH	2.0
Teacher ED	8.0
Teacher ID DH	12.0
Teacher ID	6.0
Teacher LSS	33.0
Teacher LSS No Cred	8.0
Teacher MD	9.4
Teacher Mobility	2.0
Teacher ORT	2.0
Teacher VH	9.0
Teacher on Special Assignment	2.0
Instructional Technology Outreach Consultant II	<u>1.0</u>
Total	202.4

4. On March 14, 2018, the Superintendent provided notice to Respondents that their services will not be required for the 2018-2019 school year due to the reduction or elimination of particular kinds of services.

5. Also on March 14, 2013, the Superintendent issued the Statement of Reduction in Force and served it and other required documents on Respondents.

6. Respondents each timely submitted a Request for Hearing/Notice of Participation in Reduction in Force Hearing Form, requesting a hearing to determine if there is cause for not reemploying them for the 2018-2019 school year.

7. All prehearing jurisdictional requirements have been met.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code² section 44955.

² All further statutory references are to the Education Code.

9. The Superintendent took action to reduce or discontinue the services set forth in factual finding number 3 because of the anticipated reduction of funding and the anticipated decline in student enrollment. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the Superintendent's discretion.

10. The reduction of services set forth in factual finding number 3 is related to the welfare of the District's schools and its pupils, in the context of the loss of revenue and the need to continue providing services to students in Los Angeles County, and it has become necessary to decrease the number of certificated employees as determined by the Superintendent.

11. On February 20, 2018, the Superintendent adopted Resolution No. 3-S setting forth the criteria to determine seniority among employees who first rendered paid service in a probationary position on the same date (tie-breaking criteria). Criteria to be considered, in order of significance, included possession of authorizations to teach students with limited English Language proficiency, possession of other teaching authorizations, possession of designated provisional credentials, earliest LACOE employment even if not in a certificated position, earliest receipt of certification from the California Commission on Teacher Credentialing, and, if ties still remained after application of prior criteria, success in a random drawing. The criteria are reasonable as they relate to the skills and qualifications of certificated employees. The Superintendent did not need to apply the criteria to determine the order of termination of any Respondent.

12. The Superintendent skipped certain junior employees on the basis of specialized training and experience and actual assignment in the Los Angeles County Outdoor Science School. Respondents did not challenge the retention of any individual to teach this assignment.

13. The Superintendent established competency criteria for those wishing to teach in specialized high schools, IPoly High School and Los Angeles County High School for the Arts, or to work as a Speech and Language Pathologist. Individuals wishing to serve in the high school positions are required to have taught certain rigorous courses, described as "a-g," for at least two consecutive semesters in the past seven school years. Those wanting to work as speech and language pathologists must have maintained a caseload of at least five hearing-impaired students for at least two consecutive semesters in the past seven school years. The competency criteria relate to the skills and qualifications of certificated employees and are reasonable. No Respondent asserted that he or she met the competency criteria to teach at one of the specialized high schools or to work as a speech and language pathologist.

14. Respondent Ejimole holds a Clear Level II Education Specialist Instruction Credential and teaches Special Education. He testified that the Superintendent incorrectly calculated his seniority date. His assigned seniority date is November 9, 2007. Respondent Ejimole asserts that his seniority date should be August 28, 2007, because he started working on that date and remained in the same assignment, with the same students, until the conclusion of the

school year. The Superintendent counters that Respondent held 30-Day Substitute Teaching Permits and worked as a substitute teacher during the 2007-2008 school year until November 9, 2007, when he received his first Intern Permit and his certificated employment contract as a probationary employee. If Respondent is given the higher seniority date, he would not be senior to any employee retained to perform a service Respondent Ejimole is certificated and competent to perform.

15. The Superintendent has taken into account all positively assured attrition in determining the need to layoff certificated employees and plans to take additional attrition into account before issuing final layoff notices.

16. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 13.

4. Section 44955 directs that certificated permanent and probationary employees are to be laid off by inverse order of seniority, consistent with their qualifications and status. Thus, subdivision (b), provides, in pertinent part: "Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." Moreover, the statute requires: "[T]he governing board shall make assignments and reassignments in such manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. . . ." (§ 44945, subd. (c).) Respondents were selected for layoff in accordance with their seniority and credentials, and, the Superintendent may, therefore, issue notices terminating their services for the 2018-2019 school year, by reason of factual finding numbers 1 through 16 and legal conclusion numbers 1 through 3.

5. As set forth in factual finding number 14, adjustment of Respondent Ejimole's seniority to August 28, 2007 will not impact whether he is retained for the 2018-2019 school year. He nevertheless seeks to have his seniority adjusted for the purpose of placement in the preferential rehire list. However, the instant proceeding is authorized by sections 44949 and 44955 to determine whether cause exists for not reemploying Respondent for the ensuing school year. Section 44955 provides: "As between employees who first rendered paid service on the same date, the governing board shall determine *the order of termination* solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose *order of termination* is so determined, the governing body shall furnish in writing . . . a statement of the specific criteria used in determining the *order of termination* and the application of the criteria in ranking each employee relative to other employees in the group. . . ." (Emphasis added.) Thus, the plain language of the statute directs review of the order of termination, not the order of reemployment. Preferential rehiring is the subject of other statutory provisions, such as, for instance, sections 44956 and 44957. Inasmuch as adjustment of Respondent's seniority will not impact his order of termination, the Administrative Law Judge may not modify or adjust his seniority date in this proceeding.


6. Cause exists to terminate the services of Respondents Karen Collier, Mary Cruz-Boddie, David Ejimole, Francis Gordon, Lisa Harrington, Jacqueline Levine, Dolores Medina, Barbara Moore, Abimbola Ogbecie, Shoshana Payne, Maria Ruiz, Teresa Sandoval, and Nye Sanipe-Ihediwa, by reason of factual finding numbers 1 through 16, and legal conclusion numbers 1 through 5.

ORDER

1. The Statement of Reduction in Force is sustained.

2. The Superintendent may notify Respondents Karen Collier, Mary Cruz-Boddie, David Ejimole, Francis Gordon, Lisa Harrington, Jacqueline Levine, Dolores Medina, Barbara Moore, Abimbola Ogbecie, Shoshana Payne, Maria Ruiz, Teresa Sandoval, and Nye Sanipe-Ihediwa that their services will not be required during the 2018-2019 school year due to the reduction of particular kinds of services.

DATED: April 23, 2018

DocuSigned by:

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings