

BEFORE THE
GOVERNING BOARD
LOS OLIVOS SCHOOL DISTRICT
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Sharla Braquinho and Nancy Watson,

Respondents.

Case No. 2012040037

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 3, 2012, in Los Olivos, California.¹

Danielle G. Eanet, Attorney at Law, represented Marsha Filbin (Filbin), Superintendent of the Los Olivos School District (District).

Sharla Branquinho (Branquinho) and Nancy Watson (Watson), who are collectively referred to as Respondents, represented themselves.

The District has decided to reduce or discontinue certain educational services and has given Respondents and other certificated employees of the District notice of its intent not to reemploy them for the 2012-2013 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2012-2013 school year.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Superintendent Filbin filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.

¹ The hearing in this matter was continued from its previously-scheduled date, April 18, 2012, and the deadlines set forth in Education Code sections 44949, subdivision (c), and 44955, subdivision (c), have been extended in accordance with Education Code section 44949, subdivision (e).

3. a. On February 13, 2012, the Governing Board of the District (Governing Board) adopted Resolution number 2011/2012 No. 06, reducing or discontinuing the following services for the 2012-2013 school year:

<u>Service</u>	<u>FTE² Positions</u>
Multiple-subject credentialed teachers	6.5
Single-subject credentialed Science teachers	1.0
Single-subject credentialed Math teachers	1.0
Single-subject credentialed Social Studies teachers	1.0
Single-subject credentialed English teachers	<u>2.0</u>
Total	11.5

b. The Governing Board thereafter recognized that it could not reduce some of services and still provide all course offerings mandated by the State of California. As a result, it decided to reduce the services of multiple-subject credentialed teachers by 4.0 FTE instead of 6.5, those of Science teachers by .5 FTE instead of 1 FTE, those of English teachers by .5 FTE instead of 2 FTE, and not to reduce the services of Social Studies teachers.

4. On February 15, 2012, the District provided notice to Respondents that their services will not be required for the 2012-2013 school year due to the reduction of particular kinds of services. On February 16, 2012, Respondents timely requested hearings.

5. Superintendent Filbin notified the Governing Board that she had recommended that notice be provided to Respondents that their services will not be required for the 2012-2013 school year due to the reduction of particular kinds of services.

6. On March 28, 2012, Superintendent Filbin issued the Accusation and other required documents, and thereafter served them on Respondents. Respondents filed timely Notices of Defense. On or about April 12, 2012, the District issued and served the Notice of Hearing on Respondents.

7. All prehearing jurisdictional requirements have been met.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code³ section 44955.

² Full-time equivalent.

³ All further statutory references are to the Education Code.

9. The District has two schools, Los Olivos Elementary (Elementary), a Kindergarten through Eighth Grade primary school, and the Olive Grove Charter School (Charter School), a dependent charter school providing instruction in Kindergarten through Twelve Grades. Instruction at the Elementary takes place in self-contained classrooms in Grades Kindergarten through Sixth, and in departmentalized classrooms in Grades Seventh and Eighth. Students at the Charter School conduct their studies at home, with weekly supervision and support from certificated employees. Students typically meet with teachers for one hour each week at one of the Charter School's six satellite locations. The Charter School also provides weekly classes in core subjects. Approximately 75 percent of Charter School students are in Grades Ninth through Twelve.

10. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of the District's precarious financial situation and anticipated further declines in State funding. The District projects a funding deficit of \$618,670 at the Charter School and \$307,338 at the Elementary. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

11. The reduction or discontinuance of services set forth in factual finding number 3, in the context of the financial difficulties and anticipated decline in revenue and the need to continue to provide services to its students, is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

12. On February 13, 2012, the Governing Board adopted Resolution 2011/2012 No. 07, setting forth the criteria to determine seniority among employees who first rendered paid service in a probationary position on the same date (tie-breaking criteria). The specific criteria was listed, in order of importance as: breadth of credentials, Crosscultural, Language, and Academic Development certification, advanced degrees held, units beyond a Bachelor's Degree, teaching experience in any district, and teaching experience in different subjects. The criteria are reasonable as they relate to the skills and qualifications of certificated employees. The District did not need to apply the criteria to determine the order of termination of Respondents.

13. a. On February 13, 2012, the Governing Board adopted Resolution 2011/2012 No. 08, which contains the following competency criteria. "[1] For positions in the elementary school, must have at least one year full-time classroom teaching experience in a similar classroom within the last 3 years (not subbing); [¶] 2. For single subject positions in the charter school, must have at least one year full-time teaching experience in the discipline within the last 3 years (not subbing); [¶] 3. For all positions, must have [No Child Left Behind] compliance in the discipline. . . ."

b. Filbin explained that she recommended the competency criteria to the Governing Board. In her view, experience in the past three years would ensure that the teacher was sufficiently up-to-date with curriculum changes and that he/she had sufficient recent experience to handle the assignment.

14. Respondent Watson has a seniority date of October 9, 2006, and holds a multiple subject credential. She taught at the Elementary for one year, before moving to the Charter School approximately five years ago. She has been the lead teacher at the Academy's Santa Maria site for approximately three and one-half years. In this position, she receives a stipend for performing some administrative duties. She also provides instruction to Charter School high school students.

15. Respondent Branquinho has a seniority date of November 16, 2007, and holds a multiple subject credential. She has taught at the Charter School during her entire tenure with the District. In the current year, she taught four high school classes, Career Preparation, Drivers Education, Health, and Lifetime Fitness, each for 45 minutes per week. She also supervised the instruction of five lower grade students, one each in Grades Third, Fourth, Fifth, Seventh, and Eighth, meeting with them on a weekly basis.

16. In addition to Respondents, other certificated employees with multiple subject credentials have taught and continue to teach high school subject matters. Some single subject teachers have taught and continue to teach at the Elementary.

17. The District has rescinded layoff notices, and plans to retain, Danielle Felix (Felix), Melissa Roberts, and Lana Riley, to teach at the Elementary. They have seniority dates of September 21, 2009, August 22, 2007, and August 23, 2006, respectively. Karolyn Chandler (Chandler), who has a seniority date of February 11, 2008 and who holds a single subject, English, credential, has been retained to teach for .5 FTE at the Elementary and for .5 FTE to teach at the Charter School, including an English class. The District did not establish that Chandler's assignment constitutes a single, integrated position that cannot be split.

18. The District has retained the junior employees set forth in factual finding number 17 over Respondents by application of its competency criteria. Respondents do not possess the experience required by the District's competency criteria in order to teach at the Elementary. They have not taught in an elementary school classroom, on a full-time basis, for at least one year in the past three. Respondents nevertheless assert that they are certificated and competent to teach at the Elementary.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are particular kinds of services within the meaning of section Education Code section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under Education Code sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 11.

4. Section 44955, subdivision (b), provides, in pertinent part: “[t]he services of no permanent employee may be terminated under the provisions of this section 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.” (Emphasis added.) “Certificated” is defined by the provisions of the Education Code pertaining to credentials, but “competent” is not specifically defined. In *Forker v. Board of Trustees* (1994) 160 Cal.App.3d 13, 19, the Court defined the term in a reemployment proceeding under section 44956, a statute that contains the same “certificated and competent” requirement, in terms of the teachers’ skills and qualifications, specifically, as “relating to special qualifications for a vacant position, rather than relating to the on-the-job performance of the laid-off permanent employee.” In doing so, the Court noted that courts in reduction in force cases, namely *Brough v. Governing Board* (1981) 118 Cal.App.3d 702, 714-15, and *Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 654-55, had interpreted the term in a similar manner.

As the *Forker* court recognized, school districts have the discretion to define competency, as had been permitted in earlier reemployment cases, *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016 (*King*) and *Martin v. Kentfield School District* (1983) 35 Cal.3d. 294 (*Martin*). In *King*, the court upheld a district’s requirement that laid off teachers have prior teaching experience in the open jobs in which they claimed competency, namely, mathematics and physical education. In *Martin*, a district was permitted to require prior teaching experience in middle school before deeming laid off elementary school teachers competent to teach in middle school, if such requirement was equally applied to all certificated employees, not just those on a preferential rehire list.

In *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565 (*Duax*), a case arising under the community college reduction in force statute, now section 87743, the governing board had established a standard of competency that required one year of full-time teaching in the subject area within the last ten years. After acknowledging the discretion afforded to school districts, and set forth in *King* and *Martin*, the court stated: “While these decisions stress the discretion reposed in a school board in defining the term ‘competent,’ the court in *Forker* . . . added further assistance in stating, ‘[a]s interpreted by the *Martin* court, the term ‘competent’ as used in section 44956 relates to specific skills or qualifications required of the applicant. Decisions prior to *Martin* have interpreted that term in a similar manner.’ (*Id.* at

p. 9. See also *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal. App.3d 648, 654-655; Ozsogomonyan, *Teacher layoffs in California: An Update* (1979) 30 Hastings L.J. 1727, 1749-1751.) Hence, from these authorities we conclude that a board's definition of competency is reasonable when it considers the skills and qualifications of the teacher threatened with layoff."

The *Duax* court upheld the governing board's definition of competence as a reasonable exercise of the governing board's discretion. In this regard, the court stated: "[T]he mandate is that the governing board establish a standard of competency that relates to the skills and qualifications of the teacher. That standard was established by resolution of the governing board, and since it requires only one year of teaching in the last ten, not one in the last two or three, we are not persuaded that it too narrowly defines competency. . . ." (*Duax*, supra, 196 Cal.App.3d at 567.) Unlike the requirement upheld in *Duax*, the District's competency criteria is at the other end of the spectrum, and is one that the court hinted might be too restrictive.

The District seeks to define competency too narrowly, and the criteria cannot stand. One year in three is too restrictive, and, therefore, not a reasonable measure of an employee's skills and qualifications. Not only does the District require experience in the very recent past, but it requires a full year of such experience as a full-time, as opposed to a substitute or other part-time, employee. The experience requirement is particularly unreasonable because the District has not previously imposed such a strict experience criteria, and because multiple subject teachers, such as Respondents, routinely teach high school subjects and single subject teachers routinely teach elementary school subjects.

5. Respondents are certificated and competent to teach at the Elementary. They both hold multiple subject credentials. They have both taught elementary school subjects, Respondent Branquinho in the current year. By virtue of their training and experience, Respondents have established that they possess the skills and qualifications to teach in Grades Kindergarten to Eighth.

6. A district may not be compelled to split up a full-time position in order to retain an employee subject to layoff for a portion of the full-time position. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334; *Murray v. Sonoma County Office of Education* (1989) 208 Cal.App.3d 456; *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016.) In *Hildebrandt*, two senior part-time psychologists sought to bump a full-time psychologist. The court found that the district had established that it needed a full-time psychologist to fulfill its obligations to its students. In this case, the District did not establish that Chandler's assignment constitutes the type of integrated position the *Hildebrandt* court held could not be split. Rather, she holds part-time positions in the Elementary and in the Charter School, and Respondents may bump into the Elementary assignment.

7. The District has retained two employees junior to both Respondents to teach at the Elementary, Chandler and Felix, assignments which Respondents are certificated and competent to perform. Respondents may bump into the available 1.5 FTE positions consistent with their seniority and their current FTE status. Accordingly, cause does not exist to terminate their services for the 2012-2013 school year, by reason of factual finding numbers 1 through 18, and legal conclusion numbers 1 through 6.

ORDER

The Accusation is dismissed.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings