BEFORE THE
GOVERNING BOARD OF THE
RIALTO UNIFIED SCHOOL DISTRICT
SAN BERNARDINO COUNTY
CALIFORNIA

In the Matter of the Reduction in Force Proceeding Involving: Certain Certificated Employees of the Rialto Unified School District Who Received Preliminary Layoff Notices for the 2013-2014 School Year, Respondents.	OAH No. 2013040058

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this reduction in force proceeding in Rancho Cucamonga, California, on April 25, 2013.

Paul Z. McGlocklin and John W. Dietrich, of Atkinson, Andelson, Loya, Ruud & Romo, represented the Rialto Unified School District.

Joshua M. Baskin, of Skipper, Singer & Associates, represented all respondents appearing at the reduction in force proceeding. Michael Kress, CTA Representative, assisted Mr. Baskin.

No respondent represented himself or herself.

The matter was submitted on April 25, 2012.

FACTUAL FINDINGS

The Rialto Unified School District

1. The Rialto Unified School District is located in the City of Rialto, between the cities of Fontana and San Bernardino. The District encompasses approximately 59 square miles and serves about 26,000 Kindergarten through 12th Grade students living in the communities of Rialto, Colton, Fontana, San Bernardino, and Lytle Creek. The District

currently maintains 19 elementary schools, five middle schools, three comprehensive high schools, and an adult education program. Approximately 26 percent of the students are English Language Learners. About 87 percent of the student body is eligible to participate in the hot lunch program.

The District employs approximately 2,400 persons, about 1,160 of whom are certificated employees who provide direct services and supports to students. The District has a projected budget of approximately $216 million for the 2013-2014 school year. About 92 percent of the District's budget funds employee salaries and benefits.

2. The District is governed by an at large elected five-member Board of Education. Harold L. Cebrun, Sr., Ph.D. is the District Superintendent and the Board's Chief Executive Officer. Felix J. Avila is an Associate Superintendent of Schools, Personnel Services. Rhonda D. Kramer is a Senior Director of Personnel Services.

The Fiscal Crisis

3. Public schools primarily rely on financing from the State of California. A school district cannot determine the level of funding it will receive until the state budget is chaptered, an event that is supposed to occur each year in late June. Before then, a school district's governing board, which has the duty to produce and file a balanced budget with the County Department of Education, must take steps to ensure that financial ends meet if the worst-case financial scenario develops. By law, a school district must maintain a reserve for economic uncertainty that is equal to three percent of the district's expenditures.

California's recent economic problems have had a crippling impact on the Rialto Unified School District and other public school districts. If the District cannot meet its financial obligations, the San Bernardino County Office of Education possesses the authority to intervene and take over the District's operations.

4. With regard to the budget for the 2013-2014 school year, District administrators project a $10.2 million shortfall. The amount of the projected deficit could be reduced with additional funding from the State of California.

The District's Response

5. In response to the anticipated budgetary shortfall for the 2013-2014 school year, District administrators once again reviewed services and staffing. The Board and the District implemented plans to trim the budget. The Board passed a resolution designed to reduce class size staffing. The Board passed a resolution to eliminate the adult education program. The District reassigned administrators. Cost containment in the areas of health and welfare is being pursued. In addition, on the recommendation of Superintendent Cebrun, the Board passed a resolution to eliminate 32.73 full time equivalent certificated positions, including those employees assigned to the adult education program.

On February 27, 2013, Superintendent Cebrun recommended to the Governing Board that it adopt a resolution authorizing the reduction or elimination of certificated staff in accordance with provisions of the Education Code. More specifically, Superintendent Cebrun recommended the elimination of 32.73 full time equivalent positions for the 2013-2014 school year, specifying in his recommendation the positions that should be reduced or eliminated and the amount of the reductions.

6. On February 27, 2013, following Superintendent Cebrun's staffing recommendation, the Governing Board adopted Resolution No. 12-13-44. It provides:

BOARD OF EDUCATION OF THE
RIALTO UNIFIED SCHOOL DISTRICT

REDUCTION OF PARTICULAR KINDS OF SERVICES

RESOLUTION NO. 12-13-44

WHEREAS, the Board of Education of the Rialto Unified School District has determined that due to financial conditions it is in the best interests of the District and the welfare of the schools and the pupils thereof that the particular kinds of services set forth herein must be reduced or discontinued; and

WHEREAS, it is the opinion of the Board that because of the aforementioned reason, it is in the best interest of the District that the number of regular certificated employees of the District must be reduced; and

WHEREAS, this Board does not desire to reduce the services of regular certificated employees based upon reduction of average daily attendance during the past two years; and

WHEREAS, this Board has determined that due to a significant population of English language learners with specialized educational needs, a specific and compelling need exists to employ and retain certificated employees who have authorization to teach English Learner ("EL") students, as determined by the California Commission on Teacher Credentialing, and the special training and experience that comes therewith; and

WHEREAS, State law mandates that each failure to staff a classroom containing one or more EL students with a certificated employee possessing an appropriate EL authorization is a "misassignment" subject to sanction by the County Superintendent of Schools; and

WHEREAS, compliance with the provisions of the No Child Left Behind Act, the Williams Settlement, and Education Code section 44253.1, require that EL students be served by certificated employees with appropriate EL authorizations and who are No Child Left Behind compliant in the subject area they are teaching; and

WHEREAS, the needs of the District and the students thereof should not and cannot be adequately served by concentrating EL students in particular classrooms in such a manner as to lessen the need for certificated employees with EL authorizations.

WHEREAS, Education Code section 44955(d) authorizes this Board to deviate from terminating certificated employees in order of seniority for the above reasons, if necessary; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Rialto Unified School District as follows:

A. That the particular kinds of services set forth below shall be reduced or eliminated commencing in the 2013-2014 school year:

Administrative Interns	4	F.T.E.
Adult Education Advanced Beginning ESL Teacher	.17	F.T.E.
Adult Education Beginning ESL Teacher	1.13	F.T.E.
Adult Education Diploma Subject Teacher	.80	F.T.E.
Adult Education English Teacher	.40	F.T.E.
Adult Education GED Test Prep Teacher	.74	F.T.E.
Adult Education Intermediate ESL Teacher	.47	F.T.E.
Adult Education Math Teacher	.13	F.T.E.
Adult Education Pharmacy Clerk Teacher	.17	F.T.E.
Adult Education Science Teacher	.20	F.T.E.
Adult Education Social Science Teacher	.20	F.T.E.
Adult Education Word Processing Teacher	.30	F.T.E.
Elementary Communicative Handicapped Teacher	1	F.T.E.
Elementary Multi-Handicapped Teacher	1	F.T.E.

Elementary Resource Specialists	3	F.T.E.
Elementary VAPA Teacher	1	F.T.E.
High School Biology Teacher	1	F.T.E.
High School CNC Machining Teacher	.68	F.T.E.
High School Earth Science Teacher	1	F.T.E.
High School Intervention Counselor	1	F.T.E.
High School Intro to Technology Teacher	.34	F.T.E.
High School Math Teachers	3	F.T.E.
High School Spanish Teacher	1	F.T.E.
Middle School Math Teachers	2	F.T.E.
Middle School PE Teacher	1	F.T.E.
Middle School Science Teacher	1	F.T.E.
Middle School Social Science Teacher	1	F.T.E.
School Nurse	3	F.T.E.
Teacher on Special Assignment	2	F.T.E.
TOTAL CERTIFICATED POSITIONS	**32.73**	**F.T.E.**

B. That due to the reduction or elimination of particular kinds of services, a corresponding number of certificated employees of the District shall be terminated pursuant to Education Code section 44955.

C. That the reduction of certificated staff be achieved by the termination of regular employees and not by terminating temporary or substitute employees.

D. That “competency” as described in Education Code sections 44955(b), 44956, and 44957, for the purposes of bumping and rehire rights, shall necessarily include possession of a valid EL authorization and being No Child Left Behind Compliant in the subject area.

E. That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by Board-adopted criteria.

F. That the District Superintendent or designee is directed to initiate layoff procedures and give appropriate notice pursuant to Education Code sections 44955 and 44949.

PASSED AND ADOPTED this 27th day of February, 2013, in the County of San Bernardino, California.

The Particular Kinds of Services

7. The kinds of services identified in Resolution No. 12-13-44 were services that could be lawfully reduced or eliminated under the Education Code. The Governing Board's adoption of Resolution No. 12-13-44 was neither arbitrary nor capricious; its adoption was well within the Governing Board's discretion. No particular kind of service was lowered to a level below that mandated by state or federal law. The enactment of Resolution No. 12-13-44 related solely to the economic crisis and the Governing Board's duty to balance the budget; to that extent, enactment of Resolution No. 12-13-44 was in the best interest of the District and the students thereof.

8. Each respondent in this reduction in force proceeding is a certificated employee of the District.

Delegation of Authority and Notice to Board

9. On February 27, 2013 Superintendent Cebrun granted non-exclusive authority to Associate Superintendent Avila to direct the reduction in force proceeding.

Notice to the Board

10. On March 14, 2013, Superintendent Cebrun gave notice to the Board of his recommendation that certain employees be given notice that their services would not be required for the upcoming 2013-2014 school year.

The District's Seniority List

11. The District maintains a seniority list, a constantly evolving document that is updated as new certificated employees are hired and as other employees retire, resign, or otherwise become separated from service with the District. The seniority list is a spreadsheet that is organized from the District's most senior certificated employee to the most recently hired certificated employee. The list contains each employee's seniority number, name, status (tenured or probationary), a tie-breaking value for employees who provided service on the same first day, a seniority date (the employee's first date of paid probationary service with the District), the school site where current services are being provided, the employee's current assignment, and the employee's credentials on file with the District.

12. In early February 2013, when it became apparent that a reduction in force might become necessary, the District circulated a seniority list to all certificated employees with a request that each employee review that list and verify or update his or her seniority information within the next few weeks; if an employee did not return the list to District administrative staff in a timely manner, the staff concluded that the information set forth in the seniority list was correct.

The Issuance of Preliminary Layoff Notices

13. Using the updated seniority list, Resolution No. 12-13-44, and the tie-breaking criteria, Senior Director Kramer and other staff members identified those certificated employees who should receive preliminary layoff notices and those who should not.

Whenever an employee providing a particular kind of service that was being eliminated or reduced under Resolution No. 12-13-44 was tentatively identified as being in line to receive a preliminary layoff notice, that employee's seniority and credentials were carefully examined to determine whether that employee had the seniority, credentials and competence to "bump" a junior employee and assume the more junior employee's position.

14. Preliminary layoff notices and other jurisdictional documents were served on the 27 certificated employees who did not provide services in the adult education program whose employment the District staff determined was subject to reduction or elimination as a result of Resolution No. 12-13-44, three certificated employees who did not provide services in the adult education program whose employment might be subject to reduction or elimination as a result of Resolution 12-13-44 were served with precautionary layoff notices and other required jurisdictional documents, and the nine employees who provided service within the adult education program were served with layoff notice and other jurisdictional documents. Service was accomplished by mailing a preliminary layoff notice and other jurisdictional documents to the employee's last address on file.[1]

Requests for Hearing

15. Eighteen certificated employees timely filed a request for a hearing; one certificated employee filed a request for a hearing that was not timely[2]; and 29 employees, including all of the employees involved in the adult education program, did not request a hearing.

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[1] Certificated employees of the District were and are required to maintain a current mailing address with the District.

[2] The District served that employee with notices of hearing, and the District did not object to that employee participating in this layoff proceeding.

The Administrative Hearing

16. On April 25, 2013, the record in this reduction in force proceeding was opened. Jurisdictional documents were introduced. The caption was amended. A stipulation regarding jurisdictional and evidentiary matters was provided. An opening statement was presented on the District's behalf. Sworn testimony was taken and documentary evidence was received. Associate Superintendent Villa testified about the budgetary crisis and the layoff process. Senior Director Kramer testified about the seniority list and the District's efforts to ensure that the most senior employees were retained to provide services for which they were credentialed and competent. Closing comments were given; the record was closed; and the matter was submitted.

17. No respondent testified that his or her seniority date was improper, or that he or she should have bumping rights, or that the District's retention of any certificated employee was improper.

The Reduction in Force Proceeding

18. The enactment of Resolution No. 12-13-44 was the result of a budgetary crisis, not a decline in attendance. Resolution No. 12-13-55 was enacted in good faith, and to the extent it related to the budget crisis, its passage and content was in the best interest of the District and its students. The District complied with all jurisdictional requirements. The District used seniority, credentials and competence as the basis for "bumping" junior employees and retaining the services of senior, competent, and appropriately credentialed employees to provide services currently being provided by more junior employees. The District's tie-breaking criteria were applied in an appropriate and evenhanded manner; the application of those criteria was in the best interest of the District and its students.

LEGAL CONCLUSIONS

Statutory Authority - Reduction in Force Proceedings

1. Education Code section 44949 provides in part:

> (a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor.
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> [¶] . . . [¶]

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing . . .

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and

to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds . . .

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee. . . .

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

2. Education Code section 44955 provides in part:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified . . . and no probationary employee shall be deprived of his or her position for cause other than as specified . . .

(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the 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 . . .

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any

employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(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.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

Jurisdiction

3. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to all respondents.

The Reduction of Particular Kinds of Services

4. A school board may determine whether a particular kind of service should be reduced or discontinued, and it cannot be concluded that the governing board acted unfairly or improperly simply because it made a decision it was empowered to make. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 174.) A school board's decision to reduce or discontinue a particular kind of service need not be tied in with any statistical computation. It is within the discretion of a school board to determine the amount by which it will reduce or discontinue a particular kind of service as long as the school district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.)

Competence

5. The Education Code leaves to a school board's discretion the determination of whether an employee must also be competent to be employed in a vacant position in addition to possessing seniority. The term "competent" relates to an individual's specific skills or qualifications, including academic background, training, credentials, and experience, but it does not include evidence related to on-the-job performance. (*Forker v. Board of Trustees* (1984) 160 Cal.App.3d 13, 18-19.)

6. In this matter, the Board determined that competence included an authorization to teach English Learner ("EL") students, as determined by the California Commission on Teacher Credentialing, and the special training and experience that comes therewith; and compliance with the provisions of the No Child Left Behind Act in the subject matter being taught. These are valid and objective criteria to determine "competence."

Seniority, Bumping, Skipping

7. Seniority: Under Education Code section 44845, seniority is determined by the date a certificated employee "first rendered paid service in a probationary position."

8. Education Code section 44846 provides in part: "The governing board shall have power and it shall be its duty to correct any errors discovered from time to time in its records showing the order of employment."

9. The Statutory Scheme: Education Code section 44955, the economic layoff statute, provides in subdivision (b), in part:

> Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while . . . . any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

Essentially this statutory language provides "bumping" rights for senior certificated and competent employees, and "skipping" authority to retain junior employees who are certificated and competent to render services which more senior employees are not.

10. Bumping: The district has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 136-137.)

11. Skipping: Subdivision (d)(1) of section 44955 provides an exception to subdivision (b) where a district demonstrates specific need for personnel to teach a specific course of study and that a junior certificated employee has special training and experience necessary to teach that course that the senior certificated employee does not possess. (*Bledsoe v. Biggs Unified School Dist.*, *supra*, at pp. 134-135.) There is nothing in the statute that requires such special needs be evidenced by formal, written policies, course or job descriptions, or program requirements. (Id., at p. 138.)

School districts have broad discretion in defining positions within the district and establishing requirements for employment. This discretion encompasses determining the training and experience necessary for particular positions. 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. (*Hildebrandt v. St. Helena Unified School Dist*. (2009) 172 Cal.App.4th 334, 343.)

Cause Exists to Give Notice to Certain Employees

12. As a result of the Governing Board's lawful reduction of particular kinds of service, cause exists under the Education Code for the District to give final notice to those respondents who are identified hereafter that their employment will be terminated at the close of the current school year and that their services will not be needed by the district for the 2013-2014 school year.

Determination

13. The charges alleged were sustained by the preponderance of the evidence. The adoption of Resolution No. 12-13-44 was related to the welfare of the District and its pupils. The District made necessary assignments and reassignments in such a manner that the most senior credentialed employees will be retained to render services that his or her seniority and qualifications entitle them to provide.

RECOMMENDATION

It is recommended that the Governing Board of the Rialto Unified School District issue final layoff notices to the following certificated employees:

1. Atkinson, Lance
2. Atkinson, Ronald
3. Baisie, Dorothy
4. Bashaw, Gail
5. Buchanan, Patricia
6. Burelle, Anne
7. Castillo, Albert
8. Chovan, Sandra
9. Colby-Campbell, Kathryn
10. De La Torre, Evelia
11. De La Torre, Jorge
12. Estrada, Ilene
13. Fazio, Vincent
14. Florence IV, Eugene
15. Freeman, Melissa
16. Gillespie, Nancy
17. Henriquez-Pulido, Kristal
18. Hunt, Michelle
19. John, Zelma
20. Jones, Anthony
21. Lara, Gustavo
22. Lewis, Abina
23. Linton, Valerie
24. Logan, Sarah
25. Lopez, Samuel
26. McMillan, David
27. McParland, Vanessa
28. Norton Jr., Clyde
29. Peoples, Carmen
30. Perez, Janette
31. Robles-Wallace, Mary

32. Sanchez, Arthur
33. Savage, Rhonda
34. Stubblefield, Jeneen
35. Talton, Ericka
36. Tofflemire, Shelley
37. Ventura, Evette
38. Wohlgemuth, Judy
39. Zeledon, Margarita

Dated: April 26, 2013

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JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings