

**BEFORE THE GOVERNING BOARD  
OF THE COMPTON UNIFIED SCHOOL DISTRICT**

In the Matter of the Layoffs of:

OAH Case No. L2009040220

Certain Certificated Employees of the  
Compton Unified School District,

Respondents.

**PROPOSED DECISION**

The hearing in the above-captioned matter was held on April 28, 2009, at Compton, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by Adam J. Fiss, Littler Mendelson. Respondents were represented by Glenn Rothner and Richa Amar, Rothner, Segall, Greenstone & Leheny.

Oral and documentary evidence was received at the hearing, the case was argued, and the matter submitted for decision on the hearing date. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follow.

**FACTUAL FINDINGS**

1. Complainant Karen Frison filed the accusations<sup>1</sup> in this proceeding in her official capacity as Chief of Staff of the Compton Unified School District (District)
2. The following persons are certificated employees of the District, and are hereafter referred to as Respondents:

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<sup>1</sup> The term “accusation” refers to a type of pleading utilized under the Administrative Procedure Act, Government Code sections 11500 and 11503, which provides the procedural framework for hearings of this type. It should be made clear that the Respondents are not “accused” in the every-day sense of that word; they have done nothing wrong. Instead, it might be said that they are accused of not having enough seniority or qualifications to retain their positions with the District in the face of a resolution to reduce positions.

Richee Wilson, Jessica Fitzpatrick, Dionne Bryant, Jason Darby, Mariellen Paul, Rachel Yancy, Marquitta Cobb, Maria Bradley, Lacey Kent, Silvia Garcia, Nicole Yarbrough, Jessica Moon, Chantha Krouch, Isabel Nunes, Larry Hood, and Raymond Guzman.

3. (A) On March 10, 2009, the Board of Trustees (Board) of the District adopted resolution number 08/09-2035, entitled “Reduction or Elimination of Particular Kinds of Services” (Reduction Resolution). (Ex. 1.) The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2009-2010 school year. Specifically, the resolution requires the reductions of 122 “FTE”—Full Time Equivalents—by reducing various types of services.

(B) The FTE’s that the Board determined to reduce are described in the Reduction Resolution, as follows:

Academic Intervention Coach	6.0 FTE
Intervention Support Facilitator	8.0 FTE
Peer Assistance and Review Teacher	2.0 FTE
Project Facilitator	12.0 FTE
Reading First Coach	6.0 FTE
Resource Teacher (Non Special Ed.)	35.0 FTE
Staff Teacher	17.0 FTE
K-5 Non-Special Ed. Elementary Teachers	34.0 FTE

4. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under section Education Code section 44955.<sup>2</sup>

5. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District’s discretion given uncertainty regarding the state budget and the District’s financial resources.

6. The reduction and discontinuation of services 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 Board.

7. On March 10, 2009, the Board adopted resolution number 08/09-2036, for “Establishment of Criteria for Order of Layoff and Reemployment Following Lay-off for Employees with Equal Seniority.” (Ex. 2.) The resolution established tie-breaking criteria for use in the event that two or more teachers facing layoff had the

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<sup>2</sup> All further statutory references are to the Education Code.

same seniority date. The District did not abuse its discretion in the adoption of the tie breaking and competency criteria.

8. (A) On or about March 13, 2009, each Respondent was given written notice that pursuant to Education Code sections 44949 and 44955, their services would not be required in the 2009-2010 school year (hereafter the preliminary notices). Thereafter, Respondents requested a hearing, and on or about April 9, 2009, each was served with an Accusation. Each Respondent filed a notice of defense.

(B) The District sent notices to numerous other employees, and all but three of them then requested a hearing.<sup>3</sup> Those that did request a hearing were served with accusations as well. However, the District was able to withdraw or rescind a number of the preliminary notices and accusations in the days leading up to the hearing, with numerous notices and accusations being withdrawn or rescinded on the morning of the hearing. The Respondents are those employees remaining in the case after such rescissions.

9. The preliminary notices sent to the Respondents purported to include a copy of the reduction resolution, but instead, through a clerical error, copies of the tie-breaking resolution were attached to the preliminary notices. However, each preliminary notice stated, in part:

“This notice is given pursuant to the provisions of Education Code sections 44949 and 44955. The reason for this recommendation [of notice that services will not be required] is that the Governing Board, by Resolution No. 08/09-2035 adopted on March 10, 2009, has determined to reduce or eliminate particular kinds of services of the District . . . .” (Ex. 3.)

10. Respondents objected that the failure to include a copy of the lay off notice constituted a defect in notice, of a jurisdictional nature. However, all jurisdictional requirements have been met.<sup>4</sup>

11. In the course of the reduction in force process, the District created a seniority list. That seniority list took into account a number of factors, the primary factor being each certificated employee’s first date of paid service. However, other factors, such as credential types, current assignment, and information that would be pertinent to any tie-breaking was set forth on the seniority list.

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<sup>3</sup> The certificated employees who did not request a hearing are Olga Alvarez, Shawncia Smith, and Bertha Davila. It is not clear from the record whether or not the preliminary notices and accusations were rescinded as to these employees.

<sup>4</sup> See also Legal Conclusion 1.

12. (A) The District reviewed its records and the seniority list to determine which employees might “bump” other employees, because they held credentials in another area and were entitled to displace a more junior employee. The District ultimately allowed some senior employees to bump other employees.

(B) The District determined that certain junior teachers possessed superior skills, training, or capabilities which more senior teachers did not possess, which would allow the more junior teachers to be retained or “skipped.” Those teachers were not made Respondents in this case.

(C) During the hearing, no Respondents were able to show that they could bump or skip another teacher. However, it was established that Respondent Larry Lee Hood, Jr., could not be bumped out of his entire position, and Complainant stipulated that he would only be subject to a lay off of 20 per cent of his position, i.e., .2 FTE.

13. No certificated employee junior to any Respondent was retained by the District to render a service for which a Respondent was certificated and qualified to render.

### **LEGAL CONCLUSIONS**

1. (A) Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 10.

(B) Respondents argued that the failure to include a copy of the reduction resolution with the preliminary notice made the notices defective. Respondents supported the argument with citation to *Karbach v. Board of Education of the Lawndale School District* (1974) 39 Cal.App.3d 355, for the proposition that the Education Code provisions governing layoffs “should be strictly construed.” (39 Cal.App 3d at 363.) The argument is unavailing.

(C) Section 43949, subdivision (a), provides in pertinent part that the notice to the employee of termination shall it shall state “the reasons therefore.” In this case, the preliminary notice stated that the reason for the notice was that the Board had determined to reduce particular kinds of services. The resolution, though not actually included in the mailing of the notices was cited and identified with particularity; any member of the public would have access to it. The Respondents were not deprived of notice of the reasons for their termination.<sup>5</sup> Finally, the failure to enclose the reduction resolution could be no more than a “nonsubstantive

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<sup>5</sup> It must also be noted that the first paragraph of the preliminary notice spoke to the District being “confronted by a major state financial crisis.” (Ex. 3, p. 1.)

procedural error [that] shall not constitute cause for dismissing charges” as the error has not been shown to be prejudicial. (§ 44949, subd. (c)(3).)

(D) Respondents also argued that at least one Board member, when discussing the pending resolution to reduce services, raised the issue that enrollment was declining in the District, and that a drop in enrollment, one of the statutory basis for a reduction in force, should have been set out in the resolution. This argument is also unavailing. Ultimately, the District determined to reduce particular kinds of services, and on that basis it may move forward. The other possible avenue was not resorted to, and the fact that it was discussed in some way prior to a vote does not obligate the District to proceed on that ground, nor does it invalidate the action later taken.

2. (A) A District may reduce a particular kind of services (PKS) 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.) The Court of Appeal has made clear that a PKS reduction does not have to lead to less classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-85; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject; any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

(B) The services to be discontinued are particular kinds of services within the meaning of section 44955. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949. This Conclusion is based on Factual Findings 3 through 6, and the foregoing authorities.

3. (A) A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) At the same time, junior teachers may be given retention priority over senior teachers—may “skip” that senior employee—if the junior teacher possesses superior skills or capabilities not possessed by their more senior colleagues. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of*

*Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist. (1981)*  
116 Cal.App.3d 831.)

(B) No Respondent established that they had the right to bump a junior employee or that they should have been skipped, based on the foregoing rules, and Factual Findings 12(A) through 12(C).

4. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, based on Factual Finding 13.

5. The District may lay off the respondents, in reverse order of seniority, in order to reduce services, based on all the foregoing.

### **ORDER**

1. The Accusations are sustained, except as set forth hereafter.

2. (A) Notice shall be given to Respondents that their services will not be required for the 2009-2010 school year because of the reduction and discontinuance of particular kinds of services. Specifically, the District may give such lay-off notices to the following certificated employees, in inverse order of seniority, the most junior first, and the most senior last, with the proviso that Respondent Larry Lee Hood, Jr., shall only be laid off as to .2 of his position:

Richee Wilson, Jessica Fitzpatrick, Dionne Bryant, Jason Darby, Mariellen Paul, Rachel Yancy, Marquitta Cobb, Maria Bradley, Lacey Kent, Silvia Garcia, Nicole Yarbrough, Jessica Moon, Chantha Krouch, Isabel Nunes, Larry Hood, and Raymond Guzman

(B) If the preliminary notices to Olga Alvarez, Shawnicia Smith, and Bertha Davila have not been withdrawn, then they may receive final lay off notices along with the Respondents, in inverse order of seniority, with their seniority considered along with that of the other Respondents.

May 5, 2009

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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings