

BEFORE THE BOARD OF TRUSTEES OF
SHANDON JOINT UNIFIED SCHOOL DISTRICT
COUNTY OF SAN LUIS OBISPO
STATE OF CALIFORNIA

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

ALAN SCIOCCHETTI,

Respondent.

OAH Case No. 2016040975

PROPOSED DECISION

The hearing in the above-captioned matter took place on May 6, 2016, at Shandon, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by Roman J. Munoz, Dannis Woliver Kelly. Respondent Alan Sciocchetti appeared with his attorneys, Adam A. Acevedo and Brett B. McMurdo, Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez.

Oral and documentary evidence was received, argument was heard, and the matter submitted for decision on the hearing date. By stipulation, the proposed decision was due May 17, 2016

The ALJ hereby makes his factual findings, legal conclusions, and order, as follows.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant Teresa Taylor filed and maintained the Statement of Reduction of Force Against Respondent while acting in her official capacity as Superintendent of the Shandon Joint Unified School District (District).

2. Respondent is a certificated employee of the District and he is the sole respondent in this case. He is a permanent employee of the District with a seniority date of August 15, 2005. He is senior to a number of teachers who did not receive lay off notices, including two permanent teachers and seven probationary teachers.

3. (A) On March 8, 2016, the Board of Trustees of the District (Board) adopted Resolution number 2015-16-11, pertaining to the reduction of services within the District (Reduction Resolution). The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2016-2017 school year. Specifically, the resolution requires the reduction of three “FTE”—Full Time Equivalents—by reducing three types of services.

(B) The FTEs that the Board determined to reduce are described in the Reduction Resolution, as follows:

Grades 9-12 Math, AVID, STEM	1
Grades 9-12 Math, Spanish, Art, ELD	1
Grades 9-12 Independent Study and Grades 7-12 P.E.	1

4. On February 9, 2016, the Board adopted Resolution number 2015-2016-10, which created competency criteria for the purposes of Education Code section 44955.¹ The competency criteria states as follows:

That “competency” for the purposes of Education Code section 44955 shall be determined solely upon current possession of a preliminary or clear credential for the subject matter or grade level to which the employee will be assigned at the beginning of the 2016-2017 school year at least one (1) year of experience within the preceding five (5) school years teaching the subject matter at the applicable elementary, middle or high school level. Further, that due to the specific needs of the district to hire and retain only highly qualified teachers in academic subject areas, “competency” shall require (highly qualified) current confirmation of qualifications of academic subject competency, or verifiable eligibility for competency if not previously reviewed by the District, in all subjects of a proposed assignment, including assignments teaching multiple subjects and assignments in secondary alternative schools, in accordance with the NCLB.

(Exhibit B to exhibit A, at page [Bates stamp no.] 13.)

5. (A) On or about March 14, 2016, Respondent was given notice that pursuant to sections 44949 and 44955, his services would not be required in the 2016-2017 school year (hereafter the preliminary notice). The record indicates that two other teachers were given such notices. However, only Respondent gave notice that he wanted a hearing to determine if there was cause not to re-employ him. Thus, on March 14, 2016, Respondent submitted his Notice of Participation to the District, requesting a hearing.

¹ All further statutory references are to the Education Code.

(B) Thereafter, Respondent was served with the Statement of Reduction in Force. Respondent in turn submitted his Notice of Participation in Reduction in Force Hearing; it was signed by him on April 12, and received at the District the next day, April 13, 2016. The matter proceeded to hearing as to his rights alone.

6. All jurisdictional requirements have been met.

The Reduction in PKS

7. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under section 44955. This applies to the services provided by Respondent.

8. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board. The evidence establishes that the District is in financial distress. The local county education office has been monitoring the District because the District has been operating at a financial loss.

9. The decision to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion.

10. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

11. (A) For many years prior to June 2014, Respondent taught in the Community Day School. That was a separate school operated by the District for the instruction of students outside the usual classroom environment. The students would come from various grade levels, and would attend the Community Day School if they needed to take a class again after failing, or if they came into the District needing certain classes. The number of students would vary, as would the subjects. This required a certain flexibility on Respondent's part.

(B) The Community Day School was closed after the 2013-2014 school year. Respondent was then assigned to the high school. Currently, he teaches PE, and Independent Study, which is a flexible class, having aspects of the Community Day School, in that students learn various subjects, sometimes because they need credits or have failed a class.

12. Respondent has not taught in a self-contained classroom, as have many of the teacher's junior to him, nor has he taught a "core" class for a whole school year.

13. As noted in Factual Finding 2, Respondent is senior to nine teachers who are being retained by the District. As set out further in the Legal Conclusions, it must be found that no junior certificated employee is being retained in a position which Respondent a senior

employee is both certificated and competent to fill. This is because under the Competency Criteria, Respondent is not competent to move into another assignment, because he has not taught for one year in the last five in the particular subject areas or classes he might otherwise “bump” into.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 6.

2. (A) A school district may reduce particular kind of services (PKS) within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The Court of Appeal has made clear that a PKS reduction does not have to lead to fewer classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-85; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

(B) The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949. This Legal Conclusion is based on Factual Findings 1 through 13, and the foregoing authorities.

3. (A) A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or 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.) At the same time, a junior teacher may be given retention priority over one or more senior teachers—may be “skipped” in favor of senior employees—if the junior teacher possesses superior skills or capabilities not possessed by more senior colleagues which must be necessary to teach a course or course of study that is specifically needed in the District. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.)

(B) The District did not abuse its discretion in establishing the competency criteria set out in Factual Finding 4. That a teacher should have some experience in teaching a subject or subjects before bumping into a position where such subjects will be taught is not

unreasonable. And, requiring some experience in the particular classroom milieu is not unreasonable either. The requirement here, of one year's experience within the last five years is not so narrowly drawn that it can, or should be, disregarded. (*Kern v. Duax Community College District* (1987) 196 Cal.App.3d 555.) Even if a broader standard, such as was used in *Duax* (one year experience in the past ten years), were required here, it does not appear that Respondent would meet that qualification.

(C) Unfortunately, Respondent is unable to bump another employee, and the District has not seen fit to skip, or exempt him, from lay off, despite his other qualifications.

4. Under the circumstances, it must be concluded that no junior certificated employee is being retained to perform a service that Respondent is certificated and competent to perform, based on Legal Conclusions 1 through 3, and Factual Findings 3 through 13. Therefore, the District may issue a final lay off notice to Respondent Sciocchetti, and the other teachers who did not request a hearing and participation in the reduction in force.

ORDER

Respondent Alan Sciocchetti may be served with a final lay off notice. The District may also issue final layoff notices to its two certificated employees who did not request a hearing.

May 17, 2016

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Joseph D. Montoya
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Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings