

BEFORE THE
GOVERNING BOARD
EASTSIDE UNION SCHOOL DISTRICT
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Edwige Beleno and Other Certificated
Employees,

Respondents.

Case No. 2013030790

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 17, 2013, in Lancaster, California.

Salvador O. Holguin, Jr., Attorney at Law, represented Dr. Mark E. Marshall (Marshall), Superintendent of the Eastside Union School District (District).

Lillian Kae, Attorney at Law, represented Edwige Beleno (Beleno), Ann Chapman (Chapman), Krystal Day (Day), Kathryn Devine (Devine), Ramon Flores (Flores), Dianna Garcia (Garcia), Floreen Guluarte-Silva (Guluarte-Silva), Carrie McBryant (McBryant), Cheryl Meek (Meek), Debra Morga (Morga), Jessica Mountz (Mountz), Lorena Quiros (Quiros), Tammy Riddle (Riddle), Claudia Roediger (Roediger), Jeanette Sandoval (Sandoval), Julia Saravia (Saravia), Arlene Thomas (Thomas), and Jessica Winchell (Winchell), who are collectively referred to as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents and other certificated employees of the District notice of its intent not to reemploy them for the 2013-2014 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2013-2014 school year.

Oral and documentary evidence was received at the hearing. The record was left open for the submission of closing briefs. On April 23, 2013, the District submitted a closing brief, which has been marked for identification as Exhibit 15. The matter was submitted for decision on April 23, 2013.

FACTUAL FINDINGS

1. Superintendent Marshall filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. On March 11, 2013, the Governing Board of the District (Governing Board) adopted Resolution number 12-13-16, reducing or discontinuing the following services for the 2013-2014 school year:

<u>Service</u>	<u>FTE¹ Positions</u>
Reduction of TK through 6th Grade Instructional Services	23.0
Discontinue Middle School 7/8 Intervention Instructional Services	1.0
Discontinue Middle School Technology Support Services	1.0
Discontinue Industrial and Technology Education Instructional Services	<u>1.0</u>
Total	26.0

4. On March 11, 2013, Superintendent Marshall notified the Governing Board that he had recommended that notice be provided to Respondents that their services will not be required for the 2013-2014 school year due to the reduction of particular kinds of services.

5. On March 13, 2013, the District provided notice to Respondents that their services will not be required for the 2013-2014 school year due to the reduction of particular kinds of services. Respondents thereafter timely requested hearings.

6. On March 22, 2013, Superintendent Marshall issued the Accusation and other required documents, including the Notice of Hearing, and served them on Respondents on the same date.

7. Respondents filed timely Notices of Defense. While Respondents Chapman, Meek, Quiros, Riddle, Roediger, Sandoval, and Saravia filed Notices of Defense before the Accusation had been served, the District accepted the early filings as valid.

8. All prehearing jurisdictional requirements have been met.

9. 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 Code² section 44955.

¹ Full-time equivalent.

² All further statutory references are to the Education Code.

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

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

12. On February 12, 2013, the Governing Board adopted Resolution 12-13-15, setting forth the criteria to determine seniority among employees who first rendered paid service in a probationary position on the same date (tie-breaking criteria). The following criteria were listed, in order of priority: credential status in the area of the current assignment; possession of a clear or preliminary authorization to teach English Language Learners; breadth of clear and preliminary credentials and authorizations, permitting assignment in the widest range of teaching assignments; possession of specified credentials and subject matter authorizations, in order of priority; number of years of certificated employee experience in the District; academic degrees from an accredited institution of higher education; number of total semester units at an accredited institution of higher education after earning a Bachelor's Degree. Subcriteria were listed in order of priority in five of the seven criteria. If ties remained after the foregoing criteria were applied, then seniority would be determined by the drawing of lots. The criteria are reasonable as they relate to the skills and qualifications of certificated employees. The District used the criteria to determine the order of termination of Respondents, and the application of the criteria was not challenged by any Respondent.

13. Resolution 12-13-16 contained the following paragraph: “**WHEREAS**, in order for an employee serving in a position identified for reduction or discontinuance to be eligible for reassignment to a position held by an employee with less seniority, the senior employee must be both credentialed and competent to render the service currently being performed by the junior employee pursuant to Education Code Section[s] 44955, 44956, and 44957. For purposes of implementing this Resolution, a more senior employee is defined as competent for reassignment into a position currently held by a more junior employee, if he or she currently possesses a clear, preliminary credential, including supplementary or subject matter authorizations, or the equivalent standard or general credentials, have authorization to teach English Learner (“EL”) students as determined by the California Commission on Teacher Credentialing and be able to perform such services without Board authorization, in the subject(s), grade level, or service area to which the employee will be assigned at the beginning of the 2013-2014 school year. In addition, the following criteria shall apply to the Alternative Education Academy Instructional Services: the more senior employee must have at least one year experience in the specific service area within the preceding five (5) years.” (Exh. 1, at p.2.)

14. The District wishes to retain Thomas York (York), an employee junior to Respondents Beleno (who has a seniority date of September 23, 2008), Guluarte-Silva (December 8, 2008), and Mountz (August 4, 2011), to teach at the Alternative Education Academy (Academy). York holds a clear multiple subject credential, as do Respondents Beleno, Guluarte-Silva, and Mountz. York was hired at the start of the 2010-2011 school year as a substitute teacher. On December 5, 2011, his first day of paid service in a professional capacity, he was hired to teach at the Academy, a position that had been posted for certificated employees to apply.

15. The Academy is a self-contained classroom for students in grades sixth through eighth who have been expelled from regular classrooms. These are highly volatile students with a history of discipline. Some also have a history of emotional problems, violence, family problems, or substance abuse. The Academy teaching position has been a difficult position to staff.

16. a. York has training and experience in dealing with the difficult students who attend the Academy. He worked as a corrections officer in a youth center, and received training in how to handle potentially aggressive students. York did not teach alternative education before his employment with the District, and the District has not provided him with special training.

b. Respondents Beleno, Guluarte-Silva, and Mountz are willing to teach at the Academy. They each testified that they are competent to teach the assignment. All have had to deal with difficult students in their classrooms and have other experience dealing with challenging behaviors. Respondent Beleno served in the military for nine years, where he mentored at-risk youth. Respondent Guluarte-Silva worked as a social worker for seven years and was exposed to at-risk youth. Respondent Mountz taught special education students in Florida for three years in the early 2000s, students who presented emotional and behavioral challenges.

17. The District did not retain any certificated employee junior to any Respondent 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 8.

2. The services listed in factual finding number 3 are particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 9.

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, by reason of factual finding numbers 1 through 11.

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

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

In *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565 (*Duax*), a case arising under the community college reduction in force statute, now section 87743, the governing board had established a standard of competency that required one year of full-time teaching in the subject area within the last ten years. After acknowledging the discretion afforded to school districts, and set forth in *King* and *Martin*, the court stated: “While these decisions stress the discretion reposed in a school board in defining the term ‘competent,’ the court in *Forker* . . . added further assistance in stating, ‘[a]s interpreted by the *Martin* court, the term ‘competent’ as used in section 44956 relates to specific skills or qualifications required of the applicant. Decisions prior to *Martin* have interpreted that term in a similar manner.’ (*Id.* at p. 9. See also *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal. App.3d 648, 654-655; Ozsogomonyan, *Teacher layoffs in California: An Update* (1979) 30 Hastings L.J. 1727, 1749-1751.) Hence, from these authorities we conclude that a board’s definition of competency is reasonable when it considers the skills and qualifications of the teacher threatened with layoff.”

The *Duax* court upheld the governing board's definition of competence as a reasonable exercise of the governing board's discretion. In this regard, the court stated: "[T]he mandate is that the governing board establish a standard of competency that relates to the skills and qualifications of the teacher. That standard was established by resolution of the governing board, and since it requires only one year of teaching in the last ten, not one in the last two or three, we are not persuaded that it too narrowly defines competency. . . ." (*Duax*, supra, 196 Cal.App.3d at 567.) In *Bledsoe v. Biggs Unified School District* (2009) 170 Cal.App.4th 127 (*Bledsoe*), the court upheld a rule that defined competency as having at least one semester actual teaching experience in alternative education within the last five years.

As in *Duax* and *Bledsoe*, the District's competency criteria does not define competency too narrowly. The rule relates to the skills and qualifications of the teacher, and is similar to that upheld in *Bledsoe*. Respondents Beleno, Guluarte-Silva, and Mountz do not meet the District's definition of competency to teach at the Academy, as they have never taught alternative education. Therefore, these Respondents are not competent to displace, or "bump," York.

5. Even if Respondents Beleno, Guluarte-Silva, and Mountz are deemed certificated and competent to teach at the Academy, the District established grounds to retain the more junior York. Districts are permitted to disregard seniority, or "skip" junior employees, in accordance with section 44955, subdivision (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 of study or to provide those services, which others with more seniority do not possess. . . ."

In *Bledsoe*, a district was able to skip two junior employees because of the district's demonstrated need for teachers with experience in instruction in a community day school. The junior teachers possessed special training and experience that enabled them to meet the district's specialized needs for alternative education. They had taken courses in many subjects that covered areas of instruction, had training in areas related to working with difficult students, and had actual experience in dealing with the community day school students.

In this case, the District has established that it has a need to provide alternative education at the Academy, just as the district in *Bledsoe* did. As in *Bledsoe*, the District has a specific need for personnel to meet the special needs of Academy students. These are students who have been expelled from regular classrooms because of one or more problems that interfere with their ability to learn. They need a combination of extra attention and discipline. The District has also established that York has special training and experience to provide the services which the more senior Respondents do not possess. Unlike Respondents Beleno, Guluarte-Silva, and Mountz, York has received training, albeit outside the District, in dealing

with behavior challenges. He worked in an analogous setting while a correctional officer. He also possesses about one and one-half years of actual experience dealing with the specific students at issue. Accordingly, the District properly skipped York for layoff.

6. Cause exists to terminate the services provided by Respondents Beleno, Chapman, Day, Devine, Flores, Garcia, Guluarte-Silva, McBryant, Meek, Morga, Mountz, Quiros, Riddle, Roediger, Sandoval, Saravia, Thomas, and Winchell for the 2013-2014 school year, by reason of factual finding numbers 1 through 17 and legal conclusion numbers 1 through 5.

ORDER

The Accusation is sustained and the District may notify Respondents Beleno, Chapman, Day, Devine, Flores, Garcia, Guluarte-Silva, McBryant, Meek, Morga, Mountz, Quiros, Riddle, Roediger, Sandoval, Saravia, Thomas, and Winchell that their services will not be needed during the 2013-2014 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings