

BEFORE THE
GOVERNING BOARD OF THE
FULLERTON JOINT UNION HIGH SCHOOL DISTRICT
OF ORANGE COUNTY, CALIFORNIA

In the Matter of the District Statement of
Reduction in Force Against:

EDWARD JENKINSON,

Respondent.

OAH No. 2014040062

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Fullerton, California on April 23, 2014.

Anthony P. De Marco, Attorney at Law, represented Edward D. Atkinson, Ed.D., Assistant Superintendent, Human Resources, Fullerton Joint Union High School District of Orange County, California (District).

Respondent Edward Jenkinson was not represented and did not appear.

The District has decided to reduce or discontinue a .60 full time equivalent position in its educational services for Latin and has given respondent notice of its intent not to reemploy him for such service during the 2014-2015 school year. The issue presented is whether cause exists for not reemploying respondent for the 2014-2015 school year.

The record was closed and the matter was submitted for decision on April 23, 2014.

FACTUAL FINDINGS

1. Assistant Superintendent Atkinson filed the District Statement of Reduction in Force in his official capacity.
2. Respondent is a certificated employee of the District.

3. On March, 12, 2014, the District provided written notice to respondent pursuant to Education Code¹ sections 44949 and 44955 that his services would not be required for the 2014-2015 school year.

4. On April 3, 2014, the District filed and thereafter served the District Statement of Reduction in Force and related documents on respondent. Respondent timely filed a Notice of Participation and Request for Hearing requesting a hearing for a determination of whether cause exists for not reemploying him for the 2014-2015 school year. All prehearing jurisdictional requirements were met.

5a. On March 11, 2014, the Board of Trustees (Board) of the District adopted *Resolution 2013/14 #37*, which authorizes overall reductions in the total number of certificated employees and provides for the elimination of the following service for the 2014-2015 school year:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent [FTE]</u>
Latin	.60

5b. The Board set forth its tie-breaking criteria for the District’s certificated employees with the same seniority date in Exhibit B to *Resolution 2013/14 #37*. The resolution provides for an order of termination based solely on the needs of the District and its students, using the following criteria in order of priority:

- a. Two (2) points for Bilingual Cross-cultural Language and Academic Development (BCLAD) Certificate or Bilingual Certificate of Competence (BCC).
- b. Two (2) points for each current, valid credential (excluding supplemental authorizations) held.
- c. Five (5) points for “hard to hire” credentials held (Science).
- d. Four (4) points for “hard to hire” credentials held (Math and English).
- e. One (1) point for each additional supplemental authorization appearing on the face of the credential provided that (1) the subject is offered in the District’s instructional program in 2013/14; and (2) that the teacher is “highly qualified” in that area.
- f. Two (2) points for National Board Certification.
- g. Two (2) points for having taught in a Program Improvement school in the District within the last five years.
- h. One (1) point for each year of teaching an advanced placement and/or International Baccalaureate (IB) course within the District.

¹ All statutory citations are to the Education Code, unless indicated otherwise.

- i. One (1) point for each sport (including Cheer) coached within the District during the 2013/14 school year.
- j. If there is still a tie after consideration of all of the above criteria, the tie will be broken by reviewing the last four digits of employee's original preliminary credential document number, with lower numbers being relatively more senior than high numbers.

5c. The District's tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees. There was no challenge to the District's application of the criteria.

6. The service set forth in Factual Finding 5a is a particular kind of service which may be reduced or discontinued within the meaning of section 44955.

7. The Board's decision and action to reduce or eliminate the service set forth in Factual Finding 5a was not related to the capabilities and dedication of the certificated employee rendering that service. The decision to eliminate the particular kind of service is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

8. Assistant Superintendent Atkinson oversaw the implementation of *Resolution 2013/14 #37*, which entailed reviewing available information to compile a tentative seniority list containing seniority dates, current assignments, and credentials and certifications that was then provided to certificated employees within the District with opportunities to verify, update, or correct information.

9. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the service being reduced, including whether more senior employees affected by the layoff held credentials in another area and were entitled to displace or "bump" other less senior employees. In determining who would be laid off for a service being reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals to determine whether any of the affected individuals could "bump" other employees.

10. The District properly considered all known attrition, resignations, and retirements in determining that respondent, the district's only certificated employee teaching Lain, was subject to layoff and that appropriate notice should be delivered to him by March 15, 2014.

11. The District did not retain any certificated employee junior to respondent to render a service that respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Section 44949 provides in pertinent part as follows:

(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 . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefore.

2. Section 44955 provides in pertinent part as follows:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) 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 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 certified and competent to render.

[¶] . . . [¶]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis on needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish . . . a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group

(c) . . . [S]ervices of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

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. . . .

(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 demonstrated 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.

3. All notice and jurisdictional requirements set forth in sections 44949 and 44955 were met.

4. Boards of education hold significant discretion in determining the need to reduce or discontinue particular kinds of services, which is not open to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School Dist.* (1976) 64 Cal.App.3d 167.) Such policy-making decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and action must be reasonable under the circumstances, with the understanding that “such a standard may permit a difference of opinion.” (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831, 845.) Numerous cases stand for the proposition that the process of implementing layoffs is a very flexible one and that school districts retain great flexibility in carrying out the process. (See e.g. *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796.)

5. The service set forth in Factual Finding 5a is a particular kind of service which may be reduced or discontinued within the meaning of section 44955. The Board’s decision to reduce or discontinue the identified service—Latin—was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of the service relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949.

6. A school district may reduce services within the meaning of section 44955, subdivision (b), “by determining that a certain type of service to students shall not, thereafter, be performed at all[.]” (*Rutherford, supra*, 64 Cal.App.3d at 178-179.)

7. Cause exists pursuant to sections 44949 and 44945 to reduce the number of certificated employees of the District due to the reduction or discontinuation of the particular kind of service set forth in Factual Finding 5a. The District properly identified the certificated employee providing the particular kind of service that the Board directed be reduced or discontinued.

8. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

ORDER

The Fullerton Joint Union High School District of Orange County may give notice to respondent Edward Jenkinson that his services will not be required for the 2014-2015 school year.

Dated: April 28, 2014

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings