

BEFORE THE
GOVERNING BOARD OF THE
MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

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

OAH No. 2018040154

Certain Certificated Employees of the
Manhattan Beach Unified School District,

Respondents.

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 26, 2018, in Manhattan Beach, California.

James B. Fernow, Fagen Friedman and Fulfrost, LLP, represented Manhattan Beach Unified School District (District).

Carlos R. Perez, Law Office of Carlos R. Perez, represented respondents Stella Libbi-Auday and Timothy Piper, who were present.

Justin Houterman, Attorney at Law, represented respondent Kristina Houterman, who was present.

Prior to the hearing, the District rescinded the layoff notices to respondents Keely Gabbert, Elizabeth Hutchinson, and Jeffrey Lee. These respondents did not appear at the hearing.

Oral, documentary, and stipulated evidence was received, and argument was heard. The record was closed and the matter submitted for decision on April 26, 2018.

FACTUAL FINDINGS

1. Michael D. Matthews, Ed.D., Superintendent for the District, made and filed the District Statement of Reduction in Force (District Statement) in his official capacity. Brian Lucas, Assistant Superintendent of Human Resources, and his staff were responsible for implementation of the technical aspects of the layoff.

2. Respondents in this proceeding are certificated employees of the District. They are: Keely Gabbert, Elizabeth Hutchinson, Jeffrey Lee, Stella Libbi-Auday, Timothy Piper and Kristina Houterman (collectively, Respondents).

3. On March 12, 2018, the District provided written notice to Respondents and certificated employees Katelynn Quach and Ruth Robles, pursuant to Education Code sections 44949 and 44955, that their services would not be required for the upcoming 2018-2019 school year. Each notice set forth the reasons for the District's decision and noted that 4.6 full-time equivalent (FTE) positions would be reduced or discontinued. Each notice also notified Respondents and employees Quach and Robles of their right to request a hearing to determine if there is cause for not reemploying them for the ensuing school year, and that a written request for a hearing was due on or before March 22, 2018.

4. Certificated employees Katelynn Quach and Ruth Robles did not request a hearing 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).) Quach and Robles are both counselors.

5. Respondents timely requested a hearing to determine if there is cause for not reemploying them for the ensuing school year. Thereafter, the District timely filed and served the District Statement and related documents on Respondents. Respondents timely filed Notices of Participation in Reduction in Force Hearing by which they notified the District of their intent to participate in the District's Reduction in Force Hearing. The District timely served Respondents with written notice of this hearing. All prehearing jurisdictional requirements were met.

6. On February 28, 2018, the Governing Board of the District (Board) adopted Resolution No. 2018-7 (Resolution) reducing or discontinuing the following particular kinds of services for the 2018-2019 school year, and determined that such action was related to the welfare of the schools and the pupils thereof:

<u>Particular Kinds of Services</u>	<u>FTE</u>
Spanish, Middle School	1.0
MBMS Success, Middle School	0.167
English, Middle School	0.167
Choir, Middle School	0.167
French, Middle School	0.166
Kitchen & Commerce, Middle School	0.333
English, High School	1.0
Social Studies, High School	1.0
Counselor, Middle School	<u>0.6</u>
TOTAL	4.6 FTE

7. On February 28, 2018, the Board adopted Resolution No. 2018-9 (Tiebreak Resolution), which established tiebreaker criteria for determining the relative seniority of certificated employees who first rendered paid service to the District on the same day. The Tiebreak Resolution provided that the order of employee termination shall be based on the needs of the District and its students.

8. The services set forth in Factual Finding 6 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

9. The Board adopted the District's recommendation to reduce or discontinue the services set forth in Factual Finding 6, which was based on a lack of or reduced student interest in a course or subject area, overstaffing in some areas (i.e., the course load can be met with one fewer teacher), and lower anticipated need in some subject areas. The decision to reduce services was not related to the capabilities and dedication of the individuals whose services are proposed to be reduced or eliminated. The decision to reduce the particular kinds of services was neither arbitrary nor capricious but was rather a proper exercise of the District's discretion.

10. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), credential and certifications, and current assignment. In December 2017, certificated employees were given the opportunity to verify their seniority date and credential information.

11. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the particular kinds of services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. 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.) In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority.

12. The District properly considered all known attrition, resignations, and retirements in determining the actual number of layoff notices to be delivered to its employees. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627.)

13. Respondent Timothy Piper has a seniority date of August 25, 2016, and holds a clear single-subject credential in Social Science. Mr. Piper was identified for layoff because of the proposed 1.0 FTE reduction in high school Social Studies. He is the least senior Social Studies teacher at Manhattan Beach High School. He holds no other credential and is unable to "bump" into a position held by a junior employee. The District properly identified Mr. Piper as an employee subject to layoff.

14. Respondent Stella Libbi-Auday has a seniority date of September 9, 2015, which was established by stipulation at the hearing. Ms. Libbi-Auday holds a clear single-subject credential in Spanish and a clear multiple subject credential. Ms. Libbi-Auday was identified for layoff because of the proposed 1.0 FTE reduction in middle school Spanish. Respondent Libbi-Auday is the least senior Spanish teacher. In addition, there are no positions requiring a multiple subject credential and being held by employees who are junior to Ms. Libbi-Auday. The District properly identified Ms. Libbi-Auday as an employee subject to layoff.

15. (A) Respondent Kristina Houterman has a seniority date of October 13, 2015. She holds a clear single-subject credential in English. Ms. Houterman is currently assigned to teach MBMS Success and WEB in middle school.¹ MBMS Success and WEB are types of study skills and organizational support classes for students. Ms. Houterman was identified for layoff because of the 0.167 FTE reduction in MBMS Success and because she is being displaced or "bumped" by more senior employees whose positions are being partially reduced but who have credentials to teach Ms. Houterman's position.

(B) Assistant Superintendent Lucas's unrefuted testimony established that MBMS Success and WEB may be taught by a teacher holding any credential that authorizes middle school service. Heather Gold has a seniority date of September 5, 2000. She is subject to layoff for 0.167 FTE of her assignment in middle school Choir. Courtney Rice has a seniority date of August 31, 2010. She is subject to layoff for 0.166 of her assignment in middle school French. Joni Soto has a seniority date of September 5, 2000, and is subject to layoff for 0.333 FTE of her assignment in middle school Kitchen & Commerce. Respondent Jeffrey Lee (who is also discussed in Finding 16, below) has a seniority date of August 25, 2015, and is subject to layoff for 0.167 FTE of his middle school English assignment. Employees Gold, Rice, and Soto, and respondent Lee have the seniority and credential to partially displace Ms. Houterman from her MBMS Success and WEB assignment. Ms. Houterman, through her counsel, argued but presented no evidence establishing that these four teachers are not qualified to teach her position. The District properly identified Ms. Houterman as an employee subject to layoff for her 1.0 FTE position.

16. On April 20, 2018, the District rescinded the layoff notices provided to respondents Keely Gabbert, Elizabeth Hutchinson, and Jeffrey Lee. These respondents share a seniority date of August 25, 2015, and hold clear single-subject credentials in English. Respondent Lee also has a supplementary authorization in Psychology. Their layoff notices were rescinded due to the recent retirement of one high school English teacher, which will account for the 1.0 FTE reduction in high school English proposed in the Resolution. The District Statement shall be dismissed against respondents Gabbert, Hutchinson, and Lee.

¹ MBMS stands for Manhattan Beach Middle School. WEB stands for Where Everybody Belongs.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1-5.)
2. The services identified in the Resolution are particular kinds of services which may be reduced or discontinued under Education Code section 44955. (Factual Finding 6.) The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. 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 section 44949.
3. A school district may reduce services within the meaning of 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.)
4. Boards of education hold significant discretion in determining the need to reduce or discontinue particular kinds of services, which is not open to second-guessing in this proceeding. (*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 action 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.)
5. Cause exists, pursuant to Education Code section 44949 and 44955, to reduce the number of certificated employees of the District due to the reduction or discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. (Factual Findings 1-16.)
6. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

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ORDER

1. The District may give notice to respondents Kristina Houterman, Stella Libbi-Auday, and Timothy Piper, that their services will not be required for the 2018-2019 school year.

2. The District Statement of Reduction in Force is dismissed against respondents Keely Gabbert, Elizabeth Hutchinson, and Jeffrey Lee.

Dated: April 30, 2018

DocuSigned by:

Erlinda Shrenger

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ERLINDA G. SHRENGER

Administrative Law Judge
Office of Administrative Hearings