

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

In the Matter of the Reduction in Force of:

Certificated Employees of the Monrovia
Unified School District,

Respondents.

OAH No. 2012030288

PROPOSED DECISION

Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 26, 2012, at Monrovia, California.

Margaret A. Chidester, Attorney at Law, represented Monrovia Unified School District (District).

Rigoberto Estrada represented himself.

Glenn E. Rothner and Constance Hsiao, Attorneys at Law, represented the Respondents named in Exhibit A attached hereto and by this reference made a part hereof. There was no appearance by or on behalf of any Respondents listed on Exhibit A whose names are marked with an asterisk, and the matter proceeded by way of default hearing as to them.

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Finding of Facts.

FINDINGS OF FACT

1. Deborah L. Collins, Deputy Superintendent of the District, acting in her official capacity, caused all pleadings, notices and other papers to be filed and served upon Respondents pursuant to the provisions of Education Code¹ sections 44949 and 44955. All pre-hearing jurisdictional requirements have been met with respect to the District and all Respondents.

¹ Except as otherwise noted, all statutory references are to the Education Code.

2. On February 22, 2012, the District's Governing Board adopted a Resolution (Resolution) to reduce and discontinue the services of full-time equivalent (FTE) certificated positions at the close of the 2011-2012 school year, as follows:

(1.1)	2	K-5 Elementary Classroom Teachers	(2.0 F.T.E.)
(1.2)	5	K-5 Elementary Program Specialists	(5.0 F.T.E.)
(1.3)	1	Independent Study Program Teacher	(0.50 F.T.E.)
(1.4)	2	6-8 Foreign Language, Spanish teaching positions	(0.40 F.T.E.)
(1.5)	1	9-12 Spanish Teacher	(0.80 F.T.E.)
(1.6)	1	9-12 English Teacher	(1.0 F.T.E.)
(1.7)	1	9-12 Social Science Teacher	(1.0 F.T.E.)
(1.8)	5	K-5 Physical Education teaching positions	(2.0 F.T.E.)
(1.9)	7	K-5 Intervention teaching positions	(2.65 F.T.E.)
(1.10)	9.8	Counselor positions: Five (5) Elementary; Two (2) Middle School; One (1) High School; One Eighty Percent (.80) Alternative Program; One (1) Adult Education	(9.80 F.T.E.)
(2.1)	1	Adult/Vocational Education 231 Grant Coordinator	(0.63 F.T.E.)
(2.2)	2	Adult/Vocational Education Academics teaching positions	(0.50 F.T.E.)
(2.3)	2	Adult/Vocational Education Adult Basic Skills (ABE) teaching positions	(0.26 F.T.E.)
(2.4)	1	Adult/Vocational Education Ceramics Teacher	(0.93 F.T.E.)
(2.5)	1	Adult/Vocational Education Citizenship Teacher	(0.12 F.T.E.)
(2.6)	2	Adult/Vocational Education Computer teaching positions	(0.50 F.T.E.)
(2.7)	5	Adult/Vocational Education English as a Second Language teaching positions	(2.40 F.T.E.)
(2.8)	1	Adult/Vocational Education Jewelry Teacher	(0.50 F.T.E.)
(2.9)	1	Adult/Vocational Education Pharmacy Technician Teacher	(0.23 F.T.E.)
(2.10)	1	Adult/Vocational Education Plein Air Art Teacher	(0.13 F.T.E.)
(2.11)	1	Adult/Vocational Education Sculpture Teacher	(0.07 F.T.E.)
(2.12)	1	Adult/Vocational Education Teacher on Special Assignment, Technology position	(0.73 F.T.E.)
(2.13)	1	Adult/Vocational Education Upholstery Teacher	(0.42 F.T.E.)
(3.1)	1	Regional Occupational Program Administration of Justice Teacher	(0.17 F.T.E.)
(3.2)	1	Regional Occupational Program Careers in Education Teacher	(0.13 F.T.E.)
(3.3)	1	Regional Occupational Program Certified Nurse	

		Assistant Teacher	(1.0 F.T.E.)
(3.4)	1	Regional Occupational Program Child Development Teacher	(0.50 F.T.E.)
(3.5)	1	Regional Occupational Program Computer Teacher	(0.33 F.T.E.)
(3.6)	1	Regional Occupational Program Cooking Teacher	(0.50 F.T.E.)
(3.7)	1	Regional Occupational Program Cosmetology Teacher	(0.50 F.T.E.)
(3.8)	1	Regional Occupational Program Drama Teacher	(0.17 F.T.E.)
(3.9)	1	Regional Occupational Program Forensics Teacher	(0.17 F.T.E.)
(3.10)	1	Regional Occupational Program Graphic Design Teacher	(1.0 F.T.E.)
(3.11)	1	Regional Occupational Program Job Developer	(1.0 F.T.E.)
(3.12)	1	Regional Occupational Program Lifeguard Teacher	(0.13 F.T.E.)
(3.13)	1	Regional Occupational Program Marketing Teacher	(0.83 F.T.E.)
(3.14)	1	Regional Occupational Program Medical Assisting Teacher	(1.0 F.T.E.)
(3.15)	1	Regional Occupational Program Office Occupations Teacher	(0.17 F.T.E.)
(3.16)	1	Regional Occupational Program Fashion Teacher	(0.50 F.T.E.)
(3.17)	1	Regional Occupational Program Small Business Teacher	(0.33 F.T.E.)
(3.18)	1	Regional Occupational Program Graphic Design Teacher	(0.33 F.T.E.)
(3.19)	1	Regional Occupational Program Video Production Teacher	(1.0 F.T.E.)

42.33

TOTAL F.T.E.

3. These services are “particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of discretion.

4. The reduction or discontinuation of these particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

5. The Board properly considered all known attrition, resignations, retirements, deaths and requests for transfer in determining the actual number of necessary layoff notices

to be delivered to its employees as of March 15, 2012. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, at 636 (1983).²

6. In its Resolution, the Board directed the Superintendent or his designee to serve notices of termination in accordance with and in the manner prescribed by Education Code sections 44949 and 44955.

7. At the time it adopted the Resolution, the Board also adopted criteria (Exhibit B to the Resloultion) to be used in determining the order of termination of certificated employees who first rendered paid service to the District in a probationary position on the same date. The Board resolved that the order of termination of said employees shall be determined by reference to certain tiebreaker criteria and to points assigned to each category of tiebreaker criteria. It is found that such criteria best serve the needs of the District and its students.

8. At the time it adopted the Resolution, the Board also adopted criteria for certificated personnel that it would exempt from layoff (Exhibit A to the Resolution). The Board then amended these criteria on March 14, 2012. So far as is relevant to these proceedings, the amended criteria include the following: “Certificated personnel who possess a single subject credential authorizing service in English and a Bilingual Crosscultural Language and Academic Development Certificate (BCLAD), Spanish who are presently assigned within the scope of that credential to Monrovia High School, and who will be assigned to teach within the scope of that credential and bilingual authorization for the 2012-2013.” The Board did not adopt a formal resolution amending Exhibit A; however, the same is not needed. So long as a district identifies its “specific need,” the District grants discretion to the superintendent in carrying out the layoff, even up until the time of hearing. (See, *Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, and *Bledsoe v. Biggs Unified School Dist.*, (1987) 196 Cal.App.3d 555, *infra*.)

9. Pursuant to the Resolution and the provisions of sections 44949 and 44955, the Superintendent gave timely written notice to Respondents that he had recommended to the Board that notice be given to Respondents that their services would not be required for the 2012-2013 school year. Respondents requested a hearing to determine if there is cause for not employing them for the ensuing school year.

10. The District filed and timely served an Accusation, copies of the Resolution, a Statement to Respondent, a blank Notice of Defense, Request for Discovery, and pertinent sections of the Government and Education Codes upon Respondents, who filed timely Notices of Defense.

11. The District maintains a seniority list (Exhibit 2) which contains employees’

² All layoffs were for particular kinds of service, and not “average daily attendance” which might have required positively assured attrition to be considered through May 15, 2012.

seniority dates, current assignments, and credentials. The District used the seniority list to develop a proposed lay-off list of the least senior employees currently assigned to the various services being reduced. 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. The District then determined whether these employees held credentials in another area and were entitled to displace and replace (bump) other, more junior employees. In compiling Exhibit 2, the District did not take into account the ramifications of the recent case of *Stockton Teachers Assn. CTA/NEA v. Stockton Unified School Dist.* (2012) 204 Cal.App.4th 446. According to Deputy Superintendent Collins, the holding in *Stockton* was not applied to the seniority list because that holding was found to be “confusing” and also because the district in that case has asked the California Supreme Court to review the appellate decision.³

12. School districts have broad discretion in defining positions within the district and establishing requirements for employment. (*Martin v. Kentfield School Dist.* (1983) 35 Cal.3d 294, 299-300.) Similarly, school districts have the discretion to determine particular kinds of services that will be eliminated, “even though a service continues to be performed or provided in a different manner by the district.” (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571, 1582-1585; *Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.)

13. What amounts to a particular kind of service for lay-off purposes varies according to the circumstances, and must in each case be determined in the light of the particular facts. A particular kind of service may be a certain subject, it may be the teaching of the subject for a particular purpose, or it may be a particular manner of teaching the subject. (*Walsh v. Board of Trustees of Redlands High School Dist.* (1934) 2 Cal.App. 2d 180, *Fuller v. Berkeley School Dist. of Alameda County* (1934) 2 Cal.2d 152; *Gallup v. Board of Trustees*, (1996) 41 Cal. App. 4th 1571.) *CTA vs. Goleta Union School District* (1982) 132 Cal.App.3d 32, holds that elementary teaching is a distinct particular kind of service. In *Gallup*, the court specifically noted that the issue is not *who* will perform the services, but *how* the services will be performed. (*Gallup, supra* at 1588.)

14. In order to justify skipping a junior employee in a reduction in force, a District must demonstrate a specific need for personnel with special training and experience to teach a specific course of study or to provide certain services, and that the more senior employee does not possess those skills. (Ed. Code § 44955, subd. (d).)

15. Appellate court decisions in the layoff context have held that where competency is not demonstrated by a senior employee, a junior employee having the ability to serve the needs of a program may be retained by the school district even though it may result in the senior employee's termination. (*Brough v. El Segundo Unified Sch. Dist.* (1981) 118 Cal.App.3d 702, citing *Moreland Teachers Ass'n v. Kurze* (1980) 109 Cal.App.3d 648,

³ As of the date of the hearing of this matter, the Supreme Court had not yet determined whether it would review *Stockton*.

655.) Courts have reasoned that the law requires “that someone make informed determinations whether a laid-off employee . . . is both ‘certificated and competent,’” and that “these determinations necessarily involve ‘discretionary decisions’ by a school district’s responsible officials because they ‘have a special competence’ to make them.” (*King v. Berkeley Unified Sch. Dist.* (1979) 89 Cal.App.3d 1016, 1023; *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 565.) In making this determination, a school district must consider not only legal qualifications (i.e., whether a teacher is appropriately credentialed) but also actual competence, or “the correlation between the applicant’s specific training and experience and the duties of the available position.” (*King, supra*, 89 Cal.App.3d at 1019.)

16. In *Bledsoe v. Biggs Unified School*, 170 Cal.App.4th 127 at 131, a senior English and social science teacher challenged the retention of two junior teachers teaching in a community day school, stating that the junior teachers were improperly skipped because the senior teacher was certificated and competent to render the services they were providing. The teacher argued that only formal, written program requirements are relevant in determining the District’s needs and the teacher’s competence to fill these needs. (*Id.* at 138.) The court rejected the teacher’s argument, finding instead that subdivision (d)(1) of section 44955 “expressly allows a district to demonstrate its specific ‘needs’ and there is nothing in the statute that requires such needs to be evidenced by formal, written policies, course or job descriptions, or program requirements.” (*Ibid.*) The court went on to specifically find that while the teacher may have the base qualifications necessary to be certificated and competent because she held the appropriate credential to teach in the community day school, “subdivision (d)(1) recognizes a district may have specific needs for personnel to teach a specific course of study that go beyond base qualifications.” (*Ibid.*)

17. In *Stockton, supra*, the court held that in a layoff proceeding, the district had the burden of proof to establish that those teachers it claimed were temporary employees were, in fact, properly hired in a temporary capacity. The court held that to prove that laid-off employees were temporary under section 44909 (the statute authorizing school districts to hire temporary employees for categorically funded projects), the district was required (1) to show that the employees were hired to perform services conducted under contract with public or private agencies or categorically funded projects which were not required by federal or state statutes; (2) to identify the particular contract or project for which services were performed; (3) to show that the particular contract or project expired; and (4) to show that the employees were hired for the entire or remaining term of the contract or project. The court further held that if the district did not meet its burden of proof, the teachers must be classified as probationary employees, the so-called “default classification” described in *Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist.* (2006) 145 Cal.App. 4th 460.

Joy Dunn

18. Certificated employee Joy Dunn is a permanent employee (counselor) of the District with a seniority date of August 14, 2009. She contends that under *Stockton* her

seniority date should be in January 2007. She produced a series of one-year contracts (Exhibit B), some for part-time service and some for full-time service, dating back as far as January 20, 2006. She did not specify her first date of paid service with the District. She testified that the funding for her services under the early contracts came from “Title 1 federal funds” and that the District is still receiving funds from that program. Ms. Dunn may be correct that she might be entitled to an earlier seniority date, but in this proceeding, the holding in *Stockton* is not applicable. The District does not contend that Ms. Dunn is now a temporary teacher; rather it specifies in the seniority list that she is permanent.⁴

Jennifer Oldenburg

19. Certificated employee Jennifer Oldenburg is not included on the District’s seniority list because the District classified her as a temporary employee (counselor). In 2007, Ms. Oldenburg began working for the District under a series of one-year contracts (Exhibit C). She testified that, for at least the first two contract years, her position was categorically funded. She contends that under *Stockton*, she should have a seniority date of August 20, 2007, the date the District made its initial offer of one-year employment.⁵ For the last three years, Ms. Oldenburg has been employed as a counselor under one-year contracts as a replacement for another counselor who is on a leave of absence. *Stockton* is not applicable to Ms. Oldenburg’s situation. Under section 44920, a District is given the specific authority to hire a certificated employee on a temporary basis, for a full year, to take the place of an employee who is on a leave of absence or is suffering from a long-term illness. Under that section, if the following year the person under contract is employed in a “vacant position,” he or she must be classified as probationary and the prior year of service is also treated as if he or she had been hired on probation. However, section 44920 specifically provides that, “‘vacant position’ means a position in which the employee is qualified to serve and which is not filled by a permanent or probationary employee. It shall not include a position which would be filled by a permanent or probationary employee except for the fact that such employee is on leave.” It was undisputed that, for the past three years, Ms. Oldenburg has been filling in for a counselor who has been on leave, but who is returning for the 2012-2013 school year. Accordingly, for at least the past three years, the District properly classified Ms. Oldenburg as temporary and the holding in *Stockton* does not require that she be treated as a probationary employee for those three years. A determination as to whether the District misclassified Ms. Oldenburg’s position in 2007 and 2008 is beyond the purview of this hearing.

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⁴ Even if *Stockton* was applicable to this proceeding, since the District does not contend that she is a temporary employee, it appears Ms. Dunn would bear the burden of establishing her first date of paid service. She did not so specify, nor did she indicate how, if at all, a change in her seniority date would affect these proceedings.

⁵ According to Exhibit C, Ms. Oldenburg did not accept the first contract until September 12, 2007. She did not specify her first date of paid service.

Katie Woodrick

20. Katie Woodrick has a seniority date of August 20, 2008. She possesses a single subject credential in English and currently teaches at Canyon Oaks High School. Erika Ramirez-Morales has a seniority date of August 18, 2011. She possesses a single subject English credential and currently teaches at Monrovia High School. The District skipped Ms. Ramirez-Morales in favor of laying off Ms. Woodrick because Ms. Ramirez-Morales possess a BCLAD certificate while Ms. Woodrick does not. According to Deputy Superintendent Collins, Exhibit A to the Resolution was amended, as described in Finding 8, for the specific purpose of retaining Ms. Ramirez-Morales because she possessed the BCLAD certificate. According to Ms. Collins, the District has need for teachers who are bilingual in Spanish/English, the better to enable instruction to those students with limited English proficiency and the better to understand and deal with cultural sensitivity issues of those students. The District's requiring a teacher to possess the BCLAD certificate to teach English at Monrovia High School was not an abuse of discretion.

Robert Montes

21. Robert Montes holds a single subject credential in English and has a seniority date of August 25, 2011. He is being "bumped" by Rhonda Luna who has a seniority date of August 18, 2008 and who is currently working as a counselor. Ms. Luna also has a single subject credential in English and will take Mr. Montes' place in the classroom in the coming school year. Mr. Montes argued that Ms. Luna did not possess the "highly qualified" designation needed to teach high school English, but that he did. On rebuttal, the Deputy Superintendent testified that the seniority list (Exhibit 2) was in error and that she checked the District's records and found that Ms. Luna was designated as highly qualified. The seniority list was amended by interlineation to reflect Ms. Luna's designation as highly qualified. As Ms. Luna possesses all of the qualifications to teach high school English and is senior to Mr. Montes, she has the right to bump Mr. Montes.

CONCLUSIONS OF LAW

1. Jurisdiction for these proceedings exists pursuant to sections 44949 and 44955.
2. The services set forth in Finding 2 are particular kinds of service which may be reduced or discontinued in accordance with applicable statutes and case law. A district may reduce services, within the meaning of Education Code 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.)
3. Cause exists because of the reduction in particular kinds of services to reduce the District's teaching positions as set forth in the Board Resolution and to give notice to the

affected teachers pursuant to Education Code section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

4. The District's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

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

ORDER

As a result of the reductions of services, the District may give notice to all teachers listed on Exhibit A attached hereto that their services will not be required for the 2012/2013 school year.

Dated: _____

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

Adult Education Employees

1. *Burrill, Carol
2. Socha, Sharon
3. Uribe-Treiger, Sara

Permanent and Probationary Employees

1. Cayem, Kathryn
2. Diephuis, Natasha
3. Dunn, Joy
4. Hamlow, Chloe
5. Hills-DuRose, Spring
6. McCarthy, Marita
7. Montes, Robert
8. Woodrick, Katie

Temporary Employees

1. *Cobain, Erika
2. Estrada, Rigoberto (self-represented)
3. Hicklin, Damon
4. Macchia, Natalie

R.O.P. Employees

1. Molina, Marcela
2. Petersen, Theresa (Shaoling)

Employees who failed to submit a Notice of Defense but who were allowed to participate

1. Diera, Maria
2. Ramirez-Morales, Erika
3. Oldenburg, Jennifer