BEFORE THE
LOS ANGELES COUNTY
SUPERINTENDENT OF SCHOOLS

In the Matter of the Reduction in Force of: CERTIFICATED STAFF OF THE LOS ANGELES COUNTY OFFICE OF EDUCATION, Respondents.	OAH No. 2014020972

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter on April 17 and 18, 2014, in Downey, California.

Jennifer A. Williams, Deputy General Counsel, represented the Los Angeles County Office of Education (LACOE).

Richard J. Schwab, Attorney at Law, represented Respondents, who are identified in attachment A.

The matter was continued for 10 days, until April 28, 2014, for the submission closing briefs. The parties agreed that the statutory due date of the Proposed Decision in this matter is extended for 10 days making the due date May 19, 2014.

Complainant's brief was timely received and was marked as Exhibit 22 for identification. Respondent's brief was timely received and was marked as Exhibit H for identification. The record was then closed.

Evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Darren McDuffie, Ed.D., made the District Statement of Reduction in Force in his official capacity as the Assistant Superintendent, Human Resources, of LACOE.

2. Respondents are certificated employees of LACOE.

3. On March 11, 2014, Arturo Delgado, Ed.D., the Los Angeles Superintendent of Schools (Superintendent) adopted Resolution No. 1-S to reduce and discontinue the particular kinds of certificated services specified therein no later than the beginning of the 2014-2015 school year by a total of 256 full-time equivalent positions (FTE).

4. The Superintendent further determined it necessary by reason of said reductions or discontinuances to decrease the number of certificated employees at the close of the present school year by a corresponding number of FTE and directed Dr. McDuffie, or his designees, "to take all actions necessary and proper to the accomplishment of the purposes" of Resolution No. 1-S.

5. Pursuant to Education Code sections 44949 and 44955,[1] the Superintendent was given notice by Dr. McDuffie of the recommendation that notice be given to Respondents that their services would not be required for the ensuing school year, and stating the reasons therefore. This recommendation is dated March 12, 2014, the day after the Superintendent signed Resolution No. 1-S (Exhibit 2, page 30).

6. On or before March 15, 2013, pursuant to Resolution No. 1-S and the provisions of sections 44949 and 44955, Dr. McDuffie gave written notice to Respondents that it had "been recommended" to the Superintendent that notice be given to them that their services would not be required for the 2014-2015 school year.[2] Respondents requested a hearing to determine if there is cause for not employing them for the ensuing school year. Respondents were provided with all required documents.

7. Some Respondents were served only pursuant to a provisional credential, and were non-reelected for that reason pursuant to the Superintendent's Resolution No. 4-S, independent of this layoff process. Those Respondents were provided notification as a precaution, so that they could participate in and exercise any claimed rights in this matter should they choose to do so.

8. During the hearing, LACOE rescinded the preliminary layoff notice issued to Respondent Sandra Goodwick.

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[1] All further statutory references are to the Education Code unless otherwise noted.

[2] Even though the Notice is incorrect (the Resolution was adopted before the recommendation had been made), this appears to be a procedural error that did not affect the rights of any teacher. Section 44949, subdivision (c)(3), states: "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."

Reduction and Elimination of Particular Kinds of Services

9. Resolution No. 1-S provides for the reduction or elimination of the following particular kinds of services:

EDUCATIONAL PROGRAMS

A. Division of Pupil Services		**FTE**
1.	Psychologist	12.0
2.	Audiologist	1.0
3.	Counselor	1.0
	Subtotal	**14.0**

Division of Special Education		**FTE**
1.	Principal	4.0
2.	Coordinator II	1.0
3.	Assistant Principal	8.0
4.	Senior Program Specialist	3.0
5.	Consultant II	1.0
6.	Teacher APE	7.0
7.	Teacher AUT	20.0
8.	Teacher CAR	4.0
9.	Teacher DH	1.0
10.	Teacher DIS-HH	4.0
11.	Teacher DIS-VIS	2.0
12.	Teacher ED	31.0
13.	Teacher ID	45.0
14.	Teacher LSS	20.0
15.	Teacher MD	18.0
16.	Teacher Mobility	1.0
17.	Teacher OH	1.0
18.	School Nurse	7.0
	Subtotal	**178.0**

B. Division of Student Programs		**FTE**
1.	Counselor	4.0
2.	Teacher APE	1.0
3.	Teacher CCS	2.0

4.	Teacher ISP	1.0
5.	Teacher JCS	14.0
6.	Teacher LSS	2.0
5.	Teacher Resource Specialist	1.0
5.	Teacher SDC	3.0
	Subtotal	**28.0**

EDUCATIONAL SERVICES

A.	**Division of Accountability, Support and Monitoring**	**FTE**
1.	Project Director III	1.0
2.	Project Director II	1.0
3.	Consultant III	1.0
4.	Consultant II	3.0
	Subtotal	**6.0**

B.	**Division of Curriculum and Instructional Services**	**FTE**
1.	Project Director III	3.0
2.	Consultant II	9.0
3.	Senior Program Specialist	1.0
4.	Teacher Outdoor Education	2.0
	Subtotal	**15.0**

C.	**Division of Student Support Services**	**FTE**
1.	Project Director III	1.0
2.	Consultant II	1.0
3.	Coordinator II	1.0
4.	Coordinator I	1.0
5.	Counselor	9.0
	Subtotal	**13.0**

HUMAN RESOURCE SERVICES

A.	**Division of Human Resource Services**	**FTE**
1.	Coordinator II	1.0

	Subtotal	**1.0**

TECHNOLOGY SERVICES

A.	**Division of Instructional Technology Outreach**	**FTE**
1.	Consultant II	1.0
	Subtotal	**1.0**
	TOTAL	**256.0**

10. The services or programs set forth in Finding 9 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955. The Superintendent's determination to reduce or discontinue these services or programs is within his sound discretion and was not proven to be arbitrary or capricious. The reduction or discontinuation of services is related to the welfare of LACOE and its pupils, and it has become necessary to decrease the number of certificated employees.

11. LACOE considered personnel changes due to attrition, retirements, and the releases of provisionally credentialed and temporary employees in making its determination to issue layoff notices.

12. LACOE maintains a seniority list which contains employees' seniority dates, current assignments and locations, credentials, and authorizations. LACOE used the seniority list to identify the most junior employees working in a particular kind of service being reduced or discontinued and determine which employees would receive layoff notices.

13. The Superintendent also adopted Resolution 3-S, which contained criteria to be used in determining the order of termination of certificated employees who first rendered paid service to LACOE on the same date. The Superintendent determined that such criteria best served the needs of LACOE and its pupils. Respondents did not challenge the tie-breaking criteria.

Skipping

14. Respondents did not challenge the delivery or content of the Reduction in Force notices. Nor did they challenge seniority dates or credentials of skipped staff. Pursuant to exhibit A of Resolution No. 1-S, the Superintendent determined to retain certain certificated staff in the particular kinds of services identified in Finding 9, regardless of

seniority who, by their training, experience and assignment, met any of criteria set forth in exhibit A to the Resolution which, in pertinent part, reads as follows:

> 1) Probationary or permanent certificated employees who have experience teaching and specialized training in the Road to Success Academy's customized curriculum for female incarcerated high school students.
>
> 2) Probationary or permanent certificated employees who are currently assigned to Challenger Memorial Youth Center and have received specialized training and have experience in the facility wide implementation of the Positive Behavior Interventions and Supports (PBIS) pursuant to the requirements of the *Casey A.* Court Order and Settlement Agreement section 5.
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> 3) Probationary or permanent certificated employees who are currently assigned to Challenger Memorial Youth Center and have received specialized training and are experienced in the facility wide implementation of the Advance Path program and/or other specialized programs/courses of study pursuant to the requirements of the *Casey A.* court order and Settlement Agreement.
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> 4) Pursuant to (d)(2), and as a separate ground, Probationary or permanent certificated employees who are currently assigned to Challenger Memorial Youth Center whose assignment is necessary to maintain and achieve compliance with constitutional requirements relating to equal protection, consistent with the *Casey A.* Court Order and Settlement Agreement.

15. LACOE is the local educational agency charged with providing educational services to students in juvenile halls and probation camps in Los Angeles County, including Christa McAuliffe High School at Challenger Youth Memorial Center (McAuliffe) and Road to Success Academy (RTSA) at Camp Scott-Scudder. LACOE also provides specialized programs for students with special education and alternative education needs, such as the program at Pace School (Pace) for students with emotional disturbance.

16. LACOE is party to a federal court class-action lawsuit entitled *Casey A., et al., v. Delgado, et al.*, case no. CV10-00192GHK(FMO) (C.D. Cal.). LACOE entered into a settlement agreement, which is enforced by order of the federal district court. The court order and subsequent action plan created the need for a unique course of study focused on intensified instruction and Positive Behavior Intervention Support (PBIS) to ensure the student population at McAuliffe would receive appropriate educational support. The Court order requires ongoing monitoring and consultation by a technical

consulting advisory (TCA) team that periodically reports to the court to monitor that McAuliffe staff is receiving continuous training and consistently implementing the course of study. Respondents' sole challenge is to the validity of the skips adopted by the Superintendent for the trained staff at McAuliffe, RTSA at Scott-Scudder, and Pace. Their legal position, discussed below, is that the District has retained junior employees over senior employees (skips) who have the training, experience and credentials to render the same services for which the junior employees were retained to render.

SKIPS AT MCAULIFFE

17. Staff at McAuliffe has received significant training in the area of PBIS, including training from University of Oregon, weekly PBIS discussion collaborations, weekly professional developments, daily collaboration coaching from a PBIS committee, and one-to-one coaching from a PBIS school psychologist. TCA team co-chair, Dr. Peter Leone testified as to the positive impact of retention of the trained staff following last year's skip and how this stability ensured progress towards the Court ceasing jurisdiction. He further testified as to the negative impact that the 2011 layoffs had on the progress of the action plan when no skip was sought and trained staff was laid off.

18. Staff at McAuliffe received in-depth training for instruction, including training on the Marzano Nine, focused classroom walkthroughs, and weekly participation in one-to-one coaching with academic consulting staff. Staff has also received training on the Advance Path credit recovery program, the only multi-faceted credit recovery program of its kind in LACOE's school system. The training and implementation of that training by McAuliffe staff fundamentally affects the delivery of instruction to students in a unique way by offering a systemic approach to PBIS and intensified instruction, including Advance Path. No Respondent offered testimony of comparable training or implementation in this course of study.

SKIPS AT RTSA

19. RTSA at Scott-Scudder serves a population of incarcerated female youth with distinct social and emotional needs. Based on these students' specialized needs, LACOE developed a course of study focused on a thematic, interdisciplinary project-based learning curriculum with content and support relevant and specific to the population. To implement this course of study, RTSA staff at Scott-Scudder underwent extensive training and participated in one-to-one coaching support training. Staff also launched new programmatic components exclusive to RTSA and its female population.

20. LACOE is currently involved in expanding the RTSA course of study to other LACOE sites. This is a three year process with multiple stages of training and implementation. The testimony of the Director of RTSA, Ms. Diana Velasquez, established that the other LACOE sites are in the early planning stages and have not implemented the RTSA course of study. Ms. Velasquez testified that only the staff at RTSA at Scott-Scudder has been fully trained to implement, and is implementing, the course of study.

21. Respondents argued that teacher number 572, Ms. Diem Johnson, who is listed on the seniority list as a literary specialist, should not be included in the skip, as she is currently assigned as an Acting Senior Program Specialist for RTSA and is not teaching her regular class. Ms. Johnson's designation is temporary during the hiring process. LACOE argues that under its policies and procedures, Ms. Johnson's literary specialist teaching position at RTSA is her designated current position, and that even though she is not currently on site, she still retains rights to that position as her current designation has not changed. Should Ms. Johnson be hired into the position of Senior Program Specialist, a vacancy would open at RTSA, allowing for a staff member to be reemployed. However, if Ms. Johnson is not hired, she would return to her literary specialist teaching position at RTSA.

22. Respondents did not challenge the training Ms. Johnson received or her implementation of the RTSA course of study. However, Respondent's Edpao and Hong testified that they each had the credentials and experience necessary to act as a literary specialist at RTSA and they were senior to Ms. Johnson. Both presented documentation of attending four to five "Saturday Summits." Ms. Velasquez testified that the Saturday Summits are designed to introduce staff to the RTSA course of study. These summits do not provide the embedded training, weekly training, and professional development that the staff at Scott-Scudder receive. Respondents Edpao and Hong failed to offer sufficient evidence of training to the level of staff at RTSA at Scott-Scudder or that they were in fact implementing a thematic, interdisciplinary project-based learning course of study in their current assignments as all the RTSA teachers were trained to do and were in fact doing. Accordingly, it is found that no senior teacher was laid off in favor of Ms. Johnson who had the requisite training and experience to serve as a literary specialist at RTSA.

PACE SKIPS

23. The deviation for trained staff at Pace is based on the intensive, specialized, multicourse UCLA Extension program specifically developed for educating students with Emotional Disturbance (ED). Pace is a center-based therapeutic program for ED students, specializing in mental health needs and behavioral challenges. Kim Hopko, Director of Special Education, testified there is a critical need to serve California Youth Authority ED students in an alternative setting comparable to that of a Non-Public School to assure compliance with the Individuals with Disabilities Education Act. The teaching model at Pace directly incorporates components of UCLA-based intensive training received by the four staff members at Pace that LACOE seeks to skip. Respondents Richard Burns and Jessica Reed, both of whom are senior to the four skipped Pace teachers, presented certificates from UCLA Extension programs showing they had received the same or similar course training as the skipped teachers. Their testimony corroborated the training was the same and in fact, more extensive, than the skipped teachers. LACOE argues that even if their course work was similar, they were not currently utilizing that training. At hearing, the testimony was clear that LACOE relied on the fact that it used the special UCLA training as a basis for skipping. Mr. Burns and Ms. Reed, through no fault of their own, were not given the opportunity to "utilize" the skills they had learned at UCLA and the evidence was insufficient, as to Pace, that the skipped teachers had such additional specialized training and experience that they should be retained over senior employees Burns and Reed.

LEGAL CONCLUSIONS

1. The parties met all notice and jurisdictional requirements set forth in sections 44949 and 44955.

2. Except as specifically noted below, cause exists to sustain LACOE's action to reduce or discontinue 256 full-time equivalent positions, as set forth by resolution, for the 2014-2015 school year, pursuant to sections 44949 and 44955, as set forth in Factual Findings 1-23 and Legal Conclusions 3-8.

3. Section 44955 states, in pertinent part:

[¶] . . . [¶]

(b) whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or . . . 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.

4. Section 44949 states, in pertinent 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, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

[¶] . . . [¶]

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year.

(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.

[¶] . . . [¶]

(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.

5. The services identified in LACOE's Resolution No. 1-S are particular kinds of services that it can reduce or discontinue under Section 44955. LACOE's decision to reduce or discontinue the identified services was not arbitrary or capricious; it was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of LACOE's schools and pupils within the meaning of sections 44949 and 44955. LACOE correctly identified the certificated employees providing the particular kinds of services that it directed to be reduced or discontinued.

6. 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.)

7. Except as set forth in Finding 23, no junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. By reason of said Finding, LACOE shall retain the services of Richard Burns and Jessica Reed for the 2014-2015 school year.

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8. Based on Finding 8, LACOE shall retain the services of Sandra Goodwick.

ORDER

LACOE may serve final notices to all Respondents identified on Exhibit A, except Richard Burns, Jessica Reed and Sandra Goodwick that their services will not be required for the 2014-2015 school year.

Dated: 5-8-14

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

Anavhe, Taye O
Anyanwu, Stephanie
Arellano, Alexandra H
Arteaga, Monique
Atkinson, Stephanie
Avila, Laura
Baird, Jeffrey
Bastian, Scott P
Bledsoe, Stephanie E
Bowen, Tiffani M
Bowman, Pamela
Breuninger, David
Burns, Richard E
Burton, Michelle C
Campbell, Janet M
Candelas-Morale, Elvira*
Cashman, Daniel B*
Castillo, Jesus A
Chavira, Alejandro
Cho, Kimberly
Cissoko, Miriam E
Clayton, John C
Collier, Karen M
Crummitt, Ray A
Cruz Boddie, Mary A
Currie, William J
D Souza, Susan F
Davis, Kathleen M
De La Torre, Stephanie
Di Pierro, Gary S
Didomenico, Jory
Edpao, Allan
Ejimole, David O
Escamilla, Oscar
Ferrell, Margaret E
Ferrufino, Veronica
Fischer, Steven J
Flores, Gerardo
Foresta, Melissa A
Franco, Ofelia
Frelot, Denise M
Frias, Emilia P
Gomez, Laura

Gonzalez, Randy S
Goodwick, Sandra L
Gordon, Francis O*
Gray, Debora J
Hairrington, Lisa
Harn, Teresa*
Hart Riley, Linda R
Hayman, April E
Henges, Kristina Cea
Hennessy, Mary K
Hernandez, Karl
Hoching, Tauvaga D
Hong, Danny
Hossum, Cheryl S
Howard, Delories
Howell, Dawn
Hutzler, Heidi A
Iraheta, Kenny*
Ivey, Rodney Bruce
Jacobsen, Annika
Jew, Vincent L
Johnson, Eric C
Johnson, Yves D
Keffelew, Elfykendu
Kelley, Kyle S
Kennison, Barbara
Kern, James F
Kirschner, Harry
Kuehner, Joseph
Lamarra, Parisa B
Larsonsilva, Bon B
Lizardo, De Ana
Lochhead, Susie C
Lopez, Jazmin
Lorenze, Steven J
Mackley, Jayne M
Magana, Elan N
Maldonado, Jeanette
Mallet, Monica M
Malomo, Oghenevwaire
Martin, Ariana*
Martinez, Emily M
Maselli, Peter A
Mayfield, Valencia Lynn
Mc Cloud, Richard C

Mc Kee, Victoria
Mcnamara, Laura A
Medina, Delora J
Mejia, Alicia P
Miyasato, Philip R
Mizrahi, Lara L
Molho, Emil Y
Moore, Tonya A
Morales, Andrea I
Murray, Irene E
Najera, Karla V
Nwankwo, Ifeyinwa Ngozi
Ogbechie, Abimbola A
Oh, David
Okoro, Hilary O
Okunna, Gloria M
Olivares, David L
Orji, Anthony C
Osae Brown, Isaac
Osuji, Samuel*
Pawar, Diane
Pearson, Amy M
Pellegrino, Bryn
Perez, Blanca E
Perez, Felicia Mercado
Pinedo, Adrian
Pruszynski, Rita M
Pullens, Reginald E
Quincy, Gissell
Rada, Elizabeth*
Ravare, Regina C
Reed, Jessica V
Roberts, Jenifer C
Roberts Wilson, Laura
Rodriguez, John
Rodriguez, Leticia*
Rodriguez, Nancy E
Rojas, Gustavo
Romero, Luis A
Rosenberg, Charlene Jane
Saenz, Laura S*
Salazar, Francisco A*
Salazar-Becerra, Luvina
San Luis, Beatriz B
Sandoval, Teresa*

Sanipe-Ihediwa, Nye T
Schlie, Mayte
Shafer, James D
Shah, Rina*
Simpson, Peggy S
Soto, Claudia L*
Spivery, Rudy C.
Starnes, Brent E
Stell, Luz E
Stiffel, Caren B
Stuart, Tara
Stump, Gail K
Taylor, Cynthia L
Teller, Adair L
Thompson, Rosemary C
Tittle, Anne W
Torres, Araceli
Tran, Tuyen B
Uti, Eno E
Vargas, Margarita
Villalobos, Rosanna N
Walton, Tyesa
Warren, Natasha*
White, Keysha D
Wilhelmus, Christy
Woods, Gayle
Zuniga, Victoria A