

BEFORE THE GOVERNING BOARD
CASTAIC UNION SCHOOL DISTRICT
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Certificated Employees of the
Castaic Union School District,

Respondents.

Case No. 2015030698

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 22, 2015, in Valencia, California.

Margaret A. Chidester, Attorney at Law, represented James M. Gibson (Gibson), Superintendent of the Castaic Union School District (District).

Amy M. Cu, Attorney at Law, represented Andria L. Adams (Adams), Ernestina Aguilar (Aguilar), Lesli Bjerke (Bjerke), Sylvia Borg-Otting (Borg-Otting), Ann Shannon Boyd (Boyd), Jamie Davis (Davis), Joy C. Ediger (Ediger), Michelle Fitzpatrick (Fitzpatrick), Matt Gilpin (Gilpin), Ireneo P. Gimenez (Gimenez), Tara Gordon (Gordon), Susan Lieberman (Lieberman), Jodi Lopata (Lopata), April Mailander (Mailander), John Michels (Michels), Erin Oxhorn-Gilpin (Oxhorn-Gilpin), Karry Pena (Pena), Glenda Robinson (Robinson), John Lee Simons (Simons), Kerry Summers (Summers), Jackeline Tapia (Tapia), and Edward J. Zippay (Zippay), who are collectively referred to as Respondents.

Julie Pomilia (Pomilia), Elizabeth Smith (Smith), and Patty Van Sloten (Van Sloten), who are included in references to Respondents, did not appear at the hearing.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2015-2016 school year.¹ Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2015-2016 school year.

¹ The District no longer seeks to lay off Respondents Ediger, Lieberman, Mailander, Simons, or Van Sloten.

Oral and documentary evidence was received at the hearing. The record was left open for the submission of additional evidence and for the filing of closing argument. On April 24, 2015, District submitted a document titled "Declaration of Ms. Wendy Mullins in Support of Petitioner's Reduction in Particular Kinds of Service," which has been marked as Exhibit 15. No objection was raised to the receipt of Exhibit 15, and it is received in evidence.

On April 27, 2015, the parties filed Petitioner's Closing Argument and Respondents' Post Hearing Brief, which documents have been marked as Exhibits 16 and J, respectively. On April 30, 2015, the parties filed Petitioner's Reply Brief and Respondents' Reply Brief, which documents have been marked as Exhibits 17 and K, respectively.

The matter was submitted for decision on April 30, 2015.

FACTUAL FINDINGS

1. Superintendent Gibson filed the Accusations in his official capacity.
2. Respondents are certificated employees of the District.
3. On February 26, 2015, the Governing Board of the District (Governing Board), following the recommendation of Superintendent Gibson, adopted Resolution Number 14/15-24, reducing or discontinuing the following services for the 2015-2016 school year:

<u>Service</u>	<u>FTE² Reduction</u>
1.1 Director, Administrative Services	1.0
1.2 Director, Instruction/Special Projects	1.0
1.3 Director, Business Services/Fiscal Services	1.0
1.4 Assistant Principal	1.0
1.5 Counselors	1.6
1.6 TK ³ -6 General Education Teachers	31.0
1.7 TK-6 Physical Education Teachers	2.0
1.8 TK-6 Music Teachers	1.5
1.9 7-8 Math Teachers	1.0
1.10 7-8 English Teachers	1.0
1.11 7-8 History/Social Science Teachers	1.0
1.12 7-8 Physical Education Teachers	1.0

² Full-time equivalent position.

³ Transitional Kindergarten.

1.13	SDC ⁴ Preschool Mild/Moderate	0.3
1.14	SDC Middle School Mild/Moderate	<u>1.0</u>
	Total	45.4

4. Superintendent Gibson thereafter notified the Governing Board that he had recommended that notice be provided to Respondents that their services will not be required for the 2015-2016 school year due to the reduction of particular kinds of services.

5. On or about March 2, 2015, the District provided notice to Respondents that their services will not be required for the 2015-2016 school year due to the reduction of particular kinds of services.

6. Respondents thereafter timely requested a hearing to determine whether there is cause for not reemploying them for the 2015-2016 school year.

7. On March 26, 2015, the District issued an accusation to each Respondent, and served it and other documents on each Respondent, which documents included the Governing Board's Resolution Number 14/15-24, a statement to respondent, a notice of hearing, and a blank notice of defense for Respondents to use to contest the Accusation.

8. Respondents Adams, Bjerke, Borg-Otting, Boyd, Davis, Ediger, Gimenez, Gordon, Lieberman, Lopata, Mailander, Michels, Pena, Pomilia, Robinson, Simons, Summers, and Zippay submitted timely notices of participation utilizing District-provided notices of defense. Respondents Adams, Borg-Otting, Boyd, Ediger, Gilpin, Gordon, Lieberman, Lopata, Mailander, Michels, Oxhorn-Gilpin, Pena, Pomilia, Robinson, Smith, Summers, Van Sloten, and Zippay submitted timely notices of participation on forms provided by the certificated employees association. On March 30, 2015, Counsel for Respondents submitted a timely Joint Notice of Participation on behalf of all Respondents. All Respondents have therefore filed timely notices of participation. District did not question any respondent's right to participate in the hearing or to demand to know if cause exists for not reemploying them for the 2015-2016 school year.

9. All prehearing jurisdictional requirements have been met.

10. 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 Code⁵ section 44955.

⁴ Special Day Class.

⁵ Unless otherwise noted, all further statutory references are to the Education Code.

11. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 because of significant shortfall in funding. The shortfall, which is expected to exceed \$3,000,000, is primarily due to decline in student enrollment and changes in the State of California school funding formula. The decision to reduce the particular kinds of services is neither arbitrary nor capricious, but is rather a proper exercise of the District's discretion.

12. 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 the District, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

13. a. On February 26, 2015, the Governing Board adopted criteria for breaking seniority ties for employees with the same first date of paid service. Tie-break points were awarded as follows: two points for a Bilingual Cross-cultural Language and Academic Development (BCLAD) Certificate or Bilingual Certificate of Competence (BCC); one point for a Reading Specialist Credential; one point for a Special Education Credential, Resource Specialist Credential or any credential authorizing special education services in grades Kindergarten to Eighth; one point for each current, valid credential held, excluding supplemental authorizations; one point for "hard to hire" single subject credentials held (math, science); one-half point for each additional supplemental authorization appearing on the face of the credential provided that (1) the subject is offered in the District's instructional program in 2015-2016, and (2) that the teacher is "highly qualified" in that area; one point for completion of approved and certified GLAD training, authorized by the Castaic Union School District and provided by the Newhall School District; one point for serving as a Beginning Teacher Support and Assessment (BTSA) Support Provider or PAR Consulting Teacher in the Castaic Union School District; three points for each full year of actual service (75% or more of the days schools were in session) as a full-time permanent certificated employee in the District; one point for an earned Master's degree; and two points for an earned Doctorate degree. A lottery was employed to break any remaining ties.

b. Testimony and argument were received about the propriety and wisdom of awarding three points for each full year of actual service as a full-time certificated employee for the District. Superintendent Gibson testified that the District values actual service and experience, and that it came to an agreement about the 75 percent cutoff with the certificated employees' association. Respondents argued that they should not be penalized for having taken maternity leave or other authorized leave.

c. On their face, the tie-breaking criteria are reasonable in that they relate to the skills and qualifications of certificated employees.

14. Application of the tie-breaking criteria impacted the layoff status of certificated employees hired on August 19, 2002. Of the 11 teachers with the same date of hire who were

laid off because of the reduction in elementary school general education, the District plans to retain Respondent Ediger as a full-time employee and Respondent Pena at .5 FTE. Respondent Ediger had the highest number of tie-breaking points, 38. Respondent Pena, who had 35 points and who was tied for second highest point total with Respondent Curtis, was partially retained by virtue of the lottery tie-breaker. Respondent Van Sloten, who has 26 points, was retained by virtue of her special education credential to teach in the subject matter.

15. Respondent Kerry argues that application of the tie-breaking criteria to her is discriminatory. On each of the 2005-2006, 2007-2008, and 2014-2005 school years, she took approved maternity disability leave. On a fourth school year, 2008-2009, Respondent Kerry worked a job-sharing assignment and did not receive credit for working on a full-time basis. It is unclear of the impact, if any, that re-application of the tie-breaking criteria would have on the order of layoff, as all ten affected individuals are women, and no evidence was received at the hearing about their leave history. However, even if Respondent Kerry were given credit for each of the three years for which her maternity leave precluded her from working more than 75 percent for the school year, it would still not impact her selection for layoff. If she were to receive three points for each of the three years in question, her total points would be 33, which is still below a laid off teacher with a higher tie-breaking point total.

16. The District exempted from layoff, or skipped, certain employees because it concluded that the employees possessed special training, experience, or credentials that others with more seniority did not possess. The District seeks to exempt four groups of employees: (1) certificated personnel who possess administrative credentials, who are currently assigned to administrative positions, and who will be assigned to administrative positions for the 2015-2016 school year; (2) with the exception of SDC Pre-School Mild/Moderate, and an SDC Middle School Mild/Moderate, certificated personnel who possess a credential authorizing service in a special education job description who are presently assigned within the scope of that credential, and who will be assigned within the scope of that credential for the 2015-2016 school year; (3) certificated personnel who have taught AVID/REACH⁶ classes in the District for at least three years out of the last five, who during that time have, on at least three occasions, received AVID summer training and certification, and who will be assigned to teach AVID classes in the 2015-2016 school year; and (4) grades 7-8 certificated personnel who possess authorization to teach Health, and whose combined assignment includes Physical Education and Health, and who will be placed in the same assignment in the 2015-2016 school year. Of the four, Respondents challenged the AVID/REACH and the Health exemptions.

17. a. Started in 2009, the AVID program is designed to provide educational instruction and support to students who are not eligible to participate in programs for the gifted or for the economically disadvantaged. The goal is to prepare the students to ultimately attend

⁶ Advancement Via Individual Determination and Reaching Excellence at College Heights, respectively.

college, and classes are provided at the elementary and at the middle school levels. District certificated staff in the program are required to complete training, typically a summer program and school year in-services, and to obtain AVID certification. Some of the training, which involves coordination planning, takes place with certificated staff at the William S. Hart Union High School District (Hart District), which runs a similar college preparatory program under the name REACH. Hart District is the public high school district with geographic overlap with the District. AVID teachers work to recruit students into the program, and work with Hart District staff for District students to transition into the REACH program once they attend high school in Hart District.

b. The State of California will not fund AVID instruction in the 2015-2016 school year, but the District and Hart District plan to continue funding REACH. The District plans to continue to offer the AVID classes under the REACH name and to continue the coordination with the REACH program at Hart District without State funding, and referred the services as "AVID/REACH" in the skip resolution.

c. The District plans to retain Deborah Rupel (Rupel), who has a seniority date of August 4, 2005, and Melissa Solomon (Solomon), who has a seniority date of August 30, 2005. Rupel holds a multi subject teaching credential with supplemental authorizations in English and in Social Science, and a single subject (English) credential. She currently teaches one period of AVID instruction and four other classes. Solomon holds a single subject (Social Science) credential. Solomon teaches two periods of AVID and three periods of history. Rupel and Solomon have received AVID training and hold AVID certification. They both worked with students in the program and with staff at the Hart District.

d. No Respondent testified that he or she has received training to teach in the AVID program, that he or she possesses AVID certification, or that he or she has taught an AVID class.

18. a. In years past, District students in the seventh and eighth grades received health education as part of their general science curriculum. At an undetermined time in the past, the District concluded that Health was important enough to warrant its own class, and a Health class is offered each term. The District has been utilizing physical education teachers to teach the Health class, as they are typically the employees who hold certificates in the area or who have taken Health coursework in their own school training.

b. The District seeks to skip Wendy Gingrich (Gingrich), who has a seniority date of August 9, 2005. Gingrich holds a single subject (Physical Education) credential with a supplemental authorization in Introduction to Health Sciences. Gingrich is currently teaching the Health class and four periods of Physical Education, and the District plans to make a similar assignment for the 2015-2016 school year.

19. Respondent Robinson has a seniority date of August 4, 2005. She teaches Physical Education at the elementary school level. She has also taken sufficient classes in Health to be able to teach the subject matter to middle school students if authorized by the Governing Board, and is in the process of acquiring a supplemental authorization. Respondent Robinson testified that she can teach the Health and middle school Physical Education classes that the more junior Gingrich was retained to teach.

20. As established by the testimony of Superintendent Gibson, it would be difficult for the District to hire or retain staff to teach a single period of Health or one to three periods of REACH. In addition to the diminished workload, the rotating nature of periods, where, for instance, Health classes are taught on different days each week, would make it nearly impossible to find a part-time employee to teach the subjects. Each of the current individuals teaching Health and Reach has other classes to make-up their full-time positions.

21. The District plans to lay off both Physical Education certificated employees in grades Transitional Kindergarten to Sixth, Respondents Robinson and Zieper. Superintendent Gibson testified that the District plans to meet State mandates using qualified personnel. While definite plans have not been made, the District plans to provide mandated physical education instruction, 400 minutes per ten days of instruction, through elementary school teachers and support staff.

22. Respondent Boyd has a seniority date of August 19, 2002, and holds a multi subject teaching credential and a reading specialist credential. Her assignment since August 9, 2002 has been as a Teacher on Special Assignment (TOSA) at Live Oak Elementary School. Her duties primarily include providing remedial reading instruction to elementary school students.

23. a. Respondent Oxhorn-Gilpin started working for the District on October 17, 2005. Her first assignment was that of a long-term substitute in the classroom of her sister, who had taken maternity leave. She signed three employment contracts during the 2005-2006 school year, on October 24, 2005, March 27, 2006, and June 2, 2006, each extending the end of her assignment. She ultimately worked through June 9, 2006, the end of the school year. All contracts designated her as a full-time employee, serving as long-term substitute pursuant to section 44917. Respondent Oxhorn-Gilpin worked the entire 2006-2007 school year, and signed a contract that designated her position as temporary pursuant to section 44920 (employment for employee on a long-term leave of absence). She signed a similar temporary contract for the 2007-2008 school year, with a start date of August 10, 2007. Her next employment contract, signed on May 25, 2008, for the 2008-2009 school year, listed her status as a full time probationary employee in her second year. Respondent Oxhorn-Gilpin was retained for the 2009-2010 school year and attained permanent status. She holds a multiple subject credential and taught in First Grade for during the 2014-2015 school year.

b. The District concluded that Respondent Oxhorn-Gilpin had first rendered paid service in a probationary capacity on August 10, 2007, and assigned her that seniority date. Respondent Oxhorn-Gilpin argues that her seniority date is October 17, 2005. However, it is unnecessary to determine if she is correct, which the District disputes, because even if her seniority date is October 17, 2005, it will not impact her order of layoff because several respondents with multiple subject credentials were hired on August 19, 2002.

24. The District has taken into account all positively assured attrition in determining the need to layoff certificated employees.

25. 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 9.

2. Effective January 1, 2014, section 44949 was amended to change the name of certain jurisdictional documents. While hearings must still be conducted pursuant to the Administrative Procedure Act's formal hearing procedures (Government Code section 11500 et seq.), which refer to the filing of an "accusation," a responsive "notice of defense," and to a "statement to respondent" as pleadings, districts acting pursuant to sections 44949 and 44955 are required to file a "district statement of reduction in force" as the operative pleading and teachers are required to file a responsive "notice of participation." References to the "accusation" and "notice of defense" in the prior version of section 44949, which served the same function as the statement of reduction in force and notice of defense, were removed and replaced by the new terms.

As set forth in factual finding numbers 7 and 8, the District used the pre-2014 names for operative pleadings. However, this mislabeling did not deprive any Respondent of the opportunity to participate in the instant proceeding or otherwise prejudice his/her rights. The District's error is, at most, a nonsubstantive procedural error which does not constitute cause for dismissing the charges. (§ 44949, subd. (c)(3).)

3. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 10.

4. 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 24.

5. 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).)

6. Respondents question some of the assignments and reassignments made by the District. For instance, Respondents point out that the District reassigned Claudia Ahlman (Ahlman), one of the most senior teachers in an area impacted by the reductions, Physical Education, to a counselor position instead of having her bump into the position of a more junior Physical Education teacher, who would then be laid off. Ahlman's reassignment prevented Respondent Lopata, who is junior to Ahlman, from bumping into the counselor position. However, the fact that the District could have made assignments and reassignments in a different manner does not render the assignments that were made arbitrary or capricious. Respondents did not establish that any of the assignments or reassignments made by the District, which are required by section 44955, subdivision (c), constituted an abuse of discretion or that they otherwise violated the requirements of sections 44949 or 44955.

7. Respondents argue that Respondent Boyd should not be laid off because her TOSA position was not reduced in the layoff resolution. Respondents are correct in that the Governing Board did not reduce TOSA services. However, the Governing Board did reduce the general education services in Transitional Kindergarten to Sixth Grade that are provided by teachers with multiple subject credentials such as Respondent Boyd. Respondent Boyd taught in a general elementary education classroom before and could do so again in the future despite her assignment for the 2014-2015 school year. The District may therefore consider her for layoff along with other certificated employees on the basis of their seniority and qualifications.

8. Districts are permitted to disregard seniority as set forth in section 44955, subdivision (d): "Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons: [¶] (1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course of study or to provide those services, which others with more seniority do not possess. . . ."

9. The District has demonstrated a specific need for personnel to continue to provide AVID instruction, now under the name of AVID/REACH, or simply REACH. It has identified students who can benefit from the college preparatory program, namely, those not reached by programs aimed at the top students or at those who are economically disadvantaged, and it plans to continue to provide the same type of program and supports.

Respondents argue that no specialized training or experience is required to provide instruction and that the AVID program, the program in which the individuals proposed to be skipped were trained, no longer exists. However, the testimony of Superintendent Gibson is sufficient to establish that the same program will be offered next year, under its new name, AVID/REACH or REACH. Despite its new name and funding sources, the program will continue to employ AVID methodology and techniques and target the same student population.

The District has established that it requires certificated employees with special training and experience to provide AVID/REACH instruction. As set forth in factual finding number 16, Rupel and Solomon possess the requisite special training, experience, and certification in the AVID program necessary to teach the AVID/REACH program, and are scheduled to teach the classes. Rupel and Solomon have received training in the methodology to be employed, have received certification in the program, and have experience teaching AVID. In addition, no Respondent with greater seniority testified that he or she possessed any training or experience in the AVID program.

10. The District also demonstrated its specific need to teach Health as a separate class, and established that Gingrich possesses special training and experience to teach it. Unlike Respondent Robinson, Gingrich has a health credential and has experience teaching the course.

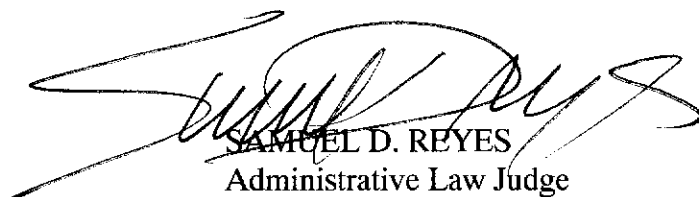
11. Respondents further argue that even if the District is allowed to retain Gingrich, Rupel and Solomon to teach the specific Health and REACH assignments, Respondents should be able to bump the junior teachers from their other assignments. However, the District has established, as set forth in factual finding number 19, that these positions should be treated as integrated positions that the District is not be required to split. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334; *Murray v. Sonoma County Office of Education* (1989) 208 Cal.App.3d 456; *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016.)

12. Cause exists to terminate the services of Respondents Adams, Aguilar, Bjerke, Borg-Otting, Boyd, Davis, Fitzpatrick, Gilpin, Gimenez, Gordon, Lopata, Michels, Oxhorn-Gilpin, Pena (.5 FTE), Pomilia, Robinson, Smith, Summers, Tapia, and Zippay, by reason of factual finding numbers 1 through 25, and legal conclusion numbers 1 through 11.

ORDER

1. The Accusation is sustained.
2. District may notify Respondents Adams, Aguilar, Bjerke, Borg-Otting, Boyd, Davis, Fitzpatrick, Gilpin, Gimenez, Gordon, Lopata, Michels, Oxhorn-Gilpin, Pena (.5 FTE), Pomilia, Robinson, Smith, Summers, Tapia, and Zippay that their services will not be required during the 2015-2016 school year due to the reduction of particular kinds of services.

DATED: 5/7/15


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings