

BEFORE THE
GOVERNING BOARD OF THE
WATERFORD UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Non-
Reemployment/Reduction in Force of:

MATTHEW BENNETT
CHRISTINA BRIONEZ
TARAH CLARK
ROBIN IRELAND
JASON JERICOFF
AMY N. KISSEE
JENNIFER PARMAN
JESSICA RODRIGUEZ
MATT STEFFEN

OAH No. 2010021006

Respondents.

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 30, 2010, in Waterford, California.

Marisa R. Lincoln, Attorney at Law, appeared on behalf of the Waterford Unified School District.

Ernest H. Tuttle, IV, Attorney at Law, appeared on behalf of respondents Matthew Bennett, Christina Brionez, Tarah Clark, Robin Ireland, Jason Jericoff, Amy N. Kisse, Jennifer Parman and Jessica Rodriguez (represented respondents).

Respondent Matt Steffen (unrepresented respondent) appeared on his own behalf.

Evidence was received, the record was closed, and the matter was submitted for decision on April 30, 2010.

FACTUAL FINDINGS

1. Don Davis is the Superintendent of Waterford Unified School District (District). Ysabel Rockwell is the Director of Personnel at the District. Their actions and the actions of the District’s Governing Board (Board) were taken in their official capacities.

2. Respondents are permanent certificated employees of the District.

3. On March 2, 2010, the Board adopted Resolution No. 100302-01 (Resolution), entitled “Reduction or Discontinuance of Particular Kinds of Service (Certificated Layoff).” Pursuant to the Resolution, the Board determined that it was necessary and in the best interest of the District to reduce or eliminate particular kinds of services (PKS) and to decrease a corresponding number of certificated District employees not later than the beginning of the 2010-2011 school year. In order to limit the number of reductions, the Board considered all positively-assured attrition, including deaths, resignations, retirements, non-reelections, and other permanent vacancies.

4. Pursuant to the Resolution, the following particular kinds of services were identified for reduction or elimination:

<u>Certificated Positions</u>	<u>FTE</u>
K-5 Elementary Teachers	6.00
K-12 Instrumental Music Teacher	1.00
K-12 Roving Substitute Teacher	1.00
Middle School Computers/Yearbook Teacher	0.20
Middle School Physical Education Teacher	0.40
Middle School Science Teacher	0.20
High School Business/Yearbook Teacher	0.20
High School Computer Teacher	0.60
High School Academic Decathlon Teacher	0.20
High School Independent Study Teacher	0.80
Continuation High School Health and Life Science Teacher	0.40
Vice Principal Alternative Education	1.00
Intermediate Resource Teacher	1.00
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Total	13.00 FTE

5. On March 2, 2010, the Board defined the “competency” of a senior employee for reassignment into a position currently held by a junior employee as follows:

- a. currently possesses preliminary, clear, professional clear, lifetime, or other full credential(s); and

- b. has at least one semester actual teaching experience in the subject area at the corresponding grade span (K-6, 7-8, 9-12) within the last five years; and
- c. has “highly qualified” status under the No Child Left Behind Act (NCLB) for the subject matter and grade level to which he/she will be assigned at the beginning of the 2010-2011 school year, and
- d. possesses a currently valid and properly filed CLAD, BCLAD, SDAIE or other regular (non-emergency) EL certificate valid for the 2010-2011 school year which will permit the employee to provide instruction to English Language Learners in his/her assignment for the 2010-2011 school year.

6. The Board directed Superintendent Davis to send appropriate notices to all employees whose services will be reduced or eliminated by virtue of the PKS reductions and eliminations. The PKS reductions and eliminations are based solely upon economic reasons, and are not related to the skills, abilities or work performance of the affected teachers.

7. On March 2, 2010, in accordance with the Resolution, and pursuant to Education Code sections 44949 and 44955, the District served preliminary layoff notices on 13 certificated teachers advising that their services would be reduced or would not be required for the 2010-2011 school year. Nine certificated teachers timely filed Requests for Hearing to determine if there is cause for not reemploying them for the ensuing school year.

8. On March 25, 2010, Superintendent Davis made and filed Accusations against the nine respondents who requested a hearing. All nine respondents timely filed Notices of Defense to the Accusations.

District’s Layoff Procedures

9. The District maintains a Certificated Seniority List Detailed (Seniority List) which contains data obtained from the District’s records and its employees, including, but not limited to, employees’ names, start dates, assignments, credentials, and school sites.

10. Ysabel Rockwell has served as the District’s Director of Personnel for six years. She is responsible for monitoring personnel files, verifying credentials, authorizations and certificates, and ensuring NCLB compliance. At hearing, Ms. Rockwell asserted that the decision to reduce or eliminate particular kinds of services was based on the fiscal condition of the district, declining enrollment, and a projected revenue deficit for the 2010-2011 school year. Ms. Rockwell stated that “the staff reductions are related to the welfare of the students in the District,” and are necessary to keep the District solvent. According to Ms. Rockwell, the District’s “reserves will be gone in three years” and the District will be “upside down,” so they “have to make cuts now.” Ms. Rockwell testified that all positively assured attrition had been

considered when the District made its layoff determinations. There was no evidence presented at the hearing to indicate that the District failed to properly take into consideration any positively assured attrition.

11. Ms. Rockwell also asserted that the Board's "competency" criteria reflect the District's need to ensure that all teachers have the requisite knowledge and experience to teach the subject matter "throughout the grade levels." In addition, the District's requirement that all certificated teachers obtain their English Learner (EL) Certificate was based on the District's need to provide equal opportunity to all of its students. According to Ms. Rockwell, it is "not the practice of the District to single out and remove EL students" from classes being taught by non-EL Certified teachers. Ms. Rockwell asserted that EL students comprise 23 percent of the students in the District, and 41 percent of the EL students attend Moon School. She is unaware of any classes without EL students in attendance. In 2007, in order to ensure that certificated teachers complied with the District's requirement, the District offered to assist the teachers, and pay for the classes and tapes necessary to obtain their EL certification. According to Ms. Rockwell, every certificated teacher in the District took advantage of the offer, except respondent Robin Ireland.

CLAD Certification

12. **Robin Ireland** has a seniority date of August 20, 2001. She holds a Professional Clear Multiple Subject Credential and Supplementary Authorization in Art. She is currently assigned to a 1.00 FTE Roving Substitute position at Richard M. Moon Elementary School (Moon Elementary School). According to Ms. Rockwell, Ms. Ireland was affected by the "competency" criteria established by the Board, and is ineligible to "bump" into a position held by a more junior teacher because she does not have her EL Certificate.

13. Ms. Ireland admitted at hearing that she was aware of the requirement to obtain her EL Certificate in 2006, and "started working on it" in the fall of 2007. However, eleven months later, she learned that she had not passed one of the classes, because she did not timely submit a portfolio to the San Joaquin County Office of Education. She has now completed three classes, and will take her fourth and final class from June 12 through August 12, 2010. She is required to submit a portfolio within two months after her last class, and expects to receive her EL Certificate approximately 10 days after completion. Ms. Ireland admitted at hearing that in the beginning of the 2009-2010 school year, she taught 2nd grade at Moon Elementary School, and six of her students were EL students. In her current position as a Roving Substitute, she also has EL students in her classes.

14. The District's rationale for laying off Ms. Ireland is the District's belief that it is required to provide equal opportunities to all of its students, and it is "not the practice of the District to single out and remove EL students" from classes being taught by non-EL Certified teachers. At hearing, the District established that EL students comprise 41 percent of the students at Moon Elementary School where Ms. Ireland substitute teaches.

15. Ms. Ireland did not establish that the Board engaged in arbitrary or capricious action or violated its discretion by requiring that certificated teachers obtain their EL Authorization. The District established that it does not single out and remove EL students from classes being taught by non-EL certified teachers, and that EL students comprise 41 percent of the students attending Moon Elementary School. Therefore, Ms. Ireland does not meet the “competency” criteria set forth in the Board’s Resolution, which requires that she possess a currently valid and properly filed CLAD, BCLAD, SDAIE or other regular (non-emergency) EL certificate valid for the 2010-2011 school year, and is subject to layoff.

Tarah Clark’s Bumping Rights

16. **Tarah Clark** has a seniority date of August 11, 2005. She holds a Clear Multiple Subject Credential, Clear Single Subject Credential in Social Science, and CLAD Certificate. She is currently assigned to teach 4th grade Gifted & Talented Education (GATE) at Lucille Whitehead Intermediate School.

17. **Matt Steffen** has a seniority date of August 14, 2006. He holds a Clear Preliminary Single Subject Credential in Social Science, and CLAD Certificate. He is currently assigned to teach three sections of United States (U.S.) History and two sections of World History at Waterford High School. Mr. Steffen received a preliminary layoff notice for 0.20 FTE for his Academic Decathlon Class, but will be retained to teach 0.80 FTE of U.S. History at Waterford High School.

18. Ms. Clark asserted at hearing that she has a Bachelor of Arts degree in History with a minor in Education. She admitted that she has not taught U.S. or World History in the school district, but believes she is “highly qualified” under NCLB to teach U.S. History. Ms. Clark is willing to teach High School Social Science and argued that she should be permitted to “bump” into 0.80 FTE of Mr. Steffen’s U.S. History assignment. The District and Mr. Steffen disputed Ms. Clark’s argument, asserting that Ms. Clark did not meet the “competency” criteria set forth in the Board’s Resolution because she does not have at least one semester of actual teaching experience in U.S. History within the last five years. Therefore, according to the District and Mr. Steffen, Ms. Clark should not be permitted to “bump” into the 0.80 FTE U.S. History assignment held by Mr. Steffen.

19. Ms. Clark does not meet the “competency” criteria set forth in the Board’s Resolution, which requires that she have “at least one semester actual teaching experience in the subject area at the corresponding grade span (K-6, 7-8, 9-12) within the last five years.” By her own admission, Ms. Clark has not taught U.S. or World History during the five years she has been employed by the District. Therefore, Ms. Clark is not entitled to “bump” Mr. Steffen.

LEGAL CONCLUSIONS

1. The District employees who received notices that their services would be reduced or would not be required in the 2010-2011 school year are not being laid off for reasons related to their ability or performance.

2. Jurisdiction in this matter exists pursuant to Education Code sections 44949 and 44955. The District has the burden of proving by a preponderance of the evidence that the proposed reduction or elimination of particular kinds of services and the preliminary notice of layoff served on respondents are factually and legally appropriate. The District has met its burden. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, “in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction.” The District must be solvent to provide educational services and cost savings are necessary to resolve its financial crisis. The Board’s decision to reduce particular kinds of services was a proper exercise of its discretion. In addition, all notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met. The notices sent to respondents indicate the statutory basis for the reduction of services and adequately describe the particular kinds of services to be reduced, and, therefore, were sufficiently detailed to provide them due process. (*Ibid.*, at p. 627; see also, *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831; *Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838; and *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

3. The Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) As set forth in Factual Finding 4 the services identified in the Resolution are particular kinds of services that may be reduced or discontinued under Education Code sections 44949 and 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 discontinuance of services relates solely to the welfare of the District’s schools and pupils within the meaning of Education Code sections 44949 and 44955.

4. No junior certificated employees are being retained to perform services that a more senior respondent is certificated and competent to render. Therefore, cause exists to give notice to respondents that their services will be reduced or will not be required for the 2010-2010 school year because of the reduction or elimination of particular kinds of services.

RECOMMENDATION

Final Notices may be given to respondents that their services will be reduced or will not be required for the 2010-2011 school year because of the reduction and discontinuance of particular kinds of services.

DATED: May 5, 2010

REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings