

BEFORE THE GOVERNING BOARD OF THE
ACTON AGUA DULCE UNIFIED SCHOOL DISTRICT

In the Matter of the District's Reduction in
force of:

OAH No. 2014030849

Marilynn Alford; Taiz Carnewal; Paul
Chhuo; Jacob Gama; Shelley Kinsey; Kelly
Kubasak; Amanda Majewski; Sara
Meissner; Kristyn Phillips; Patricia Raposo-
Reyes; Bonnie Russon; Nicholas Steed;
Kelly Sutliff; Ryan Thurlow; Daniel
Tirozzi; and Melissa Trusel,

Respondents.

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, State of California, heard this matter on April 15, 2014, at the Acton Agua Dulce Unified School District Offices in Acton, California.

Kerrie Taylor with Fagen, Friedman & Fulfrost, LLP, represented the Acton Agua Dulce Unified School District (District). Amy Moolin Cu with Schwartz, Steinsapir, Dohrmann & Sommers, LLP, represented all Respondents except Shelley Kinsey, Sara Meissner, and Nicholas Steed who did not appear at the hearing.¹

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on April 15, 2014.

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¹ Testimony at the hearing established that Respondent Sara Meissner retired from the District, effective March 31, 2014.

FACTUAL FINDINGS

Jurisdiction

1. Respondents are certificated employees of the District.
2. On March 13, 2014, the Governing Board (Board) of the District adopted Resolution Number 13-14.48 (Resolution) to reduce and discontinue the following particular kinds of services provided by the District no later than the beginning of the 2014-2015 school year:

<u>Services Being Reduced or Eliminated</u>	<u>Number of Full-Time Equivalent (FTE) Positions</u>
Elementary Classroom Teacher	7.0 FTE
Secondary Classroom Teacher – English	2.0 FTE
Secondary Classroom Teacher – Art	1.0 FTE
Secondary Classroom Teacher – P.E.	1.6 FTE
Secondary Classroom Teacher – Spanish	1.0 FTE
Special Education Teacher	3.0 FTE
Total FTE Reduction:	15.6 FTE

3. The Board further determined that the reduction in particular kinds of services necessitated the employment termination of certificated employees by a corresponding number of FTE positions. The Board directed the Superintendent to notify the appropriate employees that their services would not be required for the 2014-2015 school year.
4. On or before March 15, 2014, the District served each Respondent with a Notice of Recommendation that Services Will Be Terminated (preliminary layoff notice), informing him/her that his/her services would be terminated at the close of the 2013-2014 school year.
5. Respondents timely submitted requests for hearing.
6. On March 27, 2014, Meghan Freeman, the District's Director of Student Services, filed the District's Statement of Reduction in Force while acting in her official capacity.
7. On March 27, 2014, the District timely filed and served on each Respondent a Statement of Reduction in Force, Statement to Respondent, blank Notice of Participation form, and copies of pertinent provisions of the Government and Education Codes. On that date, the District also served a Notice of Hearing on Respondents.

8. Respondents timely filed their Notice of Participation.

Propriety of Reduction of Particular Kinds of Services

9. The services identified in the Resolution and set forth in Factual Finding 2 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. (See also Legal Conclusion 2.)

10. The decision to reduce the particular kinds of services was based in part on a fiscal solvency problem arising from the District's inability to maintain the required amount in reserve. The Board has determined to reduce its budget next year, in part by reducing particular kinds of services.

11. Prior to the adoption of the Resolution, the District considered all known attrition in determining the number of layoff notices to be served on its employees.²

12(a). The District determined that, even with the proposed reductions, it will be able to meet the minimum staffing required by law. (See Factual Findings 22, 23 and 24, below, specifically addressing English, Spanish and Physical Education services.)

12(b). The reduction or elimination of the FTE positions will not reduce services below mandated levels. (See also Legal Conclusion 3.)

13. The Board's decision to reduce or discontinue the identified particular kinds of services was neither arbitrary nor capricious and constituted a proper exercise of discretion.

14. The reduction or elimination of the identified particular kinds of services relates solely to the welfare of the schools in the District and its students. (See also Legal Conclusion 2.)

Seniority List and Tiebreaking Criteria

15. The District maintains a Seniority List which contains employees' seniority dates, current assignments, and credential and certificate information.

16. The District used the Seniority List with seniority dates to develop a proposed layoff list of the least senior employees currently assigned in the various particular kinds of services being reduced. The District also considered each teacher's credentials and certifications.

² In a layoff proceeding like this, a governing board need only consider positively assured attrition which occurs prior to the March 15th layoff notice deadline, not thereafter. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 635.)

17. In its Resolution, the Board established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. According to the Resolution, in order to meet the needs of the District and its students, the following rating system shall be applied in determining the order of termination of certificated employees:

- A. Type of Credential.
Rating: +2 for Clear; +1 for Preliminary
- B. Number of teaching and/or special service credentials.
Rating: +1 per credential
- C. Number of supplementary authorization.
Rating: +1 per supplementary
- D. Earned degrees beyond the BA/BS level.
Rating: +1 per degree

In the event that common day hires have equal qualifications based on application of the above criteria, the District will then break ties by utilizing a lottery.

(Exhibit F, attachment 1.)

18. The District did not apply the Resolution's tie breaking criteria since it determined that there was no need to do so.

19. The District determined that nobody less senior than Respondents was being retained to render services which Respondents are certificated and competent to render.

Elementary Classroom Teachers

Respondent Marilynn Alford – Currently Teaching Middle School

20(a). The District issued a preliminary layoff notice to Respondent Marilynn Alford as a 1.0 FTE Elementary Classroom Teacher, a particular kind of service (PKS) which is being reduced. However, Respondent Alford is not an Elementary Classroom Teacher. She currently teaches middle school, and her assignment consists of three periods of eighth grade science, one period of eighth grade history and one period of Medal of Honor³. The District admitted that it is not reducing secondary classroom science or history teachers as part of the layoff. The District does not know yet if the Medal of Honor program will be offered next year.

³ Medal of Honor is a non-teaching, non-pupil special assignment promoting a District-wide initiative on core values.

20(b). The District identified Respondent Alford as an individual subject to layoff because it determined that her current assignment is a "mis-assignment" and that she needs to be re-assigned to an elementary classroom teaching position. Respondent Alford holds a clear multiple subject credential and a clear single subject credential in foundational science. The District contends that Respondent Alford has been teaching her current middle school classes under her multiple subject credential which it initially determined had authorized her to teach the combination of middle school science and history. The District now asserts that she was not authorized to teach her courses under her multiple subject credential and that it mis-assigned her.⁴ However, the District admitted that Respondent Alford could teach her three middle school science classes under her single subject science credential, but not her one period of history. For the 2014-2015 school year, the District intends to assign Respondent Alford to an elementary classroom position under her multiple subject credential, and asserts that based on her seniority date, she would be one of the "multiple subject credential teachers" subject to layoff.

20(c). Respondent Alford provides services to the District outside the scope of the PKS identified for reduction in the Resolution. The District is not authorized to reduce or eliminate any FTE positions of Secondary Classroom Science or History, and cannot terminate Respondent Alford's employment based on her currently rendering services in a PKS not identified for reduction. Instead, the District is seeking to terminate Respondent Alford's 1.0 FTE under a PKS category in which she is not rendering services. Although the District has asserted that Respondent Alford is mis-assigned, it has shown only that she may not be authorized to teach history under either of her credentials. She is certificated to teach her three periods of middle school science. The District has not established that Respondent is subject to layoff as an Elementary Classroom Teacher based on the District's projected decision to move her from her current assignment (which she is at least partially authorized to teach) into an assignment which has been identified for reduction/elimination.

20(d). The Resolution specifically authorizes a 7.0 FTE reduction in the PKS category of Elementary Classroom Teachers. However, if the District terminates Respondent Alford's employment, it would not be reducing 7.0 FTE of Elementary Classroom Teachers because Respondent Alford is not teaching an elementary classroom, and she is not being bumped by a teacher teaching such an assignment. The District is in fact reducing only 6.0 FTE of Elementary Classroom Teachers at end of 2013-2014 school year. These Elementary Classroom Teachers are: Respondent Paul Chhuo (seniority date 8/31/13), Respondent Kelly Sutliff (seniority date 3/1/12), Respondent Shelley Kinsey (seniority date 8/25/08), Respondent Bonnie Russon (seniority date 10/16/06), Respondent Kelly Kubasak (seniority date 8/28/06), and Respondent Melissa Trusel (seniority date

⁴ Only the District has identified Respondent's assignment as a "mis-assignment." The Los Angeles County Office of Education has not done so.

9/26/05).⁵ Consequently, if Respondent Alford's services are terminated, there will still be an Elementary Classroom Teacher retained to render the seventh 1.0 FTE of Elementary Classroom Teacher services in the 2014-2015. This is not a reduction of 7.0 FTE Elementary Classroom Teachers as authorized by the Resolution.⁶

20(e). The District also asserts that, if Respondent Alford is retained in her "multiple subject credential" position, other more senior "multiple subject" teachers would be subject to layoff. The District's analysis is flawed. Respondent Alford is not rendering services in a "multiple subject position." She is rendering particular kinds of services as a middle school science and history teacher, and she is certified and competent to render at least the three periods of middle school science services. If Respondent Alford is retained in her current science assignment, no Respondent with greater seniority who is credentialed to teach middle school science would be subject to layoff.

20(f). The evidence established that Respondent Alford is not properly subject to layoff.

Skipping – Alternative Education Specialist

21(a). The District did not issue a preliminary layoff notice to Anali Ortiz (seniority date 8/28/06), but issued preliminary layoff notices to Respondent Kubasak (seniority date 8/28/06) and Respondent Melissa Trusel (seniority date 9/26/05) as Elementary School Teachers.

21(b). Ms. Ortiz is currently assigned as an Alternative Education Specialist (AES).

21(c). As set forth in the Board-approved job description, the General Purpose of the AES is:

Under general supervision of the school principal, provides instruction and tutors individual and small groups of students in enrichment programs. Provides subject-matter and classroom lessons, observes, monitors and records student performance and behavior; performs

⁵ Elementary Classroom Teacher Erin Steuer (seniority date 8/27/13) received a Notice of Nonreelection on March 14, 2014. The District took into account her nonreelection prior to identifying the 7.0 Elementary Classroom Teacher FTE's for issuance of preliminary layoff notices.

⁶ Where a service will continue to be performed, there is no reduction or discontinuation of a particular kind of service. (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831, 843-844 (citing *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796 at p. 812).)

administrative functions in support of classroom activities; and performs related duties as assigned. In addition, provides counseling services to students and parents which assist the student in making appropriate decisions relative to his/her educational, emotional, and social development. Assists the student in making maximum use of his/her potential. Will facilitate public relations regarding alternative education programs and college and career opportunities throughout the district .

(Exhibit H.)

21(d). As listed in the Board-approved job description for the AES position, the Minimum Qualifications are:

Teaching Credential, General Secondary, Single Subject, Multiple Subject. In addition to a California Teaching Credential, a Pupil Personnel Services Credential highly desirable. Minimum 5 years classroom teaching experience.

(Exhibit H.)

21(e). Ms. Ortiz holds a Clear Multiple Subject Credential. She is currently enrolled in a Pupil Personnel Services Credential program and is scheduled to complete that program by the end of the 2013-2014 school year. Additionally, Ms. Ortiz has completed District-funded training in transcript reading, teenage grief counseling, peer counseling, addressing bullying, and legal/law training as it pertains to her position. She has now had experience in the position of AES.

21(f). Both Respondent Kubasak and Respondent Trusel hold Clear Multiple Subject Credentials. Neither holds a Pupil Personnel Services Credential nor is enrolled in a Pupil Personnel Services Credential program. Neither Respondent Kubasak nor Respondent Trusel have had any experience as an AES, and neither have had any training in transcript reading, teenage grief counseling, peer counseling, addressing bullying, and legal/law training as it pertains to the AES position.

21(g). The District has a special need for someone to hold the position of AES and determined that only Ms. Ortiz has the necessary skills, training and experience to provide services as the AES which others with more seniority do not possess.

21(h). The District appropriately "skipped" Ms. Ortiz because she is rendering services which the more senior Respondents (Kubasak and Trusel) are not certificated and competent to render.

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Secondary Classroom Teachers

English Teachers

22(a). The District intends to reduce Secondary Classroom English Teachers by 2.0 FTE. Respondent Nicholas Steed (seniority date 9/20/10) and Respondent Krystyn Phillips (seniority date 8/27/13) teach high school English and received preliminary layoff notices.

22(b). Amy Ciceri teaches at Vasquez High School as follows: one period of Drama, one period of Beginning Vocals, one period of Advanced Vocals, one period of Music Theory, one period of ROP Stage Craft, and one period of ASB. Although the District admitted that a teacher with a single subject credential in English can teach Drama, the evidence did not establish that it would be appropriate for Respondent Steed to bump into one-sixth of Ms. Ciceri's 1.0 FTE. It appears that splitting her 1.0 FTE position to that degree to accommodate a senior employee would be impractical and inefficient, and it is within the District's discretion to decline to do so.⁷

22(c). Respondent Nicholas Steed and Respondent Krystyn Phillips both teach five periods of high school English. The District acknowledged that over 400 students are enrolled at the District's high school. The Seniority List indicates that several teachers holding Clear Single Subject Credentials in English would be retained. The District has determined that even with the 2.0 FTE reduction it will be able to satisfy the needs of students and meet legally-mandated staffing levels. The evidence did not contradict the District's determination.

Spanish Teachers

23(a). The District intends to reduce Secondary Classroom Spanish Teachers by 1.0 FTE. Courtney Straka and Respondent Patricia Raposo-Reyes are currently the only Spanish teachers in the District. Respondent Raposo-Reyes teaches five periods of Spanish; one period at High Desert middle school (Introduction to Spanish- 7 students) and four periods at Vasquez High School (Spanish I -18 students; Spanish II Honors – 6 students; Spanish III – 15 students; and Advanced Placement Spanish – 17 students). Respondent Raposo-Reyes's five periods have a combined total of 65 students. Ms. Straka teaches three periods of Spanish at Vasquez High School. There are currently 145 students enrolled in Spanish classes at the high school. Ms. Straka's three periods have a combined total of approximately 90 students.

23(b). The District determined that based on enrollment numbers, Spanish classes were not at the maximum number. The District anticipates fewer students will enroll in Spanish classes next year. Although the District intends to offer Spanish I, II, III and Advanced Placement Spanish at Vasquez High School during the 2014-2015 school year, it does not know if it will offer Spanish instruction at the middle school. The District

⁷ (See, *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016.)

acknowledged that high school students need three years of foreign language in order to meet "A - G requirements" for college entrance. However, it is not required to offer Spanish instruction to middle school students. The District is exploring the implementation of online language laboratory instruction at Vasquez High School for the 2014-2015 school year which would be administered by qualified instructors. However, the District has determined that even with the 1.0 FTE reduction it will be able to satisfy the needs of students and meet legally-mandated staffing levels. The evidence did not contradict the District's determination.

Physical Education Teachers

24(a). The District intends to reduce Secondary Classroom Physical Education (PE) Teachers by 1.6 FTE. The PE teachers receiving preliminary layoff notices for this PKS were: Linda Edwards - 0.4 FTE (seniority date 10/17/11);⁸ Respondent Daniel Tirozzi - 0.8 FTE (seniority date 9/1/06); and Jacob Gama - 0.4 FTE (seniority date 8/28/01).

24(b). Carolina Serrano is currently rendering 1.0 FTE of services as an Adapted PE (APE) Specialist. She holds a Clear APE Specialist credential and a Clear Single Subject credential in PE. Ms. Serrano did not receive a preliminary layoff notice, since APE Specialist was not a PKS identified for reduction or elimination. In addition to providing APE services for special education students in APE classes, Ms. Serrano provides APE services for one period of general education PE pursuant to an Individualized Education Plan (IEP) for a student in that class who has been mainstreamed into the general education population. Ms. Serrano teaches half of the students in that class period, including the student with the IEP, and Respondent Gama teaches the other half of the students.

24(c). If the student's IEP did not require an APE specialist to teach that period and it became a purely general education PE class, Respondent Gama is credentialed and competent to teach that class. However, as long as the student's IEP requires an APE Specialist to teach at least that student's portion of the class, Ms. Serrano is the only teacher who is certificated and competent to render services as an APE Specialist and general education PE teacher for that class. No Respondent with more seniority than Ms. Serrano is certificated and competent to render services as an APE Specialist.

24(d). With the total 1.6 FTE reduction in PE, Respondent Gama would remain as the only teacher with a Clear Single Subject credential in PE rendering services as a PE teacher. The District has determined that even with the 1.6 FTE reduction, it will be able to satisfy the needs of students and meet legally-mandated staffing levels. The evidence did not contradict the District's determination.

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⁸ Linda Edwards did not request a hearing and is not a Respondent in this matter.

Art Teacher

25(a). The District intends to reduce Secondary Classroom Art Teachers by 1.0 FTE. Respondent Taiz Carnewal (seniority date 9/1/06) received a preliminary layoff notice. She holds a Clear Single Subject credential in Art, and she is the only Art teacher in the District.

25(b). The District is not required to offer Art next year.

25(c). The evidence did not establish that Respondent Carnewal could bump into the position of any junior teacher for which Respondent Carnewal was certificated and competent to render services.

Special Education Teachers – Skipping Pre-school Class Teacher

26(a). The District issued preliminary layoff notices to Respondent Amanda Majewski (seniority date 8/28/12) and Respondent Ryan Thurlow (seniority date 11/28/11) as Special Education Teachers, but did not issue a preliminary layoff notice to Andrea Freedman (seniority date 8/29/12).

26(b). Ms. Freedman teaches the District's only Preschool Special Day Class (SDC) offered to special education students between ages three and five. Ms. Freedman holds a Level II Education Specialist credential which allows her to teach special education and a Child Development Permit which allows her to teach preschool. She also has 15 years of experience in this field. Neither Respondent Amanda Majewski nor Respondent Ryan Thurlow holds a Child Development Permit which would allow them to teach preschool.

26(c). The District has a special need for someone to teach the Preschool SDC and determined that only Ms. Freedman has the necessary skills, training and experience to teach the Preschool SDC which others with more seniority do not possess.

26(d). The District appropriately "skipped" Ms. Freedman because she is rendering services which the more senior Respondents (Majewski and Thurlow) are not certificated and competent to render.

LEGAL CONCLUSIONS

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

2. Cause exists to reduce the number of certificated employees in the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code sections 44955.

3. The reduction or elimination of the FTE positions will not reduce services below mandated levels.

4(a). Education Code section 44955, subdivision (b), provides, in pertinent part:

[T]he services of no permanent employee may be terminated . . . 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.

[¶] . . . [¶]

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.

4(b). Education Code section 44955, subdivision (d)(1), allows the District to deviate from terminating a certificated employee in order of seniority if the District demonstrates that there is 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.

5. The District demonstrated that there was a specific need to retain Anali Ortiz as an Alternative Education Specialist and that she has the special training and certification necessary to hold this position which no Respondent with more seniority possessed. Therefore, the District appropriately "skipped" Ms. Ortiz.

6. The District also demonstrated that there was a specific need to retain Andrea Freedman as the District's Preschool Special Day Class teacher and that she has the special training and certification necessary to hold this position which no Respondent with more seniority possessed. Therefore, the District appropriately "skipped" Ms. Freedman.

7(a). As set forth in Finding 20, the District improperly issued Respondent Marilyn Alford a preliminary layoff notice under the PKS category of Elementary Classroom Teacher. If Respondent Alford is retained in her current assignment, no Respondent with greater seniority who is credentialed to teach middle school science would be subject to layoff.

7(b). Given the foregoing, the Statement of Reduction in Force against Respondent Marilyn Alford should be dismissed, and she should not be issued a final layoff notice.

8. No certificated employee junior to any Respondent is being retained to perform any services which any Respondent is certificated and competent to render.

9. Other than Respondent Marilyn Alford (see Finding 20 and Legal Conclusion 7), cause exists within the meaning of Education Code section 44955 for terminating or reducing Respondents' employment for the 2014-2015 school year, as set forth in Factual Findings 1 through 26 and Legal Conclusions 1 through 8.

ORDERS


1. The Statements of Reduction in Force served on Respondents Taiz Carnewal, Paul Chhuo, Jacob Gama, Shelley Kinsey, Kelly Kubasak, Amanda Majewski, Kristyn Phillips, Patricia Raposo-Reyes, Bonnie Russon, Nicholas Steed, Kelly Sutliff, Ryan Thurlow, Daniel Tirozzi, and Melissa Trusel are sustained. Notice may be given to these Respondents that their services will be reduced or terminated for the 2014-2014 school year because of the reduction or discontinuation of particular services as indicated.

2. Notice shall be given in inverse order of seniority.

3. The Statement of Reduction in Force against Respondent Marilyn Alford is dismissed, and no final layoff notice shall be issued to her.

4. Due to her retirement from the District, the Statement of Reduction in Force against Sara Meissner is dismissed, and no final layoff notice shall be issued to her.

Dated: April 24, 2014



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings