

**BEFORE THE
BOARD OF TRUSTEES OF THE
RAISIN CITY ELEMENTARY SCHOOL DISTRICT**

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

SANDRA ORTIZ and MATILDE SANCHEZ, Respondents

OAH No. 2023030588

PROPOSED DECISION

Sean Gavin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on April 19, 2023, from Caruthers, California.

Chris Lozano, Legal Counsel for the Fresno County Superintendent of Schools, represented the Raisin City Elementary School District (District).

Ernest H. Tuttle III, Attorney at Law, represented respondents Sandra Ortiz and Matilde Sanchez.

At the start of the hearing, counsel notified the ALJ that the parties had resolved Ms. Sanchez's case and that the District would rescind her layoff notice. Consequently, the hearing proceeded only as to Ms. Ortiz (respondent).

Evidence was received, the record closed, and the matter was submitted for decision on April 19, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. Since July 1, 2021, Orin Hirschorn has been the District's acting Superintendent pursuant to the District's administrative services contract with the Caruthers Unified School District. Superintendent Hirschorn's actions, and those of the District's staff and Board of Trustees (Board), were taken solely in their official capacities.

2. On February 14, 2023, Superintendent Hirschorn recommended to the Board a reduction and/or discontinuation of particular kinds of services (PKS) and the termination of services of a corresponding number of certificated employees. The same day, the Board adopted Resolution No. 2023-138 (Resolution), stating, in relevant part:

[I]t is in the District's best interests that, as of the end of the 2022-2023 school year, certain particular kinds of services now being provided be discontinued or reduced as follows:

1. Eliminate One (1) Full-Time Equivalent Reading Intervention Specialist Position

2. Eliminate One (1) Full-Time Equivalent Single Subject ELA Teaching Position

3. The Resolution provided the method to determine which teachers to lay off and authorized Superintendent Hirschorn to initiate layoff procedures. The Resolution directed Superintendent Hirschorn, in determining the order of layoff, "to

avoid any reassignments or bumping that will result in 'out-of-field' or 'ineffective' teaching assignments as defined by the California Every Student Succeeds Act."

4. Respondent is a certificated employee of the District. On February 23, 2023, Superintendent Hirschhorn served respondent with a written "Notice of Reduction in Force (Layoff)" (layoff notice), which included his recommendation to the Board that her services would not be required for the 2023-2024 school year. Respondent timely filed a Notice of Participation in Reduction in Force Hearing. On March 23, 2023, Superintendent Hirschhorn served respondent with a Statement of Reduction in Force and a Notice of Hearing for April 19, 2023, at 9:00 a.m. Jurisdiction for the subject proceedings exists pursuant to Education Code sections 44949 and 44955.

Cause for Reduction or Discontinuation of Services

5. Superintendent Hirschhorn testified at hearing about the reason for the District's layoffs. The District maintains classes from kindergarten through eighth grade. The kindergarten through fifth-grade classes follow the multiple subject model, in which the students stay in one classroom and one teacher instructs them in multiple subjects. The sixth- through eighth-grade classes follow the single subject model, in which students move between different classrooms and teachers instruct one subject in each class.

6. The single subject model relies on teachers with single subject credentials. The District is rural. Recruiting and retaining enough qualified single subject credentialed teachers is difficult. As a result, Superintendent Hirschhorn recommended to the Board that for the 2023-2024 school year, the District transition to the multiple subject classroom model for grades six through eight. This transition

requires every teacher to maintain a multiple subject credential. Respondent received a layoff notice because she maintains a single subject credential for English.

Respondent's Testimony

7. Respondent is a Reading Intervention Specialist for the District. She is passionate about helping students improve their reading and writing skills and has devoted her career to that purpose. She serves 70 to 80 students in the District, many of whom read at two or three grade levels below expectations. A majority of her students are English language learners and come from non-English monolingual households. Respondent comes from a similar background and feels uniquely suited to help her students.

8. Given the students' need for ongoing help in reading and writing, respondent does not understand or agree with the District's choice to eliminate her position. She does not believe ending the reading program will benefit students. The District intends to replace the reading program partially with volunteers from AmeriCorps, but respondent believes those volunteers will be underqualified to help the students adequately.

Analysis

9. School districts are authorized to lay off certificated employees at the close of the school year "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 [this] condition[] to decrease the number of permanent employees in the district." (Ed. Code § 44955, subd. (b).) At hearing, respondent argued her layoff will negatively affect the students. However, the wisdom of the District's decision to

transition to a multiple subject model for sixth through eighth grade is not a proper basis upon which to challenge respondent's layoff. Furthermore, respondent argued that the District's plan to replace her services is inadequate. This argument is rejected. "Even though a service must continue to be performed in a school district, the particular kind of service of the employee may be eliminated." (*Rutherford v. Bd. of Trustees* (1976) 64 Cal.App.3d 167, 177 (citing *Davis v. Berkeley School Dist.* (1934) 2 Cal.2d 770).)

10. The District's decision to adopt a multiple subject model for the 2023-2024 school year provides cause for it to reduce or discontinue PKS. The layoff notice issued to respondent was necessary based on the District's determination to reduce or discontinue PKS and employ only teachers with multiple subject credentials. Both the reduction and discontinuation of PKS as well as the resulting layoff notice to respondent are related to the welfare of the District's schools and pupils. On that basis, the District appropriately issued the layoff notice to respondent. Any other assertions put forth by respondent at hearing and not addressed above are found to be without merit and rejected.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. "A board's decision as to reduction or discontinuation of a particular kind of service is not tied in with any statistical computation, such as reduction in the number of students. The number of terminations made necessary by PKS reductions depends totally upon the district's decision as to how many services to reduce." (*San*

Jose Teachers Assn. v. Allen (1983) 144 Cal.App.3d 627, 635.) A school district's decision to reduce a PKS must not be fraudulent, arbitrary, or capricious. (*Id.* at p. 637.) The services identified in the Resolution are PKS that can be reduced or discontinued under Education Code section 44955, and there was no evidence that the District's decision was fraudulent, arbitrary, or capricious.

3. The District is authorized to 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. Bd. of Trustees, supra*, 64 Cal.App.3d at pp. 178-179.)

4. Cause exists for the reduction and/or discontinuation of the PKS and for the reduction and/or discontinuation of respondent's Reading Intervention Specialist position for the 2023-2024 school year pursuant to Education Code sections 44949 and 44955. Cause for the reduction and/or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. Respondent's arguments have been considered and rejected. As a result, cause exists to give respondent notice that her services will not be required for the 2023-2024 school year.

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RECOMMENDATION

The Statement of Reduction in Force is affirmed. The District may notify respondent that her services will not be needed during the 2023-2024 school year due to reduction or discontinuation of particular kinds of services.

DATE: May 3, 2023


Sean Gavin (May 3, 2023 13:11 PDT)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings