

BEFORE THE GOVERNING BOARD OF THE
SAN YSIDRO SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving the Respondent's Identified in
Exhibit A.

OAH No. 2013030852

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 23, 2013, in San Ysidro, California.

Darren Kameya, Lozano & Smith, represented San Ysidro School District.

Jon Cadieux, Tosdal, Smith, Steiner & Wax, represented the respondents identified in Appendix A.¹

The matter was submitted on April 23, 2013.

FACTUAL FINDINGS

1. On March 14, 2013, the Governing Board adopted Resolution No. 12/13-0003 reducing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions would be affected by the action. The resolution identified 14 FTEs to be reduced. The decision to reduce or discontinue a particular kind of service is matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

2. Thereafter, on or about March 15, 2013, the superintendent gave written notice to certificated employees, including respondents, of the recommendation that their services would not be required for the 2013-14 school year. The reasons for the recommendation were set forth in these preliminary layoff notices. Thereafter, an accusation was served on each respondent listed on Appendix A. Each respondent is a certificated employee of the district.

¹ The parties stipulated that the district timely served all required jurisdictional documents and that all respondents timely filed a request for hearing and a notice of defense.

3. Prior to the start of the hearing the parties, after much diligent work, entered into a second stipulation resolving all issues.² The second stipulation provides the following:

- a. The District shall revise the seniority date for Chelsea Kuntz from August 8, 2005, to September 13, 2004.
- b. The Application of Tiebreaking Criteria (Exhibit 3) accurately reflects the application of the criteria contained in Governing Board Resolution #12/13-003.
- c. The layoff notices issued to Cynthia Mosequeda, Leonor Garcia, Carmen Luna, Chelsea Kuntz, Diana Hernandez, Thomas Nunez and Blanca Castillo shall be rescinded.
- d. Final layoff notices shall be issued to the respondents listed in Appendix A.
- e. The stipulation shall be non-precedential in any future layoff proceedings and respondents reserve the right to challenge the Board's skipping criteria.
- f. The stipulation shall not affect the respondents' recall rights.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. A district may reduce services 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.)

3. 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, 473-474.) Junior teachers may be given retention priority over senior teachers only if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

² That stipulation, inadvertently titled Stipulation #3, was marked and received as Exhibit 2.

4. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2013-2014 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949. The district has identified the certificated employees who are providing the particular kinds of services that the Governing Board directed be reduced or discontinued. It is recommended that the Governing Board give respondents notice before May 15, 2013, that their services will not be required by the District for the 2013-14 school year.

RECOMMENDATION

It is recommended that the governing board adopt the second stipulation (Exhibit 2) in its entirety as its order in this proceeding.

DATED: April 29, 2013

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix A

RESPONDENTS

Anguiano-Carrillo, Kathy
Del Rio, Sally
Ednalino, Jenielle
González-Monreal, Cynthia
Huerta, Brenda
Lopez, Christian
Martinez, Amanda
San Martin Vallejo, Yvonne
Sedano, Norma