

**BEFORE THE
GOVERNING BOARD OF THE
WILLIAM S. HART UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Reduction in Force of:

**CERTIFICATED EMPLOYEES OF THE WILLIAM S. HART UNION
HIGH SCHOOL DISTRICT,**

Respondents.

OAH No. 2024030532

PROPOSED DECISION

Julie Cabos Owen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 17 and 24, 2024, and continued the matter for submission of closing briefs on April 29, 2024. William S. Hart Union High School District (District) was represented by Vanessa Lee, Attorney at Law with Fagen, Friedman & Fulfroost, LLP. Tamra M. Smith, Attorney at Law with Equality Law, represented all Respondents (Represented Respondents) except for Natalie Marquez (Respondent Marquez), who was self-represented.

Testimony and documents were received in evidence. After presentation of the evidence on April 17 and 24, 2024, the record was left open, and the matter was continued for submission of closing briefs on April 29, 2024. The District and

Represented Respondents timely filed and served their closing briefs. Respondent Marquez did not submit any closing brief.

The record closed and the matter was submitted for decision on April 29, 2024.

The hearing of this matter was originally set for April 9, 2024. The hearing was continued from April 9, 2024, until April 17, 2024; from April 17, 2024, until April 24, 2024; and from April 24, 2024, until April 29, 2024, as described in more detail on the record and in any written orders granting and confirming the continuances. Pursuant to Education Code sections 44949, subdivision (c), and 44955, subdivision (c), the continuances extended the deadline for submission of the proposed decision until May 28, 2024.

FACTUAL FINDINGS

Parties and Jurisdiction

1. All Respondents are certificated employees of the District.
2. Collyn Nielsen is the Assistant Superintendent of Human Resources for the District.
3. On February 21, 2024, Mr. Nielsen recommended to the Governing Board of the District (Board), pursuant to Education Code sections 44949 and 44955, that the District reduce or eliminate particular kinds of services no later than the beginning of the 2024-25 school year.
4. On February 21, 2024, the Board adopted Resolution Number 23/24-22 (Resolution) to reduce or eliminate particular kinds of services in the District no later

than the beginning of the 2024-2025 school year and to lay off a corresponding number of certificated employees to implement the Resolution. The Board authorized the Superintendent or the Superintendent's designee to send notices to the affected employees in accordance with the Education Code.

5. On February 27, 2024, the District sent notices (layoff notices) to 53 certificated employees, including Respondents, that their services would be reduced or eliminated at the close of the 2023-2024 school year.

6. Thirty-four Respondents timely submitted requests for hearing. Respondent Daniel Soto did not timely submit a request for hearing, but the District agreed to allow him to participate in the reduction in force hearing. (The 35 Respondents are identified in Exhibit 1, which is incorporated by reference.)

7. The District timely served all Respondents with a Statement to Respondent, Statement of Reduction in Force, a blank Notice of Participation in Reduction in Force Hearing form, and relevant sections of the Education and Government Codes.

8. The District received signed Notices of Participation in Reduction in Force Hearing from all Respondents.

9. The District served all Respondents with the Amended Notice of Reduction in Force Hearing.

Reduction or Elimination of Particular Kinds of Services

10. For the sake of continuity in reading this decision, some Factual Findings contain legal analysis and legal conclusions.

11. The Board's Resolution provides for the reduction or elimination of the following particular kinds of services (PKS) and number of Full-time Equivalent (FTE) positions by the beginning of the 2024-2025 school year: Sequoia Therapeutic Special Education Program 3.0 FTE; General Special Education Teaching Services 5.0 FTE; Science 7/8 4.0 FTE; Physical Education 9.0 FTE; Math 5.0 FTE; English 12.0 FTE; Social Studies 12.0 FTE; Student Support Program Specialist 6.0 FTE; and Counselors 7.0 FTE.

12. The services identified in the Board's Resolution are PKS which may be reduced or discontinued within the meaning of Education Code section 44955. Respondents contend some PKS categories are defective, but their contentions are unpersuasive.

13. First, Respondents argue there is no such thing as "General Special Education Teaching Services" and the category is overly broad. Respondents assert that special education services include a wide range of services for students with autism, emotional disturbances, and severe disabilities as well as providing the services in different formats (e.g., special day classroom, pulling students out of general education classes to work one-on-one with a special education teacher, etc.). However, as clarified by the Mr. Nielsen, whose responsibilities include making recommendations to the Board about which PKS to reduce and implementing the Resolution, the categorization of General Special Education Teaching Services means Special Education Teaching Services in the Mild to Moderate classification, but not additional classifications such as Moderate to Severe, Deaf and Hard of Hearing, etc.

14. Consequently, the least senior employees providing General Special Education Teaching Services (i.e., Mild to Moderate) would be subject to layoff in this category.

15. Second, Respondents contend that Sequoia Therapeutic Special Education Program is the same as General Special Education Teaching Services and should be combined with that PKS category. However, Mr. Nielson testified credibly that Sequoia Therapeutic Special Education Program is a program on its own site where staff work with emotionally disturbed students, and the credentialed special education teachers assigned there must also be adept at working with that student population.

16. Consequently, the least senior employees providing services at the Sequoia Therapeutic Special Education Program would be subject to layoff in this category.

17. Respondents also question the number of FTE positions authorized to be reduced or eliminated, and Respondents argue that the Board must include prior attrition, including vacated positions and retirements, in the number of FTEs it authorizes for elimination or reduction. This assertion is not persuasive. Mr. Nielsen testified that, on his recommendation to the Board prior to adoption of the Resolution, the Board considered prior attrition in computing the number of FTEs to reduce or eliminate, and therefore lowered the number. The District continued to consider additional attrition when determining the number of layoff notices to be served on its employees and in rescinding layoff notices even after the hearing concluded. The District is not planning to fill any vacated positions. However, if the District keeps the positions open, it must consider whether senior employees subject to layoff are certificated and competent to fill those positions.

18. There was no evidence that the reduction or elimination of the FTE positions will reduce services below mandated levels.

19. The Board's decision to reduce or discontinue the identified PKS was neither arbitrary nor capricious, and constituted a proper exercise of discretion.

20. The reduction or elimination of the identified PKS relates solely to the welfare of the schools in the District and its students.

Seniority Lists

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

22. With some exceptions noted below (Factual Findings 23; 57 and 58), the information on the Seniority List is accurate.

23. By stipulation of the parties: "There is an error in the District's Seniority List, which is in evidence as District Exhibit 10. On page A1311 of Exhibit 10, the District's Seniority List states that employee Michael R. Miller (#846) has a seniority date of "07/01/21." In reality, Mr. Miller's seniority date with the District is July 31, 2023." (Exhibit 174.)

24. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various PKS being reduced or eliminated. The District also used the Seniority List to determine which employees are eligible to "bump" less senior employees assigned to provide services that the senior employees are certificated and competent to render.

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

Tie-Breaking Criteria

26. On February 21, 2024, the Board adopted Resolution Number 23/24-23, (Tie Breaker Resolution) establishing tie-breaking criteria for determining the order of layoff for certificated employees who first rendered paid service on the same date.

27. The tie-breaking criteria were to be applied in the following order: (1) possession of a currently valid credential in descending order of priority with subcategories (a) Clear, (b) Preliminary, (c) Intern, and (d) Short-term Staff permit (STSP), Provisional Intern Permit (PIP), Pre-Intern Certificate, or other provisional credential or waiver; (2) Possession of an authorization/certification to provide instruction to English Learners in descending order of priority with subcategories (a) BCLAD, (b) CLAD/LDS certification, and (c) Emergency CLAD certificate; (3) Possession of more than one valid credential; (4) Current Head Varsity Coach; (5) Possession of a currently valid supplementary authorization; (6) Possession of CTE/Designated Subjects Credential; (7) Possession of a doctorate degree; (8) Possession of a master's degree; and (9) Current Assistant Varsity Coach. In any case where a tie still results after applying the criteria above, the tie(s) shall be broken by lottery.

28. Respondents did not challenge the tie-breaking criteria. However, they challenge the application of tie-breaking criteria as set forth below.

Competency Criteria

29. If a senior teacher is "certificated and competent" to render a service provided by a more junior employee, the senior teacher is statutorily entitled to "bump" into the junior employee's position, thus avoiding layoff. (Ed. Code, § 44955, subd. (b).) A school district has the authority and the discretion to establish competency criteria that relate to the skills and qualifications of a teacher for purposes

of determining bumping rights. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 563-567.) This discretion is limited only by a reasonableness standard (i.e., the district's criteria must be reasonable, and not fraudulent, arbitrary, or capricious). (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

30. Paragraph B of the Resolution established a definition of competency to determine which employees are "certificated and competent" to render a service such that a senior employee currently assigned in a position subject to layoff can "bump" into the position of a less senior employee not subject to layoff.

31. The Board defined "competency" to provide a particular kind of service as follows:

(1) Possession of a current valid credential to teach the assigned subject matter;

(2) An employee must have all appropriate certifications, as determined by the District and state law, to hold the position (e.g., EL Certification, CLAD, registered nursing license).

(Exhibit 2, p. A3-A4.)

32. The District's competency criteria are reasonable. Therefore, the District's definition of competency in determining bumping rights is upheld.

33. The District analyzed potential bumping rights of teachers subject to layoff, and the District determined that nobody less senior than Respondents was

being retained to render services which Respondents are certificated and competent to render.

Rescinded Layoff Notices

34. After the first hearing day, the District rescinded the layoff notices of the following Respondents due to additional attrition that occurred after March 15, 2024: Janet Alexander, Anthony Pena Avila, Michael Carr, Lara Forgrave, Adam Garcia, Heila Owston, James Park, and Jacqueline Resler. The District also rescinded the layoff notice of Cristopher Boiles because it realized it had mistakenly retained a more junior employee in the Sequoia Therapeutic Special Education Program. This left 26 Respondents: Slade Barbosa, Kelly Brown, Douglas Butler, Elizabeth Carson, Kelli-Ann Cassio, Matthew Davis, Apostolos Gatzas, Daniel Hays, Carolyn Holmgren, Lauren Imai, Allison Khan, Bradley Knutsen, Steven Kwak, Leticia Ledesma, Susan Lundin, Natalie Marquez, Bridgette Martinez, Karyn McHorney, John Okenka, Katie Reagan, Megan Reck, Kaitlyn Salazar, Lindsey Schultz, Lilliawna Shaffer, Holly Marie Smith, and Daniel Soto.

35. In its closing brief, the District noted that, after April 24, 2024, it had rescinded the layoff notices of another five Respondents due to additional attrition occurring after March 15, 2024: Apostolos Gatzas, Carolyn Holmgren, Bradley Knutsen, Natalie Marquez, and Kaitlyn Salazar. The District's representation is accepted, and the layoff notices of those Respondents are deemed rescinded.

Skipping Criteria

36. A District may deviate from laying off employees in order of seniority if the District "demonstrates a specific need for personnel to . . . provide services authorized by a services credential [and] the certificated employee has special training

and experience necessary to . . . provide those services, which others with more seniority do not possess." (Ed. Code, § 44955, subd. (d)(1).)

37. In the Resolution's definition of competency (Paragraph B), the Board included a subparagraph that dealt with skipping Theater teachers:

(3) The District has a specific need for certificated staff to teach Theater with either a Theater or English credential, related course work, special training, and experience; therefore the District will skip and retain Theater teachers for the 2024-25 school year.

(Exhibit 2, p. A4.)

38. Respondents did not challenge the skipping criteria in Paragraph B dealing with Theater teachers.

LANGUAGE OF PARAGRAPH C RE: COUNSELORS

39. Paragraph C of the Resolution provides:

For the purposes of certificated employee assignments and reassignments effectuated as a result of this reduction or elimination of services, it is necessary to retain certificated counselors that provide bilingual services to students. Thus, in order for a more senior certificated counselor to displace a less senior certificated employee currently providing counseling services, the more senior certificated counselor must possess and be currently using bilingual skills with students.

(Exhibit 2, p. A4.)

40. Paragraph C of the Resolution uses language similar to competency criteria, referring to “a more senior certificated counselor” displacing “a less senior certificated employee currently providing counseling services” if the senior counselor possesses and uses bilingual skills. However, the first part of Paragraph C indicates a need “to retain certificated counselors that provide bilingual services to students,” which suggests possible skipping criteria. At hearing and in its closing brief, the District asserts that Paragraph C is skipping criteria, citing Education Code section 44955, subdivision (d)(1). As such, the District must comply with the requirements of that Education Code section in order to “skip” junior counselors from layoff.

41. Although Paragraph C articulates a need for counselors to provide “bilingual services,” the purported need and the stated criteria are vague and subject to arbitrary application. First, there are different standards applied for senior and junior employees. The criteria require a senior employee to possess “bilingual skills and be currently using bilingual skills with students,” in order to displace a junior employee. However, the criteria do not require that junior employees have “bilingual skills,” only that the junior employees are “currently providing counseling services.” Neither the term “bilingual skills” nor the term “bilingual services” is defined. The criteria do not articulate in which language a senior counselor should have “bilingual skills” (Spanish, Korean, and Russian are some of the languages students speak) or in what manner they must be “currently using bilingual skills with students” (completely fluent in all foreign languages spoken, fluent in some of the languages, conversational/functional in one or more language, etc.). The criteria similarly fail to articulate what “bilingual services” the skipped counselors are providing, including in what language(s) and in what manner. Most significantly, the criteria fail to indicate what “special training and

experience” the skipped counselors have, thus providing no objective standards with which to measure whether senior counselors possess the requisite special training and experience.

42. Given the foregoing, Paragraph C is vague and does not meet the requirements of Education Code section 44955, subdivision (d)(1).

APPLICATION OF PARAGRAPH C TO COUNSELOR LAYOFF

43. The vagueness of Paragraph C is also demonstrated by the improper and arbitrary application of the criteria to the District’s counselor layoffs, as discussed below.

44. The District “skipped” seven counselors (Eva Alonzo-Ayon, Karla Ivone Gonzales, Guillermo Gonzalez, Brianna Ortiz, Maria Reyes, William Vega, and Alicia Viera) with same seniority date (8/1/22) as Respondents Elizabeth Carson, Lauren Imai, Susan Lundin, Bridgette Martinez, and Holly Marie Smith (Respondent Counselors). The District admits it did not apply the tie-breaking criteria to determine these counselors’ relative seniority. Instead, the District apparently used Paragraph C as a tiebreak among the counselors with the same seniority date. Although the Board may have included bilingual fluency (measured by objective data) as a tie-breaking criterion, the Tie Break Resolution does not contain such a criterion. Consequently, Paragraph C was improperly applied as a tie-breaking criterion and not as a means to “skip” junior employees.

45. In determining that Respondents were subject to layoff, the District looked at the counselors’ 2022 job applications to determine their current bilingual skills. On their job applications, in the section “About You,” Respondents Elizabeth Carson, Lauren Imai, Susan Lundin, and Holly Marie Smith did not check the box

indicating "Languages (other than English)." Respondent Bridgette Martinez did check the box, and her response indicated, "Spanish . . . [] Fluent [x] Some." (Exhibit 15, p. A1369.) However, Mr. Nielsen testified, since Respondent Bridgette Martinez's application only indicated "some" Spanish, this indicated she was "not that fluent."

46. The skipped counselors' job applications were not presented in evidence. Mr. Nielsen testified that he "spoke to principals" who observed if a counselor "needed to use an interpreter to translate." There was no uniform measure of level of fluency and in what language.

47. The District did not demonstrate the skipped counselors had special training and experience necessary to provide specialized services. Rather, the District determined who had "bilingual skills" or were providing "bilingual services" based on a subjective self-assessment, the checking of a box on an employment application two years ago, and the undocumented conversations with unidentified principals regarding who "needed to use an interpreter." This amorphous determination of bilingual skills does not meet the requirement of special training and experience as required by Education Code section 44955, subdivision (d)(1).

48. Given the foregoing, the skipping criteria set forth in Paragraph C of the Resolution and the District's application of those criteria are arbitrary and capricious and cannot be upheld.

49. With the skipping criteria for counselor layoffs invalidated, in order to comply with the provisions of Education Code section 44955, the District must layoff counselors in inverse order of seniority. However, the "skipped" counselors and Respondent Counselors have the same seniority date (8/1/22), and the appropriate

procedure for layoff would have been to apply tie-breaking criteria to determine their relative seniority. Part of the tie-breaking analysis can be addressed in this decision.

50. As set forth more fully below, Respondent Bridgette Martinez should have an earlier seniority date than August 1, 2022. Consequently, she is not included in the tie-breaking analysis below.

51. Had the District correctly applied its tie-breaking criteria to the counselors, Respondent Elizabeth Carson would have won a tie with six of the counselors who did not receive layoff notices (Eva Alonzo-Ayon, Karla Ivone Gonzales, Guillermo Gonzalez, Brianna Ortiz, Maria Reyes, William Vega) because Respondent Carson holds an Administrative Services Certificate in addition to her Pupil Personnel Services Credential. (Exhibit 14, p. A1352.) Only one other counselor with an August 1, 2022 seniority date wins the tie break over Respondent Carson; Alicia Viera holds more than one credential. (*Ibid.*) Consequently, Respondent Carson's layoff notice should be rescinded.

52. Regarding the remaining counselors with the same August 1, 2022 seniority date, the District presented no evidence that the retained counselors won ties with Respondents Lauren Imai, Susan Lundin, and Holly Marie Smith under the Board's tie-breaking criteria. Therefore, the District should apply the tie-breaking criteria reflected in the Tiebreak Resolution to Eva Alonzo-Ayon, Karla Ivone Gonzales, Guillermo Gonzalez, Brianna Ortiz, Maria Reyes, William Vega and Respondents Imai, Lundin, and Smith, as required by Education Code section 44955, subdivision (b). If Respondents Imai, Lundin, and Smith are not among the three least senior, their layoff notice(s) should be rescinded.

Respondents Seeking to Change Their Seniority Dates

COUNSELORS CHALLENGING SENIORITY DATES

53. Under the Collective Bargaining Agreement (CBA) between the District and the Hart District Teachers Association (HDTA), counselors have a longer work year than teachers and therefore receive additional compensation. (Testimony of HDTA President John Minkus.) Per the CBA, a counselor's school year consists of 196 workdays, compared to 185 workdays for teachers. The extra workdays are scheduled at the direction of the counselors' supervisors and in accordance with the needs of the respective school sites. (Test. of Minkus.)

54. Pursuant to Education Code section 44845, a certificated employee "shall be deemed to have been employed on the date upon which [they] first rendered paid service in a probationary position." However, this does not necessarily include non-mandatory attendance at training or workshops prior to an employee's contract start date.

55. Respondents Imai, Martinez, and Smith are currently assigned seniority dates August 1, 2022. They claim their assigned seniority date is incorrect because the District paid them to render services as counselors prior to August 1, 2022. They noted they reported to work during the last week of July 2022 to begin performing counselor duties, but they were unable to access the District's payroll system to enter time until August 1, 2022, their official contract start dates.

Respondent Holly Marie Smith

56. Respondent Holly Marie Smith works at Saugus High School. She contends her seniority date is July 26, 2022, rather than August 1, 2022, as stated on

the seniority list. Respondent Smith received an email invitation from a District administrator regarding a "counselor meeting about master schedule" from 8:00 a.m. to 9:00 a.m., on July 26, 2022. (Exhibit 169, p. B524.) Of the eight invited "guests," five had responded "yes," one had responded "no," and two were awaiting responses. (*Ibid.*) The Respondent Smith attended the meeting on July 26, 2022. The evidence did not establish it was mandatory. Respondent Smith's time records from January-March 2023 contain the notation, "started July 26, but I was not able to be placed in [time records] [un]til Aug. 1st." (Exhibit 171, p. B527.) This appears to be a notation based on Respondent Smith's assertion, not a District confirmation that July 26, 2022, was her first date of paid service as a counselor. Therefore, Respondent Smith failed to establish a basis to adjust her August 1, 2022 seniority date.

Respondent Bridgette Martinez

57. Respondent Bridgette Martinez works at Valencia High School. She contends her seniority date is July 26, 2022, rather than August 1, 2022, as stated on the seniority list. She received an email from Justin Thomas, Chair of the Counseling Department, stating:

I don't know what has been told to you yet regard when we are returning or when you will start. Most of us will be returning on Tuesday, July 26th. I understand that it is somewhat early, but it is to process through new students and get prepared for registration. There are a few new students that will be in your alpha that are coming in on Tuesday. I have tried to block my calendar to be with you for those appointments to help. Are you able to start on the 26th?

(Exhibit 163, p. B510.)

58. Respondent Martinez reported to work on July 26, 2022, and rendered service as a counselor for which she was paid. Although the email did not specify she was required to start work on July 26, 2022, it was sent by the Counseling Department Chair indicating most of the counselors would be returning on July 26, 2022, and that she had appointments scheduled on that date to process new students. She reasonably construed this was mandatory work. Therefore, Respondent Martinez established that she began providing paid services as a counselor on July 26, 2022. Consequently, her seniority date should be adjusted to July 26, 2022. (This would have placed her higher in seniority than the skipped counselors, establishing grounds to rescind her layoff notice.)

Respondent Lauren Imai

59. Respondent Lauren Imai is a counselor in the Wellness Center at Golden Valley High School. She contends her seniority date is July 27, 2022, rather than August 1, 2022, as stated on the seniority list. She testified she started working on July 27, 2022, preparing for when students would later come in to get their class schedules. The evidence did not establish this was mandatory. Therefore, Respondent Imai failed to establish a basis to adjust her August 1, 2022 seniority date.

CAPTURING HEARTS – RESPONDENTS BARBOSA, LUNDIN, CARSON, SMITH

60. Several Respondents, including Slade Barbosa, Susan Lundin, Elizabeth Carson, and Holly Marie Smith testified that their seniority dates should be adjusted because they attended the Capturing Kids' Hearts program in July. Capturing Kids' Hearts is a program to help teachers connect with children on a personal level in order to better instruct those students. The District encourages its certificated employees'

participation and pays them for their attendance. However, participation in this training program is not mandatory. Therefore, Respondents failed to establish a basis to adjust their seniority dates based on their attendance at the Capturing Kids' Hearts program.

RESPONDENT BRIDGETTE MARTINEZ PRIOR LAYOFF

61. Respondent Bridgette Martinez was previously employed by the District and laid off May 2011. The District did not rehire her the following school year, and she sought employment elsewhere. Respondent Martinez asserts she is entitled to restoration of her prior seniority date with the District.

62. Permanent certificated employees who are laid off have a preferred right to reemployment in a position for which they are certificated and competent if they are reemployed within 39 months. (Educ. Code, § 44956, subd. (a).) If the employee is reemployed within 39 months, their absence is treated as a leave of absence with no break in service, and they retain their original seniority date. (Educ. Code, § 44956, subd. (d).) As such, to be eligible to retain her original seniority date with the District, Respondent Martinez must have been reemployed as a certificated employee by September 30, 2014. Respondent Martinez was not reemployed with the District until July 2022. Consequently, Respondent Martinez failed to establish a basis to retain her seniority date from her prior employment with the District.

RESPONDENT KELLY-ANN CASSIO – PRIOR SUBSTITUTE SERVICE

63. Respondent Kelly-Ann Cassio has a preliminary Social Science credential, and her District seniority date is July 31, 2023. She asserts her correct seniority date is an unspecified day in December 2022.

64. During the Fall of the 2022-2023 school year Respondent Cassio began working for the District as a day-to-day substitute teacher. Effective October 19, 2022, her employment status changed, and she started employment as a long-term substitute for Richard Ortiz's class while he was on leave. Mr. Ortiz passed away some time in December 2022. Respondent Cassio continued to teach his class as a long-term substitute, and the District contemplated replacing Mr. Ortiz with a teacher who had a clear credential.

65. The evidence indicated that Respondent Cassio was properly classified as a long-term substitute effective October 19, 2022. However, she asserts that, once Mr. Ortiz passed away, she was entitled to his vacant position and should have been immediately classified as a probationary employee on his death. Respondent Cassio provided no persuasive authority that would have required re-classification of a long-term substitute to a probationary employee immediately upon the absent employee's death.

66. Additionally, the evidence did not establish that Respondent Cassio served at least 75 percent of 2022-2023 school year to allow her long-term substitute services to count as probationary and thus change her seniority date.

67. Given the foregoing, Respondent Cassio failed to establish a basis to adjust her seniority date.

Assertions of "Over-Noticing" Respondents

68. Respondents assert the District "over-noticed" teachers in several areas, including English (no specific Respondents identified), Science (Respondent Lindsey Schultz), and Special Education (Respondents Daniel Hays and Matthew Davis). This assertion was not established by the evidence and is based on the argument that the

Board should have counted vacant positions as part of the number of FTEs it authorized for reduction. As noted above (Factual Finding 17), that argument was not persuasive. Consequently, Respondents (and specifically Respondents Schultz, Hays, and Davis) failed to establish “over-noticing” as a basis to rescind their layoff notices.

Respondents’ Assertions of “Irregularities” in Layoffs

MISCLASSIFICATION OF LONG-TERM SUBSTITUTES

69. Respondents assert the entire layoff should be set aside, contending the District misclassified as long-term substitutes (i.e., temporary) several employees replacing regular employees who left the District mid-year. Only a few specific employees were identified, but Respondents assert there may be many more. The long-term substitutes’ contracts were not offered in evidence. Respondents believe some Respondents may have greater relative seniority compared to the purportedly misclassified employees, thus changing their layoff status. However, Respondents’ speculative argument is not persuasive.

70. Respondents cite *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260 (*Bakersfield*) to support their assertion that the District misclassified its employees and the layoff should be set aside. However, *Bakersfield* does not support Respondents’ assertion that the District’s long-term substitutes were misclassified. *Bakersfield* involved the layoff of probationary employees while employees classified as temporary were terminated without the same statutory right to participate in the hearing. The Bakersfield Elementary Teachers Association (BETA) sought an order directing the district to reclassify the temporary employees as probationary and to set aside the layoff, asserting some of the temporary employees, if correctly classified as probationary,

could have affected the relative seniority of other probationary teachers subject to layoff.

71. The *Bakersfield* court found the temporary employees had been misclassified because their temporary classification was based on their certification / credential level (they did not hold a preliminary or clear credential), not whether they were serving in a temporary or substitute capacity. The court held “a person who has been determined to be qualified to teach is not a temporary employee simply because he or she is not yet fully accredited, but rather because he or she occupies a position the law defines as temporary. It is necessary, therefore, to differentiate a teacher's classification from his or her certification. (*Bakersfield, supra*, 145 Cal. App. 4th at p. 496–497.) The *Bakersfield* court agreed that the district's policy of classifying employees solely on the basis of their certification was invalid. The *Bakersfield* court also affirmed the trial court order directing the district to reinstate the misclassified employees for the following school year to positions and status consistent with their correct classification.

72. In this case, there is no evidence that the long-term substitutes were classified as temporary because of their credential. Instead, they were classified as temporary to fill the short-range needs of the District. Consequently, Respondents failed to establish that any of the identified long-term substitutes should be classified as probationary for purposes of this layoff or that the entire layoff should be set aside.

ALLOWING ENGLISH TEACHER TO REVOKE RETIREMENT ELECTION

73. On December 8, 2023, the District sent a written notice to all certificated staff noting that the District and the HDTA had negotiated an incentive for early notification of the intent to retire or resign from the District at the end of the 2023-

2024 school year. The notice stated, "Any HDTA unit member who informs the [District] by Friday, Jan. 5, 2024, of their intent to retire or resign at the end of the 2023-24 school year shall receive a one-time payment of \$1,000. Once the unit member provides such notification to the District, it becomes irrevocable." (Exhibit 172.)

74. An English teacher with a seniority date of August 24, 1999, Victor Limon, elected to retire, but he was later allowed to revoke his retirement election. Respondents assert this caused a greater number of English teachers to be laid off. This assertion is not persuasive. Mr. Nielsen testified that he factored in each of the early retirements and resignations when determining the number of FTEs to recommend to the Board for layoff, and the Board therefore recommended a smaller number of FTEs be reduced. The layoff notices have already been issued, and thus, Mr. Limon's revocation of his retirement election will not adversely affect the number of layoff notices issued to Respondents. Consequently, Respondents failed to establish that any Respondent's layoff notice should be rescinded based on Mr. Limon's revocation of his retirement election.

**LAYOFF OUT OF ORDER DUE TO EXPIRATION OF EMERGENCY CLAD
(RESPONDENT STEVEN KWAK)**

75. Respondent Steven Kwak has a seniority date of September 1, 2022. He teaches English, and he was issued a layoff notice. Less senior English teachers Jennifer Martinez (seniority date 1/9/23) and Janelle Burkholder (seniority date 7/31/23), both holding EL authorizations, were retained. Additionally, on April 29, 2024, the District rescinded the layoff notices of two more English teachers with less seniority than Respondent Kwak: Madalyn Theodore-Tuttle (7/31/23) and Respondent Carolyn Holmgren (7/31/23), both of whom hold EL authorizations.

76. Respondent Kwak began working with the District as a day-to-day substitute in October 2021, transitioned to a long-term English substitute in 2022, and began teaching English full-time for the 2023-2024 school year. In Fall 2022, he was advised by District administrator, Lisa Holt, he would need to obtain his EL authorization, starting with an Emergency CLAD permit. In December 2022, Respondent Kwak applied for and subsequently obtained an Emergency CLAD permit. Attached to his application was a document he signed stating:

I understand that my Emergency CLAD Permit will only be valid for a one-year authorization. During that time, I intend to complete renewal requirements for reissuance. I will either complete at least six semester units of coursework with a grade of "C" or better in a Commission-approved CTEL program, or I will pass two of the following: Test 1, Test 2, or Test 3 of the CTEL exam.

(Exhibit 149, p. B418.)

77. Respondent Kwak failed to pass CTEL examinations in August and November 2023. His Emergency CLAD Permit expired. In February 2024, he decided to enroll in the CTEL courses rather than attempt to re-take the tests. Respondent Kwak needs to complete three courses to obtain his CLAD certification, and he needs to complete two courses to re-apply for an Emergency CLAD permit. He is finishing up the first CTEL online course. He is hoping to complete the third course by August 2024.

78. Respondent Kwak does not currently possess any EL authorization.

79. Respondent Kwak asserts he must be retained because the District failed to issue layoff notices in inverse order of seniority as required by the Education Code.

He contends that using this layoff process to resolve his delay obtaining his EL Authorization is a misuse of the layoff process. He points out that, if the District believed he was not fulfilling the terms of his employment contract, it could have pursued other courses, including non-reelection or termination for cause. His assertion is persuasive.

80. Education Code section 44955, subdivision (b), prohibits a district from retaining a less senior employee to render a service that a senior employee is "certificated and competent to render." However, "Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority [if]: 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 or to provide those services, which others with more seniority do not possess." (Ed. Code, § 44955, subd. (d)(1).)

81. The District has no authority in this layoff proceeding to deviate from seniority order except as set forth in Education Code section 44955, subdivision (d). The Resolution provides no criteria for skipping less senior English teachers. Additionally, in skipping less senior English teachers, the District failed to establish that any of the less senior teachers teaches a "specific course of study" that requires "special training and experience."

82. The District's stated basis for terminating Respondent Kwak out of order is that he does not meet all of the Resolution's competency criteria; that is, he does not "have all appropriate certifications, as determined by the District and state law, to hold the position (e.g., EL Certification, CLAD . . .)," because his Emergency CLAD Permit has expired. This analysis is incorrect.

83. Competency criteria is considered when analyzing whether a senior employee subject to layoff is certificated and competent to bump into a junior employee's position that the senior employee does not currently hold. The case cited by the District, *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, notes that districts have the discretion to determine competency criteria and upholds the district's competency criteria as reasonable. In this case, the reasonableness of the competency criteria is not at issue; as set forth in Factual Finding 32 above, the District's competency criteria are deemed reasonable. However, the District seeks to inappropriately apply the competency criteria in determining whether to lay off an employee from his current position, rather than determining if he is certificated and competent to bump into another position. This manner of applying the competency criteria is incorrect, and the District cites no authority that would allow it to do so.

84. Respondent Kwak established that his layoff notice should be rescinded based on the District's incorrect manner of applying its competency criteria.

SPECIAL EDUCATION – FAILURE TO LAYOFF JUNIOR EMPLOYEE

85. Kelsey Saba, a special education teacher, shares a seniority date of July 31, 2023, with several other special education teachers including Respondents Daniel Hays and Matthew Davis. At hearing, the District admitted it improperly skipped Kelly Saba. To remedy the failure to layoff Ms. Saba, the District subsequently rescinded the layoff notice of Respondent Jean Baird Smith who was at the top of relative seniority list after application of tie-breaking criteria.

86. Respondents Hays and Davis assert they also won tiebreaks with Ms. Saba. Respondents argue that all special education layoff notices are invalid because they were tainted by nepotism in that Ms. Saba is the daughter of the District's

Director of Special Education. This alleged basis to rescind all special education layoff notices is not persuasive. Respondents cite no authority to establish that the alleged (or even actual) impetus for the improper skipping constitutes a valid basis to rescind all layoff notices in a PKS category. In this case, the error was remedied by rescinding the layoff notice of the most relatively senior employee, Respondent Jean Baird-Smith.

Vacated Positions

87. Several Respondents assert they are qualified to fill positions that have been or are being vacated. Specifically: Respondent Lindsey Schultz asserts she should be reassigned to the Biology position vacated by David Stradling; and Respondent Megan Reck asserts she should be reassigned to the .6 FTE Health position vacated by Donna Lee. They are not asserting bumping rights, because they are not seeking to bump into a junior employee's current position. The District is not planning to fill any vacated positions but instead plans to close them. Respondents cite no authority requiring the District to keep positions open. However, if the District does keep the positions open, it must consider whether senior employees subject to layoff are certificated and competent to fill those positions.

Respondent Slade Barbosa (PE / Health - partial PKS)

88. Respondent Slade Barbosa has a seniority date of August 1, 2022, when he was hired by the District as a Health Teacher. He currently teaches .2 FTE PE and .8 FTE Health.

89. Mr. Nielsen's credible testimony established the following: Typically, a single subject credential in Health is required to teach Health. However, PE teachers can teach Health if they go through the Committee on Assignments process (Ed. Code,

§ 44258.7). Respondent Barbosa participated in that process and could teach Health again next year if he goes through the Committee on Assignments process again.

90. Health was not a PKS that was reduced or eliminated, and there is no basis to reduce Respondent Barbosa's .8 FTE of Health. Consequently, Respondent Barbosa established that .8 of his layoff notice should be rescinded.

Respondent Lindsey Schultz - Corrected Seniority List

91. The parties entered into the following oral stipulation at hearing: Respondent Lindsey Schultz holds a Master's degree that is not reflected on the District's tie-breaking and seniority lists. At Exhibit 14, page A1344, there should be an X in the Master's degree column for Respondent Schultz.

92. Respondent Schultz and another science teacher, Shania Schull, have the same seniority date of July 31, 2023. Respondent Schultz holds a preliminary credential and a Master's degree, and Ms. Schull holds an STSP with no advanced degrees. Consequently, pursuant to the tie-breaking criteria Respondent Lindsey Schultz has greater relative seniority than Ms. Schull.

LEGAL CONCLUSIONS

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

2. The services identified in the Board's Resolution are particular kinds of services that can be reduced or discontinued pursuant to Education Code section 44955.

3. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and it was a proper exercise of the Board's discretion.

4. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and students within the meaning of Education Code sections 44955.

5. Services will not be reduced below mandated levels.

6. Cause exists to reduce the number of certificated employees in the District due to the reduction and discontinuation of particular kinds of services.

7. Education Code section 44955, subdivisions (b) and (d), provide, in pertinent part:

(b) [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. [¶] . . . [¶]

(d) 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, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has

special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

8. In this case, the District's competency criteria are reasonable. (Factual Findings 29-33.)

9. In this case, the skipping criteria in the Resolution, Paragraph C, on its face, violates the requirements of Education Code section 44955, subdivision (d)(1). Additionally, the District did not demonstrate the skipped counselors had special training and experience necessary to provide specialized services as required by Education Code section 44955, subdivision (d)(1). Consequently, the skipping criteria for counselors will not be upheld. (Factual Findings 39-48.)

10. During and following the hearing, the District rescinded the layoff notices issued to the following Respondents: Janet Alexander, Anthony Pena Avila, Michael Carr, Lara Forgrave, Adam Garcia, Heila Owston, James Park, Jacqueline Resler, Cristopher Boiles, Apostolos Gatzas, Carolyn Holmgren, Bradley Knutsen, Natalie Marquez, and Kaitlyn Salazar. The Statements of Reduction in Force against these Respondents should be dismissed.

11. Cause was established to adjust the seniority date of Respondent Bridgette Martinez from August 1, 2022, to July 26, 2022. This would place her higher in seniority than the retained counselors, establishing grounds to rescind her layoff notice. The Statement of Reduction of Force against her should be dismissed and her layoff notice rescinded.

12. Cause was established to retain Respondent Elizabeth Carson because, had the District correctly applied its tie-breaking criteria to the counselors,

Respondent Elizabeth Carson would have won a tie with six of the counselors who did not receive layoff notices. The Statement of Reduction of Force against her should be dismissed and her layoff notice rescinded.

13. Cause exists to require the District to appropriately apply tie-breaking criteria from the Tiebreak Resolution to counselors with an August 1, 2022 seniority date (Eva Alonzo-Ayon, Karla Ivone Gonzales, Guillermo Gonzalez, Brianna Ortiz, Maria Reyes, William Vega and Respondents Lauren Imai, Susan Lundin, and Holly Marie Smith) to determine their relative seniority. If Respondent Lauren Imai, Respondent Susan Lundin, or Respondent Holly Marie Smith are not among the three lowest ranked after the tie-break, her/their layoff notice(s) should be rescinded.

14. Cause exists to adjust the relative seniority of Respondent Lindsey Schultz, pursuant to the re-applied tie-breaking criteria. The District should determine if the adjusted relative seniority of Respondent Lindsey will no longer subject her to layoff, and if so, the Statement of Reduction of Force against her should be dismissed and her layoff notice rescinded.

15. Cause does not exist to terminate Respondent Steven Kwak in that the District incorrectly applied its competency criteria to him. The Statement of Reduction in Force against Respondent Steven Kwak should be dismissed, and his layoff notice should be rescinded.

16. Cause exists to terminate Respondent Slade Barbosa's .2 FTE assignment in PE, but cause does not exist to terminate .8 FTE of Respondent Barbosa's Health assignment because Health services were not reduced or discontinued.

17. Except as set forth in the Legal Conclusions above and the resulting orders below, no junior certificated employee will be retained to perform services that a more senior employee is certificated and competent to render.

18. Cause exists within the meaning of Education Code section 44955 for terminating or reducing the remaining Respondents' employment for the 2023-2024 school year, as set forth in Factual Findings 1 through 92, and Legal Conclusions 1 through 17.

ORDER

1. The Statements of Reduction in Force are dismissed against the following Respondents, whose layoff notices have been rescinded: Janet Alexander, Anthony Pena Avila, Michael Carr, Lara Forgrave, Adam Garcia, Heila Owston, James Park, Jacqueline Resler, Cristopher Boiles, Apostolos Gatzas, Carolyn Holmgren, Bradley Knutsen, Natalie Marquez, Kaitlyn Salazar.

2. The District's seniority date for Respondent Bridgette Martinez shall be adjusted from August 1, 2022, to July 26, 2022.

3. The Statements of Reduction in Force are dismissed against the following Respondents, and their layoff notices shall be rescinded: Elizabeth Carson, Bridgette Martinez, and Steven Kwak.

4. The District shall adjust the relative seniority of Respondent Lindsey Schultz, pursuant to the re-applied tie-breaking criteria, and the District shall determine if the adjusted relative seniority of this Respondent will no longer subject

her to layoff. If so, the Statement of Reduction of Force against her shall be dismissed and her layoff notice rescinded.

5. The District shall apply the tie-breaking criteria reflected in the Tiebreak Resolution to the following counselors with an August 1, 2022 seniority date to determine their relative seniority: Eva Alonzo-Ayon, Karla Ivone Gonzales, Guillermo Gonzalez, Brianna Ortiz, Maria Reyes, William Vega and Respondents Lauren Imai, Susan Lundin, and Holly Marie Smith. If Respondent Lauren Imai, Respondent Susan Lundin, or Respondent Holly Marie Smith are not among the three lowest ranked after the tie-break, the Statement(s) of Reduction in Force against her/them shall be dismissed, and her/their layoff notice(s) shall be rescinded.

6. The Statement of Reduction in Force is sustained in part with respect to Respondent Slade Barbosa, and the District may notify him that .2 FTE of his services will not be needed during the 2023-2024 school year due to the reduction of particular kinds of services.

7. The Statements of Reduction in Force are sustained against the remaining Respondents who have not yet had their layoff notices rescinded. Notice shall be given to those Respondents that their services will not be required for the 2024-2025 school year, and such notice shall be given in inverse order of seniority.

DATE: 05/14/2024

Julie Cabos-Owen

JULIE CABOS OWEN

Administrative Law Judge

Office of Administrative Hearings