

BEFORE THE
GOVERNING BOARD OF THE
NATOMAS UNIFIED SCHOOL DISTRICT
COUNTY OF SACRAMENTO
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of
Certificated Employees:

OAH No. 2013030997

Nathan Baker
Timmothy Broz
Rebekah Cyr
Jason Eusebi
Jason Everhart
Lisa Goldsmith
Lundon Jackson
Caley McGowan
April Pickett
Paul Sanchez
Kristin Sandoval
Sara Thorn
Stephanie Turner
Justin Vorhauer
Jiyhun Woodward

Respondents.

PROPOSED DECISION

This matter was heard before Dian M. Vorters, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on April 25, 2013.

Nevin Trehan and Roman J. Munoz, Attorneys at Law,¹ represented the Natomas Unified School District (District).

Carolyn Langenkamp, Attorney at Law,² appeared on behalf of all represented respondents.

¹ Nevin Trehan and Roman J. Munoz, Attorneys at Law, Kronick Moskowitz Tiedemann & Girard, 400 Capitol Mall, 27th floor, Sacramento, California 95814.

April Pickett and Kristin Sandoval (unrepresented respondents); appeared and represented themselves.

Evidence was received and the matter was submitted for decision on April 25, 2013.

FACTUAL FINDINGS

1. Sally L. Clark is the Assistant Superintendent of Human Resources for Natomas Unified School District (District). The actions of Ms. Clark and the District Governing Board were taken in their official capacities.

2. On or before March 15, 2013, Ms. Clark determined that funding for the 2013-2014 school year would be reduced, thereby necessitating the reduction or elimination of particular kinds of services (PKS). As such, Ms. Clark recommended to the Board that certain PKS be reduced or eliminated. Her recommendation was made solely for the welfare of students.

3. On January 22, 2013, the Board adopted Resolution No. 13-03 (Administrative PKS Resolution) which identified the particular kinds of administrative management positions that “shall be reduced or discontinued” before the start of the 2013-2014 school year. The Administrative PKS Resolution directed the Superintendent or designee to send appropriate notice to all employees affected by the Board action. The Administrative PKS Resolution eliminated 4.0 full-time equivalent (FTE) administrative employee positions, as follows:

- a. Director of Student Support Services, 1.0 FTE.
- b. Director of Student Support Services and Community Relations, 1.0 FTE.
- c. Director of Educational Options/Categorical Programs, 1.0 FTE.
- d. Coordinator of Special Education, 1.0 FTE.

4. On February 26, 2013, the Board adopted Resolution No. 13-10 (PKS Resolution) which identified the particular kinds of certificated teaching services that “shall be reduced or discontinued” before the start of the 2013-2014 school year. The PKS Resolution directed the Superintendent or designee to send appropriate notice to all employees affected by the Board action. The PKS Resolution reduced or eliminated 28.5 FTE probationary and permanent employee positions, as follows:

- a. Elementary (TK-6) Teaching Services, 10.0 FTE.
- b. Secondary (7-12) Teaching Services:

² Carolyn Langenkamp, Attorney at Law, Langenkamp Curtis & Price, 1331 Garden Highway, Suite 300, Sacramento, California 95833-9773.

Art	1.0 FTE
Earth Science	1.0 FTE
English	6.0 FTE
Health	3.0 FTE
Mathematics	3.0 FTE
Social Sciences	2.0 FTE

- c. Special Education Services: Resource Specialist Program Mild/Moderate, 2.5 FTE.

- 5. The PKS Resolution set forth the District’s competency criteria as follows:

That “competency,” for the purposes of Education Code section 44955, shall be determined solely upon current possession of a preliminary or clear credential for the subject matter or grade level to which the employee seeks to displace a junior employee for the 2013-2014 school year. Further, that due to the specific need of the District to hire and train only highly qualified teachers in academic subject areas, “competency” shall require (highly qualified) current confirmation of qualifications of academic subject competency, or verifiable eligibility for competency if not previously reviewed by the District, in all subjects of a proposed assignment, including assignments teaching multiple academic subjects, all secondary grade levels of a subject, and assignments in secondary alternative schools, in accordance with the NCLB.

- 6. The PKS Resolution also set forth the following tie-breaking criteria to be applied in this layoff:

That as between employees who first rendered paid service on the same date, the order of termination and rehire shall be based solely on the needs of the District and the students thereof as determined by the point system described herein. This system shall be applied only where the implementation of layoffs or rehire actually impacts two or more employees with the same first date of paid service and is applied only to those employees. In the case of each tie, points shall be granted to each affected employee based upon all the following criteria:

- a. Possession of a currently valid preliminary or clear California teaching credential – 1 point;
- b. Possession of multiple valid preliminary or clear California teaching credential – 1 point;
- c. Greater total years of service, as defined by Education Code section 44908, with any California public school district – 1 point;

- d. Possession of one or more English Language Learner certifications (e.g., LDS, CLAD, SB 1969, SB 395, BCC, BCLAD) or other EL qualifying credential – 1 point;
 - e. Possession of one or more post graduate degree(s) – 1 point;
 - f. Possession of an undergraduate major or minor in: math, science, special education – 1 point;
 - g. In any case, where a tie results after calculating the cumulative points for each of the above criteria, then the tie shall be broken by a lottery conducted by the Superintendent or designee.
7. The PKS Resolution also set forth the following skipping criteria:

That due to the specific need of the District to hire and retain only highly qualified teachers in core academic subject areas, the Superintendent and/or his designee is authorized to deviate from terminating certificated employees in order of seniority only in instances where the less senior employee possesses a currently valid intern, preliminary or clear California teaching credential and evidence of core academic subject competency in accordance with the NCLB and the more senior employee meets certification or licensing requirements solely on an emergency, temporary, or provisional basis except a valid intern credential, or does not possess evidence of core academic subject competency in accordance with the NCLB.

8. Both resolutions provided that “a certificated employee receiving a preliminary layoff notice who may have bumping rights into an alternative education program (e.g., continuation high school) and is willing to accept such assignment for the 2013-2014 school year shall provide written notice of such consent at the time of filing a request for layoff hearing.”

Both resolutions also stated that for purposes of calculating seniority, credentials held, and information necessary to apply skipping, bumping, and tie-breaker criteria, the District will consider only such documentation provided to the Human Resources Office by the date of the resolution.³ For practical reasons, the District must establish a cutoff in order to begin the layoff process. The District is not held responsible for a teacher’s failure to record her credential before March 15, 2013, by which time all notices must be sent out. (*Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 568.)

9. On or before March 15, 2013, Ms. Clark caused affected certificated employees to be served with notice of the District’s intent to reduce or eliminate their

³ Administrative PKS Resolution (No. 13-03) was passed on January 22, 2013. PKS Resolution (No. 13-10) was passed on February 26, 2013.

services for the 2013-2014 school year (Layoff Notice). Respondents timely requested a hearing. (Ed. Code, § 44949, subd. (b)).

10. On or about April 3, 2013, Ms. Clark made and filed an Accusation against each respondent. Respondents timely filed Notices of Defense to the Accusation. (Ed. Code, § 44949, subd. (c)(1).)

11. At hearing, the District and respondents entered into a Stipulation that Layoff Notices issued to the following 10 respondents are rescinded. All 10 employees are credentialed and competent to teach in a position within the District based on seniority.

1. Sara Thorn
2. Paul Sanchez
3. Caley McGowan
4. Landon Jackson
5. Jason Eusebi
6. Jason Everhart
7. Nathan Baker
8. Justin Vorhauer
9. Stephanie Turner
10. Lisa Goldsmith

The hearing proceeded as to the following four respondents: Timmothy Broz, Jiyhun Woodward, April Pickett, and Kristin Sandoval.

12. At hearing, the District and Mr. Broz entered into the following two stipulations:⁴ 1) Mr. Broz concedes that Jason Eusebi is more senior, and 2) the District agrees that Mr. Broz is competent, certificated, and more senior to replace Ms. Woodward in 0.8 FTE mathematics.

13. Luann Watkins is the personnel coordinator for the District. She testified at hearing about the process she used to identify teachers affected by the PKS Resolution. Seniority lists were created from personnel data on file as of the date of each PKS Resolution.

Tie-Breaking Determinations

14. Tie-breaking criteria were applied to two employees, Ms. Sandoval and Ms. Pickett, both with a hire date of August 14, 2012.

15. *April Pickett.* Ms. Pickett was identified on the basis of the PKS reduction of secondary teaching services, 3.0 FTE mathematics. She holds a single subject (S/S)

⁴ Though Mr. Broz is represented by counsel, Ms. Langenkamp did not enter into these stipulations due to a conflict of interest, in that she represents other affected parties.

foundational level mathematics credential and an English Learner Authorization (ELA). She currently teaches 1.0 FTE in mathematics at Inderkum High School.

16. *Kristin Sandoval*. Ms. Sandoval was identified on the basis of the PKS reduction in secondary teaching services, 3.0 FTE mathematics. Ms. Sandoval holds a clear S/S mathematics credential with a CLAD certificate. She currently teaches 1.0 FTE in mathematics at Inderkum High School.

17. Ms. Watkins applied the tie-breaker criteria from the PKS Resolution to Ms. Pickett and Ms. Sandoval. They received the same points with the exception of Criteria C (greater total years of service with any California public school district). Ms. Sandoval had more teaching experience than Ms. Pickett and received an additional point. As such, Ms. Sandoval received a higher seniority rank as between her and Ms. Pickett. Consequently, Ms. Pickett was the appropriate recipient of a layoff notice for 1.0 FTE secondary mathematics teaching services.

Bumping Determinations

18. *Timothy Broz*. Mr. Broz has a hire date of August 5, 2009. He was identified for layoff on the basis of the PKS reduction in secondary teaching services, 3.0 FTE mathematics. Mr. Broz holds a clear S/S foundational-level mathematics credential with an ELA. He is qualified to teach secondary pre-algebra, algebra, and geometry. He currently teaches mathematics (1.0 FTE) at Inderkum High School. Mr. Broz will be laid off for .80 FTE (.60 mathematics and .20 APEX, a credit recovery course). Mr. Broz was bumped by Sandra Keenan for .20 APEX, by Cynthia Connell for .20 mathematics, and by Jenna Boller for .40 mathematics. These teachers who bumped Mr. Broz were all senior to him and certificated and competent to teach the relevant subject matter. Mr. Broz is senior to Ms. Woodward who teaches secondary mathematics at Discovery High School, an alternative education school. He is, therefore, qualified to bump Ms. Woodward for .80 FTE in mathematics at Discovery. Mr. Broz consents to teaching at Discovery High.

19. *Jiyhun Woodward*. Ms. Woodward has a hire date of October 1, 2012. She has the least seniority of secondary mathematics teachers in the District. She holds a preliminary single subject mathematics credential with an ELA. Her credential authorizes her to teach all levels of secondary mathematics including pre-algebra, algebra, geometry, trigonometry, calculus, and statistics. Ms. Woodward currently teaches 1.0 FTE mathematics at Discovery High School. Because Mr. Broz is competent to teach secondary mathematics and senior to Ms. Woodward, he may bump Ms. Woodward for .80 FTE in mathematics at Discovery. This will leave Ms. Woodward with a .20 mathematics teaching assignment at Discovery.

20. *April Pickett*. Ms. Pickett has a hire date of August 14, 2012. She holds a clear S/S foundational level mathematics credential. She currently teaches mathematics at Inderkum High School. She is more senior than Ms. Woodward and qualified to bump Ms. Woodward for .20 FTE in mathematics at Discovery. However, Ms. Pickett does not consent to a part-time teaching assignment at Discovery. Ms. Pickett testified that she would prefer

not to be at Discovery High School. She would “probably accept” a 1.0 FTE teaching assignment at Discovery, but “would not accept” a .20 FTE assignment at Discovery. She stated that she needs to work full-time to support her family. Since 1.0 FTE is not available to assign, the District properly applied bumping and tie-breaking criteria to issue Ms. Pickett a layoff notice for 1.0 FTE in secondary mathematics.

Inverse Bumping Issues

21. Respondents assert that the District employed “inverse bumping” to identify which English teachers to layoff. Respondent math teachers believe that this method would benefit them and argue that the District must apply inverse bumping to their subject area as well. Inverse or triangular bumping attempts to maximize the retention of the most senior teachers by looking not just at the relationship between two employees, but the relationship between a group of employees. For example: Employee A is senior, B is in the middle, and C is most junior. Employees A and B are competent to teach the same subject. B’s FTE is being eliminated and B is not competent to teach C’s assignment (i.e. to bump into C’s position), but A is qualified to teach C’s assignment. Under inverse bumping, A would be re-assigned to C’s position, and B would be retained.

This inverse bumping strategy was rejected in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 568-569. The court in *Duax* held that the law does not contemplate “inverse bumping rights.” Instead, a school district’s obligations to make assignments and reassignments under the law is “limited to attempting to place an employee who would otherwise be terminated in a position being held by another employee with less seniority.” (Id. at p. 569.)

22. The District rejected the notion that they engaged in inverse bumping for any subject matter area. Secondary English teaching services were slated for reduction by 6.0 FTE. Ms. Watkins created a List of Layoffs/Precautionary Notices dated March 13, 2013 (Layoff Chart), showing teachers who received layoff notices. She also created a Bumping Sequence Chart that shows which certificated employees bumped those less senior. Ms. Watkins testified that she first identified English teachers who would be laid off for lack of seniority, and then engaged in bumping to determine if those teachers were qualified to teach a subject that a less senior employee currently taught. To satisfy the 6.0 secondary English instruction, the following teachers received layoff/precautionary notices according to the Layoff Chart:

1. Rebekah Cyr (.20 FTE, Hire Date August 8, 2007),
2. Lyn Bigelow (1.0 FTE, September 12, 2011),
3. Sara Thorn (1.0 FTE, August 23, 2006),
4. Paul Sanchez (1.0 FTE, August 8, 2007),
5. Jason Everhart (1.0 FTE, August 28, 2006),
6. Nathan Baker (1.0 FTE, August 17, 2006),
7. Justin Vorhauer (1.0 FTE, August 16, 2006),
8. Stephanie Turner (1.0 FTE, August 16, 2006).

23. Respondents did not establish that the District retained or failed to notice any less senior secondary English teacher (hired on or after August 16, 2006), than those identified for layoff. Further, as stated in *Duax*, the District is not required to engage in inverse bumping to meet its obligations under Education Code section 44955.

24. The District identified employees who would be laid off and placed the more senior of those employees into positions being held by less senior employees. (*Duax, supra*, 196 Cal.App.3d at p. 569.) The District complied with the statutory requirement that “the services of no permanent employee may be terminated ... 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.” (Ed. Code, § 44955, subd. (b).)

25. There was no evidence that the District proposed to eliminate any services that are mandated by state or federal laws or regulations. Except as provided by statute, no other permanent or probationary certificated employee with less seniority is being retained to render a service which respondent and other noticed teachers are certificated and competent to render. As between employees who first rendered paid service to the District on the same date, the order of termination was based solely on the needs of the District and the students thereof.

26. The District’s reductions and eliminations of particular kinds of services relate solely to the welfare of the District’s schools and pupils. The decision to reduce or discontinue these services was neither arbitrary nor capricious, but rather a proper exercise of discretion of the District.

27. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

Applicable Laws

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, “in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction.” The District must be solvent to provide educational services and cost savings are necessary to resolve its financial crisis. The Assistant Superintendent’s decision to reduce particular kinds of services was a proper exercise of her discretion.

3. A 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.)

4. The Layoff Notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolutions and in the Layoff Notices, adequately described particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838.)

5. Education Code section 44955 provides that when certificated employees face layoffs due to reduction or elimination of PKS, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teachers have both the credentials and competence to occupy such positions. The intent of the Legislation is clearly to prevent school districts from laying off senior teachers while retaining junior teachers. Education Code section 44955, subdivision (c) provides in pertinent part:

Services of such employees shall be terminated in the inverse of the order in which they were employed... 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...

6. The District appropriately considered all positively assured attrition which occurred during the computation period prior to submitting the PKS Resolution to the Board for its approval. As set forth in Factual Finding 11, the District rescinded notices of layoff to 10 certificated employees at hearing.

7. The District appropriately applied bumping rules and allowed bumping based upon the more senior employee holding a credential or authorization to teach the assignment of the less senior teacher.

8. The services identified in the PKS Resolutions are particular kinds of services that can be reduced or discontinued under Education Code section 44955. Cause exists for the reduction of the particular kinds of services and for the reduction of full-time equivalent administrative and certificated positions at the end of the 2013-2014 school year pursuant to Education Code sections 44949 and 44955. 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. Therefore, cause exists to give respondents notice that their services will be reduced or will not be required for the ensuing 2013-2014 school year.

RECOMMENDATION

Cause exists for the reduction of 4.0 full-time equivalent administrative management positions and 28.5 FTE certificated teaching positions at the end of the 2012-2013 school year. Excluding the 10 rescissions noted in Legal Conclusion 6, notice shall be given to respondents that their services will be reduced or will not be required for the ensuing 2013-2014 school year, because of the reduction and discontinuance of particular kinds of services. Notice shall be given in inverse order of seniority.

DATED: May 1, 2013

DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings