

**BEFORE THE  
GOVERNING BOARD OF THE  
OXNARD SCHOOL DISTRICT  
STATE OF CALIFORNIA**

**In the Matter of the Reduction in Force of:**

**CERTIFICATED EMPLOYEES OF THE OXNARD SCHOOL  
DISTRICT,**

**Respondents**

**OAH No. 2020040364**

**PROPOSED DECISION**

Irina Tentser, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on May 21, 2020, in Los Angeles, California.

Erika D. Anderson, Attorney at Law, appeared and represented complainant Karling Aguilera-Fort, Superintendent for the Oxnard School District (District).

Amy Jo Cannon and Alejandro Gutierrez, Attorneys at Law, appeared and represented the following respondents, Donna Bragg; Davina Cardone; Diana DeMars; Justin Donovan; Rochelle Ford; Tricia Henry; Brett Lane; Joan Louth; Laura Mason; Brennan Pope; Kimberly Sharp; Patty Peterson; Andrew Browning; Maribel White; Nicole Espinoza; Lauren Dann; Claudia Medrano; Debra Milne; Gabriela Ambriz; Deanna Romero; Arlene Jimenez; James Sisco; Breanna Varela; Christian Velarde; Sandra Alonso; Diana Donovan; Cassandra Ferris; Eder Fuentes; Susan Green; Sandra

Hammond; Maleah Lopez; Mary Lang; Belinda Garcia; Mary Garcia; Richard Raddas; Wendy Sanchez; and Yocelin Valencia (Represented Respondents). All Represented Respondents were present at the hearing, except Sandra Alonso, Gabriela Ambriz, Donna Bragg, Andrew Browning, Alyxandra Dudley, Cassandra Ferris, Mary Garcia, Susan Green, Laura Mason, Deborah Milne, Brennan Pope, Deanna Romero, Wendy Sanchez, Yocelin Valencia, and Christina Velarde.

Respondent Carmen Serrano (Respondent Serrano) was not represented and did not appear at hearing.

The parties presented evidence and argument at the hearing. At the conclusion of the hearing, the administrative law judge closed the record and took the matter under submission.

## **FACTUAL FINDINGS**

### **Background and Jurisdictional Matters**

1. Respondents are all certificated employees of the District.
2. On March 9, 2020, Dr. Karling Aguilera-Fort, Superintendent with the District, mailed to all respondents by certified United States mail, with return receipt requested, a written notice that he would be recommending to the Board that notice be given to each respondent that his or her services may not be required in the 2020-2021 school year, and that each respondent had the right to request a hearing pursuant to Education Code sections 44949 and 44955. (Ex. 3.)
3. On April 8, 2020, complainant filed the District Statement of Reduction in Force in his official capacity as the Superintendent for the District.

4. By April 14, 2020,<sup>1</sup> all Represented Respondents except Yocelin Valencia acknowledged service of the District Statement of Reduction in Force and delivered to the District a Notice of Participation requesting a hearing. On April 23, 2020, an Amended Notice of Participation was delivered to the District which added Yocelin Valencia to the list of Represented Respondents who acknowledged service of the District Statement of Reduction in Force and requested a hearing.

5. On a date not established by the evidence, Respondent Serrano requesting a hearing and filed a Notice of Participation.

6. On April 20, 2020, the District filed and served on each respondent a Notice of Hearing.

## **Reduction Resolution**

7. On March 4, 2020, the Governing Board (Board) of the District adopted Resolution No. 19-21, Reduction or Discontinuation of Particular Kinds of Service (Reduction Resolution). The purpose of the Reduction Resolution was to reduce or discontinue particular kinds of certificated services no later than the beginning of the 2020-2021 school year. Specifically, the resolution required the reduction of 68 Full Time Equivalent (FTE) positions by reducing various types of services. The FTE positions that the Board determined to reduce or discontinue are described as follows:

<b>Kind of Service</b>	<b>FTE positions</b>
K-6 Multiple Subject Teachers	43.0

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<sup>1</sup> The District did not object on the grounds of untimeliness to the Notice of Participation.

Single Subject – Physical Education	5.0
Single Subject – Social Science Teacher	2.0
Single Subject – Science Teacher	2.0
Single Subject – Music Teacher	3.0
Teacher on Special Assignment – Dual Language Immersion	1.0
Teacher on Special Assignment – Newcomer	1.0
School Counselor	8.0
Assistant Principals	3.0
<b>TOTAL FTE POSITIONS</b>	<b>68.0</b>

8. The services which the District seeks to reduce or discontinue are particular kinds of services that may be reduced or discontinued under Education Code section 44955. Except as otherwise provided by law, the services of a permanent employee may not be terminated under the provisions of Education Code section 44955 while any probationary employee, or any other employee with less seniority, is retained to render a service which the permanent employee is certificated and competent to render. (Legal Conclusion 6.)

9. Represented Respondents' argument that Education Code section 44955.5, rather than Education Code section 44955, is applicable to the employee reductions; that the District's RIF notices were premature because they were based on potential budgetary shortfalls for the 2020-2021 school year; and that the Board did

not properly account for the District's prospective pandemic employee needs, are unconvincing. (Ex. B.)

10. On the contrary, the decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather a proper exercise of the District's discretion, governed by Education Code section 44955. At the time of the Reduction Resolution, the District faced ongoing declining enrollment and a budget shortfall of 13 million dollars. Accordingly, the reduction and discontinuation of services are 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. The Reduction Resolution was furnished to each respondent with the notification mailed on March 9, 2020, as set forth in Factual Finding 2. All jurisdictional requirements have been met.

### **The Tiebreaking, Skipping, and Bumping Criteria**

12. As part of its Reduction Resolution, the Board determined that the District has a specific need for personnel to teach specific courses of study or provide pupil personnel or health services, and to retain certificated employees possessing the special training and experience needed to teach such courses or provide such services that other employees with greater seniority do not possess (Skipping Criteria). The Board determined to exclude from the Reduction Resolution any permanent or probationary certificated employee who satisfied the Skipping Criteria. Specifically, the Board determined to retain the employment of any certificated employee in the particular kind of services identified in the Reduction Resolution, regardless of seniority, to the extent the certificated employee possessed either of the following

credentials, is presently assigned within the scope of that credential, and will be assigned within the scope of that credential for the 2020-2021 school year: (1) a credential authorizing the teaching of special education classes; or (2) a Bilingual Cross-Cultural Language and Academic Development (BCLAD) certificate.

13. As part of its Reduction Resolution, the Board determined that the District shall retain employees who are certificated and competent to render services over more senior employees who are not certificated or competent to render the same services. (Skipping Rights.) For these purposes, the District defined "competent" as follows: "(1) The employee has actually rendered instruction or service in the subject matter area in which s/he claims to be entitled to render instruction or service in or after the 2009-2010 school year, whether for the District or another school district; and (2) the employee possesses a BCLAD, CLAD, SB 1969, or other certificate authorizing him/her to instruct English Learner students." (Ex. 2, p. 7.)

14. As part of its Reduction Resolution, the Board identified criteria to be applied to resolve ties in seniority between certificated employees (Tiebreaking Criteria). Employees sharing the same first date of paid probationary service to the District were awarded points based on the following Tiebreaking Criteria:

1. Possession of credential(s) authorizing service for the District on March 15, 2020
2. Subject matter authorization held on March 15, 2020, including supplemental authorizations, on credential(s) authorizing service for the District
3. Possession of Bilingual Cross-Cultural Language and Development certificate or its equivalent on March 15, 2020

4. Column placement on salary schedule as of March 15, 2020
5. Service as BTSA Mentor teacher within 2019-2020 school year and/or two immediately preceding school years
6. Service as Department Chairperson or Instructional Team Leader
7. Possession of a License through the Board of Behavioral Sciences (Educational Psychologist)

(Ex. 2, p. 12.)

## **Implementation of Reduction Resolution**

15. Dr. Ed Bond, Director of Certificated Human Resources for the District, testified about how the District carried out the Reduction Resolution.

16. The District created a seniority list, taking into account each certificated employee's first date of paid service, job class description, school assignment, and permanent status. (Ex. 9.) The seniority list ranked District employees, including respondents, in order of seniority. After applying the Tiebreaking Criteria to the seniority list, Dr. Bond created a chart of the employees whose services would be terminated pursuant to the Reduction Resolution. (Ex. 10.)

17. The lay-off notices of Amelia Taylor-Gonzalez, Tracy Gordon, and Yolanda Pandolfi were rescinded using the BCLAD Skipping Criteria. (Ex. 10.) Natalie Arceo's lay-off notice was rescinded based on her reassignment to Special Education. Robert Paul Brown's lay-off notice was rescinded based on his reassignment to Science. Rusty Lanning's and Thomas Gonzalez's lay-off notices were rescinded after applying Tiebreaking Criteria. The lay-off notices of Patrick Price, Yvonne Garcia, Jovan

Mosby, Cecilia Arredondo, and Maureen Aryeetey were rescinded. None of the foregoing employees are respondents in this case.

18. No certificated employee junior to any respondent was retained by the District to render a service for which a respondent was certificated and qualified to render. No respondent claimed bumping rights.

### **Tiebreaking Criteria Based on Service as Department Chairperson or Instructional Team Leader**

19. Represented Respondents challenged the District's seniority Tiebreaking Criteria awarding one point based on a teachers' service as department chairperson or instructional team leader as being capricious and arbitrary. They argued that the means of choosing teachers to serve in these capacities was inconsistent from site to site, with some positions being offered to volunteers while others were not. (Ex. B.) District argued, in turn, that service as a department chairperson or instructional team leader is relevant to the continuing needs of the District and its students, and in breaking a tie among employees with the same first date of probationary service, it is appropriate to award higher seniority to employees who have served in such leadership positions. During his testimony Dr. Bond admitted that while he collected information from sites about which employees subject to lay-off served in the tiebreaking positions for purposes of awarding a point potentially leading to higher seniority, he did not know how various school sites chose their department chairpersons or instructional team leader.

20. Here, all the respondents who challenged the seniority Tiebreaking Criteria are subject to layoff even after the application of those criteria, regardless of whether a respondent was awarded a point for serving as a department chairperson or



instructional team leader. Accordingly, this decision need not and does not address whether awarding a tiebreaking point to a teacher who served as a department chairperson or instructional team leader was arbitrary or capricious, because it is not relevant in this matter.

## **LEGAL CONCLUSIONS**

### **Statutory Framework**

1. The District's teacher layoff process, also referred to as a reduction in force, is governed by Education Code sections 44949 and 44955. Education Code section 44955.5, based on an anticipated budget shortfall, is inapplicable in this matter, as set forth in Factual Findings 9 and 10.

2. Education Code section 44949, subdivision (a), states in pertinent part: "No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Education Code section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor."

3. Notice to the employee is sufficient "when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee." (Ed. Code, § 44949, subd. (d).)

4. A respondent must file his or her notice of participation, if any, within five days after service of the District's Statement of Reduction in Force. (Ed. Code § 44949, subd. (d).)

5. The parties complied with the notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955, or compliance was waived, as set forth in Factual Findings 1 through 6, and 9 through 11.

## **Reduction Resolution**

6. A school district cannot terminate the services of a permanent or probationary employee for causes other than those specified in the Education Code. (Ed. Code § 44955, subd. (a).) Education Code section 44955, subdivision (b), authorizes a school district to terminate the services of permanent or probationary teachers under the following circumstances and subject to the following conditions:

Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. 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.

7. A school district may reduce services within the meaning of Education Code 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.)

8. Boards of education hold significant discretion in determining the need to reduce or discontinue particular kinds of services. (*Rutherford v. Board of Trustees, supra*, 64 Cal.App.3d at p. 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 actions 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, 845.) The process of implementing layoffs is very flexible and school districts retain great flexibility in carrying out the process. (*Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838.)

9. In this instance, the Board's decision to reduce services was a proper exercise of the District's discretion. While Represented Respondents argued that the proposed reduction in force was based on anticipated, rather than existing, budget deficits and was premature based on potential future District employee needs related to the pandemic, no convincing evidence was presented to show that the proposed

reductions in services violated any statutory or regulatory requirement governing the District. (Factual Finding 10). The services to be discontinued are particular kinds of services within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and the District has acted reasonably and within the scope of its flexible authority in carrying out the process. The reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

### **Tiebreaking Criteria**

10. Education Code section 44955, subdivision (b), states:

As between employees who first rendered paid service to the district 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 board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, 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 the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give

affected employees any legal right or interest that would not exist without such a requirement.

11. Here, the Board established a point system that gave more seniority to those employees who scored more points on a point system that served the needs of the District and its students. By sending a copy of the Reduction Resolution to each respondent at the time of the notice described in Factual Finding 2, the District properly furnished respondents with 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 the other employees in the group.

12. No evidence was produced to dispute the analysis made by Dr. Bond in applying the Tiebreaking Criteria to the seniority list.

13. Respondents introduced evidence that the Tiebreaking Criteria of awarding a point based on department chairperson or instructional team leader by the District may be arbitrary or capricious and may, therefore, result in errors in seniority dates for Represented Respondents who are challenging that Tiebreaking Criteria. However, adjustment of Represented Respondents seniority based on the elimination of the one point for department chairperson or instructional team leader will not impact whether any of the Represented Respondents are retained for the 2020-2021 school year. (Factual Finding 19 and 20.) Because this adjudication is authorized by sections 44949 and 44955 of the Education Code, the scope of inquiry is limited to *order of termination* of a certificated employee subject to the lay-off notice. Accordingly, because seniority list adjustment of Represented Respondents who challenge the department chairperson or instructional team leader Tiebreaking Criteria will not impact their order of termination, this decision will not address whether the criterion is arbitrary and capricious.

14. Accordingly, the Board complied with Education Code section 44955, subdivision (b), in establishing the Tiebreaking Criteria to distinguish among certificated employees who first rendered paid probationary services on the same date.

## **Skipping Criteria**

15. Education Code Section 44955, subdivision (d), provides additional requirements when a school district proposes to skip teachers in the layoff process. It states in pertinent part:

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 . . . , and that the certificated employee has special training and experience necessary to teach that course or course of study . . . , which others with more seniority do not possess.

16. Junior teachers may be given retention priority over senior teachers if the junior teachers possess the special training and experience to teach a specific necessary course that is not possessed by their more senior colleagues. (Ed. Code, § 44949, subds. (b) and (d)(1); *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399.)

17. The District has demonstrated a specific need to exclude from the layoff process and retain a junior employee to teach a specific course or course of study by

adopting Skipping Criteria for special education training and BCLAD certification. Consequently, the District complied with Education Code section 44955, subdivision (d), in establishing the Skipping Criteria to retain certificated employees possessing the special training and experience needed to teach such courses, or provide such services, that other employees with greater seniority do not possess.

## **Bumping Rights**

18. According to Education Code § 44955, subdivision (b), a school district is prohibited from terminating the services of a permanent employee while retaining any probationary employee, or any other employee with less seniority, to render a service which the permanent employee is "certificated and competent to render." (Legal Conclusion 6.) Hence, if a school district notifies a senior teacher that his or her position is subject to reduction or discontinuance, the senior teacher has the right to transfer to a continuing position which he or she is certificated and competent to fill.

19. The term "certificated" is defined by the provisions of the Education Code pertaining to credentials, but "competent" is not specifically defined. School districts have broad discretion to establish competency standards for purposes of exercising bumping rights, limited by a reasonableness standard. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 564-65.) Competency may be defined in terms of skills and special qualifications for a position. (*Forker v. Board of Trustees* (1994) 160 Cal.App.3d 13.)

20. In this instance, the Board's definition of competence was reasonable and related to the special qualifications of the position. No respondent in this case, however, argued that they had the right to bump a junior employee pursuant to the

Reduction Resolution. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

## **Disposition**

21. Cause exists under Education Code sections 44949 and 44955 for the reduction of the particular kinds of service set forth in the Reduction Resolution, which cause relates solely to the welfare of the District's schools and pupils. (Factual Findings 7-20.) The District may lay off Represented Respondents and Respondent Serrano, in reverse order of seniority, in order to reduce services, based on all the foregoing.

## **ORDER**

1. The District Statement of Reduction in Force is sustained as to respondents Donna Bragg, Davina Cardone, Diana DeMars, Justin Donovan, Rochelle Ford, Tricia Henry, Brett Lane, Joan Louth, Laura Mason, Brennan Pope, Kimberly Sharp, Patty Peterson, Andrew Browning, Maribel White, Nicole Espinoza, Lauren Dann, Claudia Medrano, Debra Milne, Gabriela Ambriz, Deanna Romero, Arlene Jimenez, James Sisco, Breanna Varela, Christian Velarde, Sandra Alonso, Diana Donovan, Cassandra Ferris, Eder Fuentes, Susan Green, Sandra Hammond, Maleah Lopez, Mary Lang, Belinda Garcia, Mary Garcia, Richard Raddas, Wendy Sanchez, Carmen Serrano, and Yocelin Valencia.

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2. Notice shall be given to respondents in reverse order of seniority that their services will not be required for the 2019-2020 school year because of the reduction or discontinuance of particular kinds of services. Where necessary, that notice shall indicate if less than a full time equivalent position is affected.

DATE: May 26, 2020

DocuSigned by:  
*Irina Tentsen*  
IRINA TENTSEN

Administrative Law Judge

Office of Administrative Hearings