

BEFORE THE
BOARD OF EDUCATION OF THE
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of: CERTIFICATED EMPLOYEES OF THE SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT, Respondents.	OAH No. 2012030325
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PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 18, 2012, in Santa Monica.

Atkinson, Andelson, Loya, Rudd & Romo, by Elizabeth Zamora-Mejia, Attorney at Law, represented the Santa Monica-Malibu Unified School District (District).

Trygstad, Schwab & Trygstad, by Lillian Kae, Attorney at Law, represented Katherine Bickert, Catherine Cammarota, Jordan Ervin, Ryan Hoffman, Megan McGoey Merrick, Kristen Mowry, Danielle Murawski, Barbara Ransom, Cerenity Young, and Mallory Marek (collectively, Respondents). All Respondents were present at the hearing except for Ervin, Mowry, Murawski, and Marek.

The District has decided to reduce or discontinue certain services and has given Respondents notice of its intent not to reemploy them for the 2012-2013 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2012-2013 school year.

Oral, documentary, and stipulated evidence was received at the hearing. The record was closed and the matter was submitted for decision on April 18, 2012.

FACTUAL FINDINGS

1. Sandra Lyon, the District's Superintendent, and Debra Moore Washington, Assistant Superintendent, Human Resources, took all relevant actions in their official capacity.

2. Respondents are certificated employees of the District.

3. On March 1, 2012, the Board of Education (Board) of the District adopted Resolution No. 11-20 (Resolution 11-20), which proposed a layoff of 10.0 full-time equivalent (FTE) certificated employees. Specifically, the Resolution provided for the reduction or discontinuance of the following particular kinds of services for the 2012-2013 school year:

<u>Service</u>	<u>FTE</u>
K-5 Elementary Teaching Services	3.0
Secondary Mathematics Teaching Services	1.0
Secondary Social Studies Teaching Services	1.0
Secondary English Teaching Services	1.0
Secondary Foreign Language Teaching Services (Chinese/Latin/Spanish)	1.0
Elementary Special Education Teaching Services	2.0
Secondary Special Education Teaching Services	<u>1.0</u>
Total Certificated Positions	10.0

4. On March 8 and 13, 2012, Superintendent Lyon notified the Board that she recommended that notice be provided to 13 certificated employees, including Respondents, that their services will not be required for the ensuing 2012-2013 school year due to the reduction of particular kinds of services.

5. On or before March 15, 2011, the District served 13 certificated employees, including Respondents, with written notice that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would not be required for the 2012-2013 school year. Each notice set forth the reasons for the recommendation and noted that the Board determined to reduce particular kinds of certificated services. Each notice also notified the employee of his or her right to request a hearing to determine if there is cause for not reemploying him or her for the ensuing school year, and that a written request for a hearing was due on or before March 22, 2012.

6. Three certificated employees did not request a hearing by March 22, 2012, and thereby waived their right to a hearing and cannot contest the recommendation of their non-reemployment by the District. (Ed. Code, § 44949, subd. (b).) The three certificated employees are: Ashley Alexoupolus, Mary Scifres, and Katheryne Soller.

7. Ten certificated employees, the Respondents herein, submitted timely written requests for a hearing to determine if there is cause for not reemploying them for the 2012-2013 school year. The Superintendent made and filed Accusations against each of the Respondents. The District served Respondents with an Accusation along with required accompanying documents and a blank Notice of Defense form. The accompanying documents notified each Respondent that a signed Notice of Defense had to be delivered to the Board on or before March 30, 2012, and the failure to do so would constitute a waiver of his or her right to a hearing.

8. The District received timely Notices of Defense from Respondents Katherine Bickert, Jordan Ervin, Ryan Hoffman, Megan McGoey Merrick, and Cerenity Young.

9. (A) Government Code section 11506, subdivision (c), provides, in part: "The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the [Administrative Law Judge] in [his/her] discretion may nevertheless grant a hearing.

(B) Respondents Kristen Mowry and Mallory Marek failed to file a Notice of Defense. Consequently, Mowry and Marek waived their right to a hearing on the merits of the Accusation. Mowry and Marek were not present at the hearing.

(C) Respondents Catherine Cammarota, Danielle Murawski, and Barbara Ransom, each submitted untimely Notices of Defense (i.e., after the March 30, 2012, deadline). The District objected to their participation in the hearing, based on Government Code section 11506. As there was no showing of prejudice by the District, Respondents Cammarota, Murawski, and Ransom are not deemed to have waived their right to a hearing on the merits of the Accusation. Murawski was not present at the hearing. Cammarota and Ransom were present but chose not to testify.

10. All prehearing jurisdictional requirements have been met.

11. The services set forth in Factual Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.

12. The Board's decision to reduce the services set forth in Factual Finding 3 was due to its on-going structural deficit of \$4 million and an additional \$4 million deficit due to an anticipated decline in state funding. This layoff is one of the District's measures for addressing a portion of the \$4 million structural deficit. The Board's decision was not arbitrary or capricious, but constituted a proper exercise of its discretion.

13. The reduction of services set forth in Factual Finding 3 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.

14. The Board properly considered all known attrition in determining the actual number of necessary layoff notices to be delivered to its employees.

15. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), credential information, and current assignments. The District used the seniority list to identify the least senior certificated employees currently assigned in the particular kinds of services that it was seeking to reduce in this layoff proceeding.

16. The District determined to "skip" or exempt from layoff the certificated employees who have special training and experience to provide instruction to English Language Learners in bilingual classes and Spanish-English immersion classes. Specifically, in the area of K-12 instruction, those employees who possess a BCLAD certificate and are currently assigned to teach Bilingual classes or Spanish-English immersion classes under the scope of a BCLAD certificate. In addition, the District determined to "skip" the certificated employees with special training and experience to provide instruction to special education students with moderate/severe designations. Specifically, in the area of K-12 instruction, those employees who possess a moderate/severe credential. Under Education Code section 44955, subdivision (d)(1), junior teachers may be given retention priority over senior teachers if the junior teachers possess special training and experience which their more senior counterparts lack. (*Santa Clara Federation of Teachers v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.) The District has a specific need for these employees to provide instruction to English Language Learners and moderate/severe special education students.

17. The District applied tie-breaker criteria established in Resolution 11-21, which was adopted by the Board on March 1, 2012, to determine the relative seniority of certificated employees who first rendered paid service on the same date. Resolution 11-21 provided that the order of termination shall be based on the needs of the District and its students in accordance with the criteria stated therein. Each criterion is applied, in chronological order, until the tie is broken.

18. 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.) Resolution 11-20 sets forth six criteria that must be met in order for a more senior employee to be deemed "competent for reassignment into a position currently held by a more junior employee."

19. Ryan Hoffman is number 578 on the seniority list, which shows him possessing an "EL" authorization. The District has received information that his CLAD authorization is pending. The District stipulated that it will update Hoffman's information on the seniority list regarding the CLAD upon its receipt of information from the CTC confirming that Hoffman, in fact, possesses a CLAD. The pending CLAD does not change Hoffman's status as an employee identified for layoff.

20. Barbara Ransom is number 529 on the seniority list. Her current assignment is 0.6 FTE in English and 0.4 FTE in Math. The District stipulated that Ransom is subject to lay off only for her 0.6 FTE (English) assignment, and she will retain her 0.4 FTE (Math) assignment for the 2012-2013 school year. The District agreed that Ransom will be given a letter confirming the retention of her 0.4 FTE (Math) assignment.

21. No claims were raised concerning the District's skipping of employees providing bilingual or special education instruction or its tie-breaker and bumping analysis. The District's evidence established that it has followed the procedural rules and properly identified the certificated employees subject to layoff.

22. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists under Education Code sections 44949 and 44955, by reason of Factual Findings 1 through 10.

2. The services identified in Factual Finding 3 are particular kinds of services that may be reduced or discontinued under Education Code section 44955, by reason of Factual Findings 3 and 11.

3. Cause exists under Education Code sections 44949 and 44955 for the reduction of the particular kinds of services set forth in Factual Finding 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of Factual Findings 1 through 22.

4. Cause exists to terminate the services of Respondents Katherine Bickert, Catherine Cammarota, Jordan Ervin, Ryan Hoffman, Megan McGoey Merrick, Kristen Mowry, Danielle Murawski, Cerenity Young, and Mallory Marek, and Respondent Barbara Ransom only for her 0.6 FTE position, by reason of Factual Findings 1 through 22.

ORDER

The Accusation is sustained and the District may notify Respondents Katherine Bickert, Catherine Cammarota, Jordan Ervin, Ryan Hoffman, Megan McGoey Merrick, Kristen Mowry, Danielle Murawski, Cerenity Young, and Mallory Marek, and Respondent Barbara Ransom only as to her 0.6 FTE position, that their services will not be needed for the 2012-2013 school year due to the reduction of particular kinds of services.

Dated: April ___, 2012

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings