

**BEFORE THE
GOVERNING BOARD OF THE
AZUSA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

**In the Matter of the District's Statement of Reduction in
Force Against:**

**CERTIFIED TEACHERS OF THE AZUSA UNIFIED SCHOOL
DISTRICT, Respondents.**

OAH No. 2022040285

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 4, 2022, by videoconference.

Melanie A. Petersen and Vanessa Lee, with Fagen Friedman & Fulfrost, LLP, represented the Azusa Unified School District (District). Carlos R. Perez, with the Law Offices of Carlos R. Perez, represented all respondents appearing at the hearing, who are identified as follows: Eileen L. Baly, Emily Bresee, Virginia Bonilla, Kevin Knight, Alondra Morton, Karla Nanez Castillo, Nirupama Parmar, and Gabriela Rodriguez. Respondent Mary MacDonagh, who is also represented by Mr. Perez, did not appear at the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 4, 2022. This matter was originally set for

hearing on April 22, 2022, but the hearing was continued until May 4, 2022. Accordingly, the dates prescribed in Education Code Section 44949, subdivision (c), and 44955, subdivision (c), have been extended for a period of time equal to the continuance.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondents are certificated employees of the District.
2. On March 1, 2022, the Governing Board (Board) of the District adopted Resolution Number 21-22:22 (Resolution) to reduce or discontinue the following particular kinds of services provided by the District at the end of the 2021-2022 school year:

Services Being Reduced or Eliminated	Number of Full Time Equivalent (FTE) Positions
K-6	3.0
Secondary English Language Arts	2.0
Secondary Math	3.0
Secondary Social Science	2.0
Total FTE Reduction	10.0

3. The Board further determined that the reduction or discontinuance of particular kinds of services necessitated a decrease in the number of certificated employees by a corresponding number of FTE positions. The Board directed the

Superintendent or his designee to send all appropriate notices to employees whose positions were affected, and to take all other actions necessary to implement the resolution.

4. On March 4, the District served each respondent with a Notice of Recommendation That Services Be Terminated (preliminary layoff notice), informing him/her that his/her services would not be required for the ensuing 2022-2023 school year.

5. On March 23, 2022, Jorge A. Ronquillo, the District's Assistant Superintendent of Human Resources, filed the Statement of Reduction in Force while acting in his official capacity.

6. On that same date, the District served each respondent with the Statement of Reduction in Force, Statement to Respondent, blank Request for Hearing and Notice of Participation form, and copies of pertinent provisions of the Government and Education Codes (Reduction in Force packet). In addition to the respondents, Jennifer Wong was served with a preliminary layoff notice and with the District's Statement of Reduction in Force packet. However, she did not submit any Request for Hearing and Notice of Participation, and she did not appear at the hearing either personally or through counsel.

7. Respondents each timely submitted a signed Request for Hearing and Notice of Participation.

8. The District timely served an Amended Notice of Reduction in Force Hearing on respondents, informing them that the hearing had been continued to May 4, 2022.

Propriety of Reduction of Particular Kinds of Services

9. At the hearing, Assistant Superintendent Ronquillo testified regarding the District's decision to reduce particular kinds of services. The District currently consists of 16 school sites, and it employs 1,300 staff members and 400 certificated teachers to serve approximately 7,200 students. The number of students enrolled in the District fills only 60 to 70 percent of the capacity of its facilities. Due to the low enrollment, the District is unable to offer some programs, such as early college level courses, to its students. To address this problem, the District has been in the process of reorganizing its schools. For example, the District plans to consolidate one of its high schools, Gladstone High School, with Azusa High School by the end of the 2023-2024 school year. This consolidation, however, will also result in a reduction in the need for certificated teachers.

10. Therefore, 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. 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.

11. Additionally, 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. In a layoff proceeding like this, a governing board need only consider positively assured attrition which occurs prior to the March 15 layoff notice deadline, not thereafter. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 635.) However, Assistant Superintendent Ronquillo assured the respondents that the District will take into consideration any resignation and retirement notices before issuing final layoff notices.

Bumping Criteria and Skipping Criteria

12. The Board's Resolution established a definition of competency for purposes of allowing an employee currently assigned in a position subject to layoff to "bump" a less senior employee holding another position not subject to layoff. A senior teacher whose position is discontinued has the right to replace, or "bump," into the position of a junior employee who is providing a service which the senior teacher is certificated and competent to fill, thus allowing the senior teacher to avoid layoff. (Ed. Code, § 44955, subd. (b); *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) The Resolution provided that "competency" shall mean possession of a valid clear or preliminary credential in the subject or grade level; possession of a full English Learner certificate; possession of a single subject credential if teaching in a departmentalized setting; and trainings, permits, and experiences to meet the requirements of specialized positions. Respondents did not challenge the District's competency definition, and no respondent asserted the right to "bump" a junior employee.

13. The Board's Resolution also established "skipping" criteria to retain certain employees for the following school year regardless of seniority. Specifically, the Resolution provides that certificated employees who possess a Bilingual, Cross-cultural, Language and Academic Development (BCLAD) certificate to teach in dual immersion program positions are subject to skipping. Respondents did not challenge the District's skipping criteria, and none of the respondents indicated that he or she possessed a BCLAD certificate.

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Seniority List and Tiebreaking Criteria

14. The District maintains a seniority list that contains employees' seniority dates (first date of paid service), credential information, and current assignments. Assistant Superintendent Ronquillo testified to the accuracy of the seniority list and how it was compiled. At the end of November 2021, certificated employees were notified in writing of the District's records regarding their employment history with the District, and they were allowed to confirm or challenge the accuracy of that information. The seniority list was updated based on information obtained from certificated employees that was verified by the District.

15. The District used the seniority list to implement and determine the proposed layoffs. The District developed staff reduction worksheets of the least senior certificated employees currently assigned in the particular kinds of services to be reduced. The District then determined how many certificated employees assigned in the particular kinds of services are retiring or resigning; whether the least senior certificated employees in these particular kinds of services hold other credentials, can perform in other service areas, and are entitled to bump other more junior certificated employees; whether certain certificated employees should be skipped and retained; and how many certificated employees in each service area must be reassigned or laid off.

16. To determine the relative seniority of certificated employees who first rendered paid service on the same date, the Board, on January 11, 2021, adopted Resolution Number 21-22:11 establishing the tie-breaker criteria. The tie-breaking criteria provide for awarding priority based on credential status, breadth of the credential, number of years of experience, and possession of a clear or preliminary authorization to teach English Language Learners. In the event of a tie after applying

the tie-breaking criteria, the District would hold a random lottery. Respondents did not challenge the tiebreaker criteria or their application. The District used information from the seniority list to apply the tie-breaking criteria to determine the relative seniority among two English teachers who shared the same seniority date within their subject area. Respondent Nirupama Parmar (#348 on the seniority list) was properly identified for layoff to account for the 1.0 FTE reduction in secondary English language arts.

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

Testimony of Respondent Parmar

18. At the hearing, respondent Parmar presented testimony regarding her experience as an English teacher. Respondent Parmar has been teaching English at Gladstone High School for the last four years. According to respondent Parmar, she is the only teacher at the school who has audit authorization from the College Board to teach Advanced Placement (AP) English language and AP English literature. Respondent Parmar has had audit authorization for AP English language since 2005 and for AP English literature since 2011. Respondent Parmar also testified that in general, it takes three years for an AP English teacher to become proficient in teaching the subject matter.

19. However, respondent Parmar did not dispute her seniority level on the seniority list. She also did not dispute the application of the tie-breaking criteria which allowed another English teacher who shared the same seniority date to avoid layoff. Moreover, AP courses are not one of the courses of study identified for skipping in the Resolution. Therefore, respondent Parmar remains a teacher subject to layoff.

20. No other respondent testified at the hearing.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1-8.)

2. The services identified in the Resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. 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. Under Education Code section 44955, subdivision (d)(1), junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.) The District's skipping criteria are not in dispute.

5. 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*, *supra*, 13 Cal.3d 469.) A school district has discretion in determining whether an employee is certified and competent, as provided by Education Code section 44955, subdivision (b), to be reassigned and, as a result, displace a junior employee, as provided by subdivision (c). (*Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 565.) The criteria used to determine a teacher’s competence must be reasonable. (*Id.* at p. 566.) Competency criteria that consider the skills and qualifications required of the teacher are reasonable. (*Id.* at pp. 565-566.) It was established that the competency criteria adopted in the Resolution are reasonable, and the District’s bumping criteria are not in dispute.

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

7. Based on the above, there is sufficient cause for not reemploying respondents for the ensuing school year. (Ed. Code, § 44949, subd. (b).)

ORDER

1. The District’s Statement of Reduction in Force is sustained.

2. Notice may be given to employees occupying 10.0 full-time equivalent certificated positions that their services will not be required for the 2022-2023 school year because of the reduction and discontinuance of particular kinds of services. Notice shall be given in inverse order of seniority. Such notice may be given to respondents Eileen L. Baly, Emily Bresee, Virginia Bonilla, Kevin Knight, Alondra Morton, Karla Nanez Castillo, Nirupama Parmar, Gabriela Rodriguez, and Mary

MacDonaugh; such notice may also be given to Jennifer Wong, the certificated employee who did not request a hearing.

DATE: 05/12/2022

Ji-Lan Zang

JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings