

BEFORE THE
GOVERNING BOARD OF THE
TEMPLETON UNIFIED SCHOOL DISTRICT
COUNTY OF SAN LUIS OBISPO
STATE OF CALIFORNIA

In the Matter of the Layoff Of:

Robin Aaron and Other
Certificated Employees of the
Templeton Unified School District,

Respondents.

OAH Case No. L2010031646

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 14, 2010, in Templeton, California.

Roberta Rowe, Attorney at Law, represented Deborah Bowers, Ed.D. (Bowers), Superintendent, Templeton Unified School District (District).

Alexis Ridenour, Attorney at Law, represented Robin Aaron-England (Aaron-English), Julie Badalamenti (Badalamenti), Deborah Garcia (Garcia), Shelly Keller (Keller), Neal Mandich (Mandich), Elisabeth Neary (Neary), Susan Pickett (Pickett), Susan Rounsevell (Rounsevell), Meredith Salio (Salio), and Teresa Terry (Terry), collectively referred to as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2010-2011 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

Oral and documentary evidence was received at the hearing. The record was left open for the submission of written briefs. District submitted a Post Hearing Brief on April 19, 2010, and a corrected Post hearing Brief on April 22, 2010, which documents have been marked for identification as Exhibit 15. Respondents had filed a Hearing Brief and did not file a post-hearing brief by the April 21, 2010 deadline. The matter was submitted for decision on April 22, 2010.

FACTUAL FINDINGS

1. Superintendent Bowers filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.
3. On February 25, 2010, the Board of Trustees of the District (Governing Board) adopted Resolution number R10-12 reducing or discontinuing the following services for the 2010-2011 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
Teacher on Special Assignment (Math/Reading Int.)	2.00
K-6 Teacher (Multiple subjects)	3.00
Middle School Science (6 th Grade)	1.00
Middle School Math (6 th Grade)	1.00
Middle School Physical Education (6 th Grade)	.50
Middle School Art/Intervention	1.00
Middle School Electives	1.00
High School English	1.00
High School American Sign Language	.43
High School French	.14
High School Yearbook	.14
High School Math	.14
High School Advanced Drama	.14
Computers/Business	1.00
Home School, Grades K-8	.53
Independent Studies, Grades 9-12	<u>1.04</u>
 Total	 14.06

4. On March 11, 2010, Superintendent Bowers notified the Governing Board that she recommended that notice be provided to Respondents that their services would not be required for the 2010-2011 school year due to the reduction of particular kinds of services.

5. Between March 11 and March 15, 2009, the District provided notice to Respondents that their services will not be required for the 2010-2011 school year due to the reduction of particular kinds of services. Respondents filed timely requests for hearing.

¹ Full-time equivalent position.

6. a. On March 29, 2010, the District filed and thereafter served the Accusation on Respondents. Respondents Aaron-England, Badalamenti, Garcia, Keller, Neary, and Pickett filed timely notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

b. Respondents Mandich, Rounsevell, Salio, and Terry did not file timely notices of defense. At the hearing, Respondents Salio and Mandich testified about their intent to contest their layoffs, as expressed in the filing of a request for hearing, and about their excusable error in not submitting an additional document, the notice of defense.

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 Code section 44955.²

9. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of the uncertainty surrounding future State funding. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

10. The reduction of services set forth in factual finding number 3 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.

11. The District issued layoff notices to 18 individuals, accounting for 15.3 FTE, or 1.24 FTE more than authorized by the Governing Board. Superintendent Bowers explained that the "over-noticing" was done as a precaution. Respondents Badalamenti and Keller, both with seniority dates of August 24, 1998, are the two most senior teachers holding multiple subject credentials and Superintendent Bowers testified they were the ones receiving precautionary notices.

12. a. On February 25, 2010, the Governing Board adopted criteria for breaking seniority ties for employees with the same first date of paid service. The following six criteria were chosen, based on the District's needs for the 2010-2011 school year: credentials to teach or serve in a particular program or provide a particular service of need by the District; credentials to teach a special categorical program (e.g., reading, special education); years of experience previous to current employment as a full-time, credentialed teacher in a probationary/permanent K-12 teaching situation in a public school; number of supplementary authorizations (e.g. Math, English, Health Science); possession of certificates or authorizations to teach students with limited English language proficiency; earned degrees beyond the BA/BS level. The criteria were

² All further references are to the Education Code.

equally weighed, and points were awarded for each item. The tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees.

b. The District applied the criteria only as necessary to implement the layoff. Thus, for the five employees with a seniority date of August 24, 1998, the District applied the criteria to the two employees with multiple subject credentials, Respondents Badalamenti and Keller, and not to the other three with single subject credentials, because the service at issue was elementary school education. Similarly, of those with a seniority date of August 22, 1997, the District broke ties among employees with multiple subject credentials. The certificated employees with a seniority date of August 22, 1997, were not actually given notice of layoff. The District properly applied the criteria, as necessary to determine the order of termination.

13. As set forth in Resolution number R10-16, the Governing Board has concluded that it has specific needs for certificated employees who possess Bilingual Crosscultural, Language, and Academic Development (BCLAD) certificates and for those who teach Special Education. Consistent with these needs, the District did not reduce or eliminate services in these areas, and has retained individuals who are junior to some Respondents to teach in these areas. The District has established its specific needs in these areas and that the retained individuals possess the requisite credentials to teach in these areas. No Respondent contends that he or she was laid off despite possessing a BCLAD certificate or a Special Education credential.

14. The District has established a competency rule. In pertinent part, Board Policy 4117.3 states: “To be considered competent, an employee must have academic training, a valid and appropriate credential, and one year of full-time, successful contractual District experience within the last five (5) years in the assignment (i.e., K-6 classroom). [¶] In specialized classes such as music, physical education, or a single subject teaching assignment, an employee must have academic training, a valid and appropriate California credential, and one year of full-time, successful contractual District experience within the last five (5) years in that specialized area. ...” (Exhibit 1, at p.2.) This policy was incorporated into Resolution R10-16, adopted March 8, 2010, entitled “Resolution regarding the Determination of District needs in Selected Certificated Positions: Competency/Skipping Standards,” which states the competency rule as: “Teachers with one year of full-time, contractual District experience within the past five (5) years within the subject area of the credential or supplemental authorization.” (Exhibit 5, at p.1.) Superintendent Bowers testified that the competency rule was intended to serve both as skipping criteria and as a competency statement.

15. Application of the competency rule impacted Respondent Garcia, who has a seniority date of August 25, 1999. She holds a clear multiple subject credential and a clear single subject (English) credential. She teaches second grade, and the curriculum includes English instruction. Two junior teachers have been retained to teach high school English and two have been retained to teach middle school Language Arts, classes Respondent Garcia is credentialed to teach. However, she has not taught a departmentalized English class, or any other class for

which her single subject credential provided the requisite qualification, in the past five years, in order to satisfy the District's competency criteria and bump these retained junior employees.

16. a. Respondent Aaron-England has a seniority date of August 25, 1999. She holds a clear multiple subject credential and a supplemental authorization in Health. She teaches fourth grade, but has not taught a Health class, or a class for which the Health authorization provided the requisite credential qualification, in the past five years.

b. Danny Loney (Loney) has a seniority date of August 21, 2009. He holds a preliminary single subject (Health Science) credential, and a supplemental authorization in Introductory Social Science. He is a part-time employee, or .43 FTE, and teaches Health, Driver's Education, and Physical Education.

c. Respondent Aaron-England is not credentialed or competent to teach the classes Loney was retained to teach. Her credentials do not allow her to teach grades above Ninth, and some of the classes taught by Loney are in grades Ten or higher. Moreover, Respondent Aaron-England, who teaches fourth grade, has never taught health classes.

17. a. Respondent Keller has a seniority date of August 24, 1998. She holds a clear multiple subject credential and a supplemental authorization in Social Science. During the past year she has been working as a Teacher on Special Assignment, teaching Music with a world history emphasis in elementary school, a position that was eliminated. Although Respondent Keller has taught social studies to her elementary school students, she has done so in the context of a self-contained classroom as authorized by her credential.

b. Respondent Keller asserts that she can teach the History class that Amy Wagner, who has a lower seniority date, August 24, 2000, was retained to teach in middle school. However, this is a departmentalized class, and Respondent Keller is not credentialed to teach in such a setting. Moreover, during the past five years, she has not taught Social Science or any other subject within her credential in middle or high school.

18. a. Respondent Neary has a seniority date of August 22, 2001. She holds a clear multiple subject credential and a supplemental authorization in Computer Concepts and Applications. She has taught the Computer Lab classes at the middle school for eight years, and has been instrumental in upgrading and standardizing the curriculum.

b. Respondent Neary is being laid off as a result of the District's reduction of Computers/Business services in the high school. The teacher displaced by that reduction, Leila Harrington (Harrington), is certificated to teach at the middle school with a clear single subject (Business) credential, and is more senior (August 24, 2000). Harrington has also taught in the subject matter, as her Multimedia class involves the use of computers and computer applications. Harrington also teaches ROP Accounting, but it was unclear if this was a computer-related class.

c. Kari Haworth has a seniority date of August 22, 2008, and holds preliminary single subject (Biological Science, Chemistry, Geosciences, and Physics) credentials and a preliminary multiple subject credential. She teaches high school classes, including advanced ones, in Computer Science, Physics, Mechatronics, and Engineering. Respondent Neary is not credentialed to teach computer science in high school.

d. Tom Russell (Russell) has a seniority date of August 21, 2009, and holds a clear designated vocational education (Computer Systems Operation) credential. He teaches one period of Computer Repair, and works as the District's network administrator. Respondent Neary does not have the credential to teach this vocational class, which is taught to students in grades Ten and above.

19. a. Megan Cordes (Cordes) has a seniority date of August 21, 2006. She holds clear single subject (Biology and Chemistry) credentials and a clear multiple subject credential. She teaches Earth Science and a one period "ASB" at the high school. In the ASB position, Cordes is the faculty advisor to the student body government, a position that is chosen by the high school principal based on criteria not articulated at the hearing. Superintendent Bowers testified that the ASB assignment is not an independent assignment, and that is usually bundled with other teaching assignments.

b. Respondents argue that Respondents Aaron-England, Badalamenti, Garcia, Keller, Pickett, and Rounsevell are more senior than Cordes and are credentialed to perform the duties of the ASB assignment. Of these respondents, only Respondent Garcia possesses a credential that would allow her to teach in departmentalized classrooms at the high school, the site of the ASB assignment. However, unlike Cordes, Respondent Garcia does not have a teaching load to which the single period of ASB can be attached.

20. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

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

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

3. Cause exists under 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 in the context of uncertain State funding, by reason of factual finding numbers 1 through 20.

4. The four Respondents set forth in factual finding number 6.b. did not present any evidence regarding their particular circumstances, and they did not make any specific offer of proof regarding what, if any, evidence they would have presented if deemed to have filed timely notices of defense. Nevertheless, Respondents' counsel was not limited in her cross-examination of District witnesses, and could have asked relevant questions that would impact retention of any Respondent, including these four. On the other hand, the District did not claim surprise or other prejudice if these four Respondents, who filed request for hearings, are deemed to have requested a determination of whether cause exists for their layoff. Moreover, sections 44949 and 44955 impose certain affirmative obligations and requirements on school districts, and these must be discharged regardless of the number of individuals who actually request a hearing or present evidence to be considered. Therefore, the Administrative Law Judge has considered the issue of whether cause exists for not reemploying Respondents Mandich, Rounsevell, Salio, or Terry for the 2010-2011 school year.

5. The number of certificated employees to be given final layoff notice depends on the service reductions. As Section 44955, subdivision (b) states, "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 become necessary to decrease the number of permanent employees of 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. . . ." (Emphasis added.) In this case, the Governing Board has reduced or discontinued particular kinds of services that account for 14.06 FTE, and final notices in excess of this number may not be issued.

6. 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, 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.

Courts in analogous layoff and reemployment contexts, construing provisions similar to section 44955, have recognized that school districts have discretion to establish rules to define teacher competency. Thus, after reviewing earlier cases, the Court in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565 (*Duax*), wrote: “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.” (See: also: *Martin v. Kentfield School District* (1983) 35 Cal.3d 294, 299-300; *Forker v. Board of Trustees*, supra.)

In *Duax*, 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. The Court found such standard “clearly related to skills and qualifications to teach” and therefore a reasonable one. (*Duax*, supra, 196 Cal. App.3d 555, at p. 567.) The Court also concluded that the standard did not define competency too narrowly.

The District’s competency rule, as set forth in Resolution R10-16 and quoted in factual finding number 14, relates to the skills and qualifications of its certificated employees, as required by the foregoing authorities, and may be used by the District in implementing the layoffs. In fact, it is very similar to the rule in *Duax*, with the only difference being the period in which the teaching must have occurred. Contrary to Respondents’ argument, the period established in the competency rule is not unduly restrictive.

The competency rule was contained in a resolution that also addressed skipping, and Superintendent Bowers testified that the resolution was also intended to be used as skipping criteria in light of the District needs. While the genesis of skipping and competency rules may lie in the same District needs, skipping decisions must meet additional statutory requirements. Under section 44955, subdivision (d)(1), a school district may deviate from the statutory mandate to lay off employees in order of seniority, or “skip” junior employees, if it “[d]emonstrates a specific need for personnel to teach a specific course or course of study . . . 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.” In this case, except as set forth in factual finding number 13, the District did not designate any particular area or areas in which it had specific needs that required skipping more junior employees. Thus, despite the “competency/skipping” designation in the resolution and the potential confusion it may cause, the District requirement of one year of experience in the subject matter during the past five years has only been allowed in this case in connection with one of its intended purposes, namely, defining “competent” pursuant to section 44955, subdivision (b).

Although mentioned in connection with several respondents, application of the competency rule only impacts Respondent Garcia. Respondents Aaron-England, Keller, and Neary lacked the credential, as well as the experience, to teach the subjects they claimed junior teachers were retained to teach. Respondent Garcia does have a credential that allows her to

teach English or Language Arts classes as a single subject in middle or high school, but has not taught this subject or another for which her credential would qualify her in this departmentalized setting. Accordingly, she is not competent to render a service, English or Language Arts instruction, that a more junior certificated employee was retained to render.

7. Respondents argue that the District must make available part-time services for which they qualify. As they point out, section 44955, subdivision (c), requires: “[T]he governing board shall make assignments and reassignments in such manner that employees shall be retained to render *any* service which their seniority and qualifications entitle them to render. . . .” (emphasis added.) Respondents argue that “any” service should include part-time services, and correctly point out that section 44955 does not expressly exclude part-time positions from the affirmatively-required assignments and reassignments.

However, as the court recently concluded in *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, districts have discretion to define positions and the manner in which they will be taught as long as it is done in good faith. In this case, the District has decided to make the ASB assignment a part of a full-time teacher’s assignment, and such decision is within the District’s discretion. Therefore, Respondent Garcia may not bump Cordes from the ASB portion of her assignment.³

8. Subject to legal conclusion number 5, cause exists to terminate the services of Respondents Aaron-English, Badalamenti, Garcia, Keller, Mandich, Neary, Pickett, Rounsevell, Salio, and Terry, by reason of factual finding numbers 1 through 20, and legal conclusion numbers 1 through 7.

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ORDER

The Accusation is sustained and the District may notify Respondents Aaron-English, Badalamenti, Garcia, Keller, Mandich, Neary, Pickett, Rounsevell, Salio, and Terry, subject to

³ Since Respondents Keller and Neary are not certificated and competent to teach portions of Loney’s or Russell’s assignments, it is unnecessary to decide whether the retained employees’ workloads constitute integrated positions that a district is not required to split, or whether the assignments contain part-time portions that may be performed by more senior employees.

legal conclusion number 5, that their services will not be needed during the 2010-2011 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings