

**BEFORE THE
BOARD OF EDUCATION OF THE
SANTA ANA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Statement of Reduction In Force of:

CERTIFICATED EMPLOYEES OF THE SANTA ANA UNIFIED

SCHOOL DISTRICT,

Respondents.

OAH No. 2025020454

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on April 14 through 18, 2025, in Santa Ana, California.

Anthony P. De Marco and Lauren Ruvalcaba, Attorneys, represented Santa Ana Unified School District (District).

Marianne Reinhold and Ilissa B. Gold, Attorneys, represented a majority of the respondents, who are identified in Exhibit D.

A number of other respondents, identified in Exhibit OAH 1, appeared at the hearing and represented themselves.

The hearing concluded on April 18, 2025. However, the record was held open, and the hearing was continued, for the parties to submit closing briefs. The closing briefs submitted by the District and represented respondents were timely lodged. The closing briefs of several self-represented respondents (noted below) also were timely lodged and marked collectively as Exhibit 102.

The record closed and the matter was submitted for decision upon receipt of the closing briefs on April 25, 2025.

By operation of Education Code section 44949, subdivision (e), the continuance of the hearing, due to leaving the record open for closing briefs, extends by one week the dates specified in sections 44949, subdivision (c)(3), and 44955, subdivision (c).

SUMMARY

The District proposes to lay off 386 full-time equivalent positions due to overstaffing. A number of respondents challenge various aspects of the District's seniority tie-breaking method, proposed skipping, and proposed bumping decisions. The glancing challenge to the seniority tie-breaking method is not successful. Respondents do not challenge the District's designated skipping categories, but a few unsuccessfully argue they should have been skipped as well. However, the District's bumping decisions for its Counselor 192 and Counselor 202 service areas are in error, and a number of other respondents successfully demonstrate either that they were improperly bumped by unqualified certificated employees, or they should be allowed to bump less senior colleagues. In all other respects, the District met its burden of establishing by a preponderance of the evidence that its proposed layoff may proceed as it intends.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Jennifer Flores is the District's Associate Superintendent, Human Resources. (Ex. 2.)

2. Respondents, who are identified in Exhibits D and OAH 1, are employed by the District as certificated employees. (Ex. 2.)

3. On or before January 31, 2025, pursuant to Education Code sections 44949 and 44955, the District's Board of Education (Board) was given written notice of the recommendation by the District's Superintendent that notice should be given to a requisite number of certificated employees that their services will not be required for the ensuing 2025-2026 school year. (Ex. 1.)

4. On March 14, 2025, and no later than March 15, 2025, certificated employees, including respondents, who were employed and identified as permanent or probationary employees of the District, were given written notice of the recommendation that, pursuant to Education Code sections 44949 and 44955, their services will not be required for the ensuing 2025-2026 school year (layoff notice). The certificated employees who were given this layoff notice are identified in attachment 5 of the layoff notice. (Ex. 2, pp. A25-37.)

5. Ms. Flores brought the Statement of Reduction in Force in her official capacity, which was served on the certificated employees in question. (Ex. 2.)

6. Of those who received the above-described layoff notice and Statement of Reduction in Force, respondents timely requested, or have been deemed to have

timely requested, a hearing to determine if there is cause for not reemploying them for the 2025-2026 school year. (Exs. 2, D, OAH 1.)

7. The District compiled a list of 24 certificated employees it concluded had not requested a hearing, and therefore are not respondents allowed to participate in this matter. (Ex. 11.) However, two individuals on that list were represented by counsel at the hearing, Kristi Almanzar and Rodolfo Calderon (Ex. D), and one individual appeared and represented herself, Bianka Silva (Ex. OAH 1). The District did not object to these appearances at the hearing, and therefore the three in question were allowed by the ALJ to participate in the hearing as respondents.

8. On the final day of the hearing, District Executive Director of Human Resources, Olga McCullough, testified that the District will not issue final layoff notices to the following respondents: Rodolfo Calderon, Morgan Riley Waite, and Cheryl Whittington.

The Board's Layoff Resolution

9. On January 31, 2025, the Board adopted Resolution 24/25-3649 (Resolution) to reduce or eliminate particular kinds of services performed by certificated employees no later than the end of the 2024-2025 school year, and stating the reasons therefor. (Testimony [Test.] of McCullough; Ex. 1.)

10. The Board further determined that it shall be necessary by reason of said reductions or discontinuances to decrease the number of certificated employees at the close of the current school year by a corresponding number of full-time equivalent (FTE) positions, and directed the Superintendent, or his designees, to proceed accordingly by notifying the appropriate employees to implement the Board's determination. (Test. of McCullough; Ex. 1.)

REDUCTION OR ELIMINATION OF PARTICULAR KINDS OF SERVICES

11. According to the Resolution, the following particular kinds of services were to be reduced or eliminated at the end of the 2024-2025 school year:

<u>Service Areas</u>	<u>FTEs</u>
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Elementary Instruction

Teacher - Elementary (General/Multiple Subjects)	186
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Teacher - Transitional Kindergarten	12
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Secondary/Departmentalized Instruction

Teacher - Math	34
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Teacher - English	63
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Teacher - Social Science	35
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Teacher Secondary - Business	6
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Teacher Secondary - French	2
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Teacher Secondary - Home Economics	1
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Teacher Secondary- Health	1
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Non-Rostered Services

Curriculum Specialist	16
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Itinerant Support Teacher	21
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Home and Hospital	5
Teacher on Special Assignment (TOSA)	17
Counselor - 192 days	63
Counselor - 202 days	27
Counselor Coach	4
Instructional Coach - Future Ready	39
Social Worker	10
Lead Social Worker	4
Total	546

12. The decision to reduce or discontinue these FTE positions is due to the District's budgetary situation. Beginning in Spring 2023, the District determined during staff allocation that it was overstaffed. The District established a stabilization plan, in which it began reducing staff in all categories, including teachers. Under this plan, the District decided to not renew temporary teaching contracts, offer early retirement incentives to certificated staff, and not fill certain key positions left vacant, including nine administrative positions overseeing certificated staff and several management positions overseeing classified staff. Nonetheless, the District determined the reduction and elimination of certificated staff still was necessary to implement the stabilization plan. (Test. of McCullough.)

13. During the hearing, however, Ms. McCullough testified that subsequent to the Resolution, the District has received information indicating fewer FTEs need to

be reduced to fulfill the stabilization plan, lowering the number of FTEs subject to reduction or elimination as follows:

<u>Service Areas</u>	<u>FTEs</u>
Elementary Instruction	
Teacher - Elementary (General/Multiple Subjects)	140
Teacher - Transitional Kindergarten	12
Secondary/Departmentalized Instruction	
Teacher - Math	26
Teacher - English	44
Teacher - Social Science	16
Teacher Secondary - Business	0
Teacher Secondary - French	0
Teacher Secondary - Home Economics	0
Teacher Secondary- Health	0
Non-Rostered Services	
Curriculum Specialist	16
Itinerant Support Teacher	20
Home and Hospital	5

Teacher on Special Assignment (TOSA)	17
Counselor - 192 days	27
Counselor - 202 days	20
Counselor Coach	4
Instructional Coach - Future Ready	39
Social Worker	0
Lead Social Worker	0
Total	386

14. Many respondents are those the District intends to “skip,” as discussed below, and they will not be given final layoff notices, depending on the outcome of the hearing. Thus, the District intends only to issue final layoff notices to 276 respondents. (Test. of McCullough.)

TIE-BREAKING

15. Exhibit B to the Resolution sets forth tie-breaking criteria to determine the relative seniority of certificated employees who first rendered paid probationary service on the same date. (Ex. 1.)

16. The tie-breaking criteria is comprised of nine areas, each of which is assigned varying points, based on the needs of the District at this time. The criteria are weighted in favor of more senior and experienced teachers, as well as those with bilingual skills and special education experience, which are particularly important to serving the District’s student population. (Test. of McCullough.)

17. The criteria was applied to certificated employees with the same seniority date; the greater the number of points, the more senior the involved employee is considered. (Test. of McCullough; Ex. 1.)

18. According to the Resolution, "In cases where multiple employees remain tied after applying the above criteria, the final determination may be made by a lot or other equitable method as determined by the District." (Ex. 1, p. A6.) In such cases, the District used a digital on-line randomizer, which staff had seen used before by the California State Teachers' Retirement System to randomly determine which school districts to audit. The higher the number assigned by the randomizer, the greater the seniority. (Test. of McCullough.)

19. Ms. McCullough believes this was a fair and unbiased way to handle ties after all of the tie-breaking criteria had been applied. Screen shots showing the number assigned by the randomizer were placed in the involved respondents' personnel files and made available for inspection upon request. No evidence presented indicates any respondent made an inspection request and/or reported an error or irregularity with the randomizer results. (Test. of McCullough; Ex. 1.)

20. As a result of seeking additional information from certificated staff concerning their seniority dates with the District, and other relevant information, the District several times updated its seniority list. Those updates caused changes in numerous certificated employees' seniority dates, and the application of tie-breaking criteria. Sometimes those changes moved a respondent out of one group and into another. When there were changes to a "band" of teachers with the same seniority date, the randomizer was used to assign numbers to all of those now in that band. The District advised its certificated employees that the seniority list would be subject to change over time as new information was received. Ms. McCullough does not

remember how many times the randomizer was used to break ties. After the formal seniority list was published to all respondents, it was updated four times. The seniority list was “locked” a few days before the hearing when it was uploaded into Case Center, the digital repository for exhibits used in this case. (Test. of McCullough.)

SPLIT ASSIGNMENTS

21. The Resolution prohibits fractional bumping of split assignments. (Ex. 1, p. A3, para. 12.)

22. A split assignment is where a teacher is credentialed and competent to teach more than one course of instruction, where two or more courses require different credentials and competency. Specific examples include “blended assignments” like teaching Math and Science, English and Social Studies, or high school assignments which include at least one section of coaching a sports team. (Test. of McCullough; Ex. 1.)

23. Fractional bumping is where a more senior employee credentialed and competent to teach some but not all of the junior teacher’s assignment requests to bump only part of the junior employee’s assignment. Under the Resolution, in order for a more senior employee to bump a less senior employee teaching a split assignment, the senior employee must be competent and credentialed to teach all of the junior employee’s assignment, not just some of it. (Test. of McCullough; Ex. 1.)

24. During the hearing, this dynamic also was referred to as the “whole assignment rule,” in which the Board, through the Resolution, intended to protect these type of blended assignments. Case law generally allows school districts to protect a whole assignment by preventing employees from demanding fractional bumping. For example, in *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d

1016, 1021, the court concluded a laid off counselor could not compel her former employing school district to re-employ her as a part-time employee in half of a newly created position that was 50 percent counselor and 50 percent teacher. In *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, 343, the court similarly ruled a school district cannot be compelled to split one full assignment into fractional assignments when considering bumping in a layoff.

SKIPPING

25. Pursuant to the Resolution, the Board determined it was necessary to retain certificated employees for the following school year regardless of seniority (skipping) to teach specific courses or courses of study who possess the types of special training and experience that others with more seniority do not possess.

26. The Resolution provides that the courses or courses of study subject to skipping are those taught by certificated employees in the following categories: (a) in the area of Elementary Instruction - Teacher Elementary, special education services, and Visual and Performing Arts (VAPA); (b) in the area of Elementary Instruction – Transitional Kindergarten, special education services and VAPA; and (c) in the area of Secondary – Departmentalized Instruction, International Baccalaureate (IB) in grades 7 through 12, VAPA, and special education services. (Ex. 1.)

27. At the outset of the hearing, the District announced that, by operation of the above-described whole assignment rule, it had decided also to skip high school teachers who have a blended assignment teaching one area of content, as well as coaching a sport. If the coach in question did not have a PE credential, he or she may still be assigned a section as a sports coach if they complete 20 hours of mandated

health and safety training and receive certification. The certified training is in basic first aid and CPR, heat stroke, and concussion protocols. (Test. of McCullough.)

28. Thus, the District has decided to skip all high school sports coaches in such a blended assignment who had received initial layoff notices, and determined that these teachers only could be bumped by someone who could assume their whole assignment of both teaching and coaching. (Test. of McCullough.)

The District's Seniority List

29. The District maintains a seniority list that contains employees' seniority dates (first date of paid probationary service), contract status, job title and course(s) taught, credential information, additional licensure, and current location of their assignment(s). The seniority list used at hearing is 355 pages, detailing the above information for 2,720 certificated employees. (Exs. 12, 45.)

30. Since August 2023, staff from the District's Human Resources Department have been reviewing the seniority list and relevant personnel files, including the District's computer and paper records of its certificated employees. Staff also confirmed teachers' current assignments through the District's AERIES course listing, as well as confirmed their credentials with the Orange County Department of Education (OCDE). A consultant was hired to review the accuracy of the seniority list and recommend appropriate changes. In the last few school years, the Human Resources Department several times requested certificated employees to review their seniority information, and provide information and documentation if they believed there was an error, or the District was missing material facts. The District recently has been in contact with the certificated employees' bargaining unit to address any other

disputes. This activity resulted in many updates to the seniority list. (Test. of McCullough.)

31. As discussed above, the seniority list was formally updated four times in the weeks leading up to the hearing of this matter to address errors identified by respondents and confirmed by District staff. As indicated below, the seniority list was updated throughout the hearing after various respondents testified and offered documentation demonstrating correction of the seniority list was warranted.

32. Based on the above, it was established by a preponderance of the evidence that the District's seniority list is accurate, with the few exceptions noted below.

33. The District used the seniority list to implement and determine the proposed layoffs, identifying the corresponding least senior certificated employees in each affected service area. The District then determined how many certificated employees assigned in the involved particular kinds of services are retiring or resigning; whether the least senior certificated employees in these particular kinds of services hold other credentials, can perform in other service areas, and are entitled to bump other more junior certificated employees; whether certain certificated employees should be skipped and retained; and how many certificated employees in each service area must be reassigned or laid off. For the hearing, the District created a displacement chart, which shows how and why each affected respondent is being laid off. In her testimony, Ms. McCullough also explained in detail how each certificated employee who received the layoff notice is affected by the layoff. The displacement chart was updated after the hearing to account for revisions suggested by some respondents which the District confirmed were correct. (Test. of McCullough; Exs. 12, 13, 45.)

34. The District considered all known attrition, resignations, and retirements in determining the actual number of necessary final layoff notices to give. Ms. McCullough testified the District has taken into account attrition subsequent to the Resolution, and will continue to do so after the hearing.

Challenges to the Application of the Tie-Breaking Criteria

35. Education Code section 44955, subdivision (b), provides, in part:

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 of needs of the district and the students thereof. . . .

36. School districts have wide latitude in implementing tie breaks to seniority dates. For example, school districts are not required to apply tie-breaking criteria prior to issuing layoff notices. (*Zalac v. Ferndale Unified School District* (2002) 98 Cal.App.4th 838, 855.) In fact, the failure of a school district to apply tie-breaking criteria until after a hearing began was found not to be prejudicial to laid off teachers where there was “no evidence the criteria were applied inappropriately or in bad faith.” (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 144.)

37. While not binding, decisions from prior OAH layoff cases can provide guidance. In the past, OAH decisions have generally approved of a school district using a lottery as a final tie breaker if ties in seniority remain after applying other objective criteria contained in a layoff resolution based on the needs of the school district and its students. (See, e.g., *Sacramento County Office of Education* (2011 ALJ J. Lew).)

38. A number of respondents who were in bands of others with the same seniority date received an initial number from the randomizer high enough to not be subject to lay off. However, the final application of the randomizer used when the seniority list was "locked" before the hearing resulted in those respondents getting lower numbers, making them subject to lay off.

39. The respondents who testified about the above scenario were Alexander Cheng (# 543), Kyle Lofdahl (# 557), Lillian Moreno (# 523), and Linda Solval (# 537).

40. This situation does not warrant an order directing the District to change these respondents' seniority vis-a-vis other respondents sharing the same seniority date. The Resolution clearly specifies that if ties remain after application of all the criteria, the District shall use "a lot or other equitable method as determined by the District." As discussed above, use of a lottery after application of tie-breaking criteria is an approved method of resolving this kind of situation. The randomizer is essentially a digital lottery.

41. The preponderance of the evidence established the randomizer was used in a fair and unbiased way. No evidence presented indicates the randomizer was used in a way to defeat the statutory principles requiring the District to honor seniority. The District endeavored to continually update the seniority list as new information was received and confirmed, and to keep the involved certificated employees apprised of the situation as it progressed. While the cited case law would have supported the District if it decided to use the randomizer only once before locking the seniority list just before the hearing, no statute or case required the District to do that. In sum, the District should not be penalized for giving respondents advance notice of their situations, or for making changes to the seniority list when warranted.

Challenges to Some Skipping Decisions

42. Education Code section 44955, subdivision (d)(1), permits a school district to deviate from the order of seniority in teacher layoffs when “District demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the employee [who is retained] has special training and experience necessary to teach that course or course of study . . . which others with more seniority do not possess.”

43. Respondents do not challenge the skip categories specifically provided for in the Resolution pertaining to VAPA, special education, and IB. However, some respondents challenge the District’s failure to apply the whole assignment rule skip, as detailed below.

SPEECH AND DEBATE COACHES

44. Four respondents are English teachers each also with one section of Speech. These four respondents coach their schools’ Speech and Debate teams, and contend they should have been skipped under the whole assignment rule for the same reason as sports coaches. The four respondents in question are Adam Duarte (# 562), Jefe Diaz (# 178), Timothy Ahn (# 185), and Katrina Shimasaki (# 563).

45. Based on the testimony of two of these respondents (Duarte & Diaz), a stipulation concerning the other two (Ahn & Shimasaki), and documentation provided by all four, these respondents established their ability to successfully teach Speech and to coach Speech and Debate teams, which came from years of experience teaching and coaching Speech and Debate teams. These four respondents believe their ability to teach Speech comes from their specialized training and experience, not from simply

having an English credential. (Test. of Duarte, Diaz, stipulation regarding Ahn & Shimasaki; Exs. O-R.)

46. However, Ms. McCullough persuasively testified these four respondents are not eligible for the whole assignment rule skip that the qualified sports coaches received for two reasons.

47. First, anyone with an English credential can teach Speech; no other credential is necessary to teach English and Speech in the same assignment. In fact, respondents Duarte and Shimasaki are being bumped by more senior teachers with an English credential or authorization. By contrast, sports coaches teaching a blended assignment must have a credential for the subject matter sections (such as English, Math, or Social Studies), and either a PE credential or the mandated 20 hours of health and safety training to perform the section of sports coaching. (Test. of McCullough.)

48. Second, English teachers who also have a section of Speech are not required to coach the Speech and Debate team because students who take Speech are not required to compete in Speech and Debate competitions. If students in a Speech class want to compete in Speech competitions, they would be coached in that additional activity by any of 14 District employees who specialize in coaching students for Speech and Debate competitions. By contrast, every student-athlete on a sports team must compete in athletic competition, and are coached by the certificated employee performing the blended assignment. (Test. of McCullough.)

49. Respondents point to the fact their collective bargaining agreement (CBA) with the District provides additional compensation for coaching the Speech and Debate teams, as do sports coaches. The same provision of the CBA offers additional compensation to all other faculty members who volunteer their time outside of the

classroom to work with students, such as drama, band, student government, etc. This comparison is not decisive, as it does nothing to change the fact that teaching Speech is not the sort of blended assignment covered by the whole assignment rule skip.

50. Although these four respondents have unique experience and qualifications to coach in Speech and Debate competitions, the District cannot retain them in favor of more senior English teachers who can provide the same service in the Speech classes.

JOURNALISM OR YEARBOOK

51. Respondent Daniel Van Hoosier (# 282) is an English teacher with a section or more of Journalism and Yearbook. Similar to the Speech and Debate coaches discussed above, respondent Van Hoosier is not eligible for the whole assignment rule skip because anyone with an English credential has the training and experience to teach Journalism and Yearbook; no other credential or authorization is required to perform the Journalism and Yearbook section. (Test. of McCullough.)

SPORTS COACHES

52. Alexander Cheng (# 543). Respondent Cheng testified he should be skipped because of his past track-and-field coaching experience. However, he did not establish that he has the required health and safety certification discussed above to be skipped.

53. Kyle Lofdahl (# 557). Respondent Lofdahl testified he should be skipped because of his past middle school baseball and pickleball coaching experience. While respondent Lofdahl testified he has the required health and safety certification, he did

not submit any documentation verifying the same. Based on these circumstances, respondent Lofdahl failed to establish a basis for the District to skip him.

Challenges to Some of the Bumping Decisions

GLOBAL CHALLENGE TO DISTRICT'S COUNSELOR LAYOFF DECISIONS

54. The Resolution specifies two separate classes of counselors being reduced, Counselor – 192 (192 Counselor) and Counselor – 202 (202 Counselor). (Ex. 1.) The distinction drawn by the District for these two service areas is the number of school days per school year worked by the involved counselor. Depending on whether the counselor is assigned to an elementary school, a middle school, or a high school, some counselors work 192 days in a school year, and some work 202 school days. (Test. of McCullough.)

55. The District is allowing 202 Counselors to bump into positions held by less senior 192 Counselors, but will not allow 192 Counselors to bump into positions held by less senior 202 Counselors. The reason stated for this approach is that allowing a 192 Counselor to bump into a 202 Counselor position would give the 192 Counselor a benefit of 10 additional working days in the following school year, and that the layoff laws prohibit an employee receiving a benefit from a layoff. (Test. of McCullough.)

56. One problem with this unequal treatment of counselors is that both service categories have the same credential and competency requirements, i.e., a 192 Counselor is credentialed and competent to perform a position held by a 202 Counselor and vice versa. Specifically, both positions require the same credential and have the same job descriptions. (Test. of McCullough.)

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57. Another problem is that it was not established by a preponderance of the evidence that being a 202 Counselor is more beneficial than being a 192 Counselor. For example, both positions comprise 1.0 FTE and are considered full-time assignments. The daily pay rate for both positions is the same. More to the point, being required to work additional 10 days in a school year is not necessarily a benefit; many would leap at the opportunity to work 10 less days in a school year at the price of receiving slightly less pay. No evidence indicates the involved 192 Counselors object to being required to work 10 additional days next school year in order to bump, and more importantly, no evidence suggests any 202 Counselor has refused to be reassigned into a position that requires working 10 less days.

58. Finally, the District cites no provision from the Education Code requiring a bumping decision to ignore seniority in order to avoid giving a senior teacher a benefit.

59. The only legal authority cited by the District is *Murray v. Sonoma County Office of Education* (1989) 208 Cal.App.3d 456, 460, in which a school nurse employed in a permanent .16 FTE position discontinued for budgetary reasons was unable to compel her former employer to rehire her in a newly created full-time nursing position. The court held:

[T]he purpose of [layoff rehire rights] 'is to give a permanent [employee] . . . the same employment rights that she would have had if no layoff had intervened, but to not greater rights. [Citation omitted.]' Thus, when a part-time employee is laid off he or she is not entitled to a *full time* position which subsequently opens up. Section 44956 only requires that the employee be returned to his or her

'prelayoff' status. [Citation omitted.] Moreover, in our view appellant did not have the right to force the Office of Education to divide the full-time position to accommodate her desire for a part-time position. (See *King v. Berkeley Unified School Dist.* (1979) 89 Cal.App.3d 1016, 1020–1021.)

(*Ibid*; emphasis in original.)

60. *Murray* does not hold that bumping decisions are controlled by whether an employee is benefitted by exercising his or her seniority rights. *Murray* involved a completely different issue, i.e., a part-time position versus a full-time position. In fact, the *Murray* court did not even use the word "benefit" in its analysis, instead focusing on "greater rights." It is hard to describe one full-time employee having greater rights than another full-time employee, simply because one works more days in the school year.

61. Based on the above, any more senior 192 Counselor is entitled to bump a less senior 202 Counselor, and conversely, a less senior 202 Counselor is not entitled to bump a more senior 192 Counselor.

62. The record in this case is not developed enough to allow the ALJ to make bumping decisions based on the above. Therefore, the District is ordered to redetermine its layoff of the 192 and 202 Counselors jointly, based solely on seniority, without regard to the number of school days worked in the position, and provide final layoff notices only to the number of counselors necessary to effectuate the total number of layoffs for the two combined service areas articulated in the Resolution and as modified during the hearing.

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SCHOOL-BASED MENTAL HEALTH SPECIALISTS

63. School-Based Mental Health Specialists (SBMHS) implement a variety of school-based mental health services for students on campus. (Ex. 29.) They also work a greater number of school days in a school year than a 192 Counselor. (Test. of McCullough; Ex. 29.)

64. The preponderance of the evidence established that a certificated employee currently fulfilling the 192 Counselor position who also has an Associate Professional Clinical Counselor (APCC) license or a Licensed Professional Clinical Counselor (LPCC) license from the State of California is credentialed and competent to perform the service of an SBMHS. (Test. of Yariza Amaton, Alejandra Salazar, Danissa Colombana.)

65. The District and a majority of respondents concurrently filed with their closing briefs a joint stipulation regarding the following respondents who presently are 192 Counselors and hold either an APCC or LPCC license: Sandra Guillen (# 406); Lexy Rens (# 384); Danissa Colombana (#346); Alejandra Salazar (# 344); and Pablo Flores (# 341). The joint stipulation is marked for identification and admitted as Exhibit 49.

66. The District has not allowed a 192 Counselor to bump into an SBMHS position because the 192 Counselors work fewer school days than an SBMHS. The District has not articulated any other reason for disallowing such bumping. According to the joint stipulation, the District is not laying off 21 certificated employees who currently are assigned an SBMHS position and less senior than the five respondents identified above.

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67. For the reasons explained above concerning the 202 Counselor situation, respondents Guillen (# 406), Rens (# 384), Colombana (#346), Salazar (# 344), and Flores (# 341) shall not be laid off, as they are credentialed and competent to perform a service that less senior certificated employees are being retained to perform.

PROGRAM SPECIALIST

68. Under direction of a designated site administrator, a Program Specialist implements, coordinates, and facilitates programs that are more than one school in scope. Any valid teaching or service credential can be used. (Ex. T.) Any 192 Counselor meets that description. A Program Specialist works more than 192 school days in a school year.

69. Respondent Angelica Sandoval (# 420) is a 192 Counselor who works at a dual immersion elementary school site and works with students in an English Learner (EL) Program. (Ex. 12.) She is designated for layoff because she is being bumped by a more senior 202 Counselor (# 521). However, respondent Sandoval seeks to bump a less senior employee, respondent Karla Aranda (# 94). Respondent Aranda is a Program Specialist who works in an EL and Migrant Education Program. (Test. of McCullough; Exs. 12, 45.) Ms. McCullough testified someone able to bump respondent Aranda would need her experience working with migrant populations and knowledge in how to comply with federal law regarding migrant education. Respondent Sandoval did not testify, and her existing experience was not established. While respondent Sandoval is credentialed to perform respondent Aranda's position, it was not established that she is competent to do so.

70. Based on the above, respondent Sandoval failed to establish by a preponderance of the evidence that she is credentialed and competent to perform an

assignment being rendered by a less senior certificated employee, and therefore she is subject to lay off.

71. Respondent Yariza Amaton (# 430) also is a 192 Counselor. Initially she sought to bump into an SBMHS position, but it was revealed that her APCC license is in delinquent status. (Test. of Amaton; Ex. 46.) Thus, respondent Amaton testified she can bump respondent Cecilia Chavez (# 388), who currently is a Program Specialist responsible for being the District liaison with the McKinney-Vento program that provides assistance to homeless children. Respondent Amaton described in her testimony her past experience also serving as a McKinney-Vento program liaison for 1.5 years, as well as her overall experience working with homeless and exploited youth. In her rebuttal testimony, Ms. McCullough commented that a more senior counselor could bump respondent Chavez, so long as the more senior employee would not gain a benefit from doing so. As held above, the fact respondent Amaton works 192 school days is not an impediment to her bumping. Therefore, it was established by a preponderance of the evidence that respondent Amaton is credentialed and competent to bump the less senior employee, respondent Chavez.

DUAL IMMERSION CLASSROOM ASSIGNMENTS

72. The following six respondents teach elementary dual immersion classes and are being bumped by more senior teachers: Patricia Reyes (# 1187); Jazmina Amado (# 1191); Cristina Zavala-Venegas (# 1201); Ana Harvey (# 1288); Elizabeth Alvarez (# 1289); and Marcela Santillan (# 1293). (Test. of McCullough; Exs. 13, 45.)

73. All six of these respondents possess either a Bilingual Cross-Cultural Language and Academic Development (BCLAD) credential, or Bilingual Authorization (BASP) embedded in their credentials, both of which authorize them to provide

bilingual instruction. All six respondents are assigned to classes where they provide bilingual instruction in English and Spanish, and at sites where many, if not all, of the classes are dual immersion in those two languages. (Test. of Reyes, Amado, Zavala-Venegas, Harvey, Alvarez, and Santillan.) The District agrees the dual immersion classes require the teacher to have either a BCLAD or BASP. (Test. of McCullough.)

74. The District proposes bumping, or displacing, these six respondents with more senior teachers as follows: Reyes, by a curriculum specialist (# 2312); Amado, by an instructional coach (# 2276); Zavala-Venegas, by an instructional coach (# 2169); Harvey, by an instructional coach (# 1611); Alvarez, by a curriculum specialist (# 1418); and Santillan, by a teacher on special assignment (# 1335). However, it was established by a preponderance of the evidence that none of these more senior teachers holds a BCLAD or BASP certification. (Test. of Reyes, Amado, Zavala-Venegas, Harvey, Alvarez, and Santillan; Ex. 12.) Thus, none of the six more senior teachers are credentialed and competent to provide bilingual instruction in a dual immersion assignment.

75. In response, Ms. McCullough testified in rebuttal that the District will re-work the bumping chart to ensure these six respondents are bumped by teachers who hold a bilingual credential or authorization. Ms. McCullough is confident that, with over 200 teachers with BCLADS being retained for next school year, the District can fill this need.

76. Ms. McCullough's rebuttal testimony is problematic for two reasons. First, since the six identified more senior teachers cannot lawfully bump these six respondents, the basis asserted by the District for laying off the six respondents was not established. Second, although Ms. McCullough is confident the District can find more senior teachers with bilingual authorization to meet the needs of the students at

the dual immersion schools, the District provided no evidence establishing this proposition.

77. Because the District is attempting to bump these six respondents who provide bilingual, dual immersion instruction, with instructors who do not possess BCLAD or BASP authorization, and therefore lack the credentials and competency to teach these assignments, respondents Reyes, Amado, Zavala-Venegas, Harvey, Alvarez, and Santillan are not subject to being laid off.

PEP SQUAD

78. Respondent Justin Davidson (# 579) testified he is competent and credentialed to bump respondent Vi Pham (# 415). Both are Math teachers using a Math credential. The District skipped respondent Pham because she also is assigned a section of Pep Squad, and thus has a blended assignment subject to the whole assignment rule. In her Pep Squad section, respondent Pham is the faculty advisor and teacher of record; she gives grades and coordinates with an outside or walk-on coach who works with the cheerleaders. (Test. of Davidson, Pham.)

79. Respondent Davidson testified and submitted documentation regarding his prior experience as a cheer coach (Ex. U). Respondent Davidson previously served for other school districts as a cheer coach in 2014, an after-school cheer coach in 2015, and an assistant cheer coach in 2016. He also has training certificates in concussion protocols, CPR, and basic first aid, but the certificates are ten or more years old and were issued by another state. (Test. of Davidson; Ex. U.)

80. The District announced the sports coach skip at the beginning of the hearing. Respondent Davidson therefore did not know earlier what documentation the District would find relevant regarding his competency to teach other assignments

when it solicited information from teachers as it finalized its seniority list. Therefore, respondent Davidson submitted his documentation toward the end of the hearing. Ms. McCullough testified she did not have sufficient time to check whether respondent Davidson's health and safety certifications qualify under California law and District requirements. On the other hand, respondent Davidson did not establish by a preponderance of the evidence that his certifications so qualified either. In its closing brief, the District advises that respondent Davidson's certifications are vague, and concludes he has not demonstrated competency to bump respondent Pham.

81. Respondent Pham testified to defend her position. She has been the Pep Squad advisor for the last two years. In that position, she has the requisite training and certifications, which neither party disputes. (Test. of Pham, McCullough.)

82. On balance, respondent Davidson failed to establish that he has the requisite training and certification rendering him competent to bump into respondent Pham's position, due to the vagaries of the certification he presented. Because of the lateness of the sports coach skipping announced by the District, respondent Davidson was given little notice that his current health and safety certification status was important. Therefore, the Order below discusses how to resolve this situation.

SPORTS COACH

83. Isabelle Arriaga (# 433). Respondent Arriaga represented herself at hearing. She testified she is able to bump into the position held by less senior respondent Jessica Marquez (# 137). Both are social studies teachers, but the District skipped respondent Marquez because she currently is a cross-country and track coach at a high school, and thus has a blended assignment subject to the whole assignment rule skip. Respondent Arriaga works at a high school now, but in the 2022/2023 school

year, she worked at a middle school and was the head coach of the school's intramural track program. In that capacity, she ensured students got physicals, gave grades to those participating in meets, and determined the events in which to place meet participants. Respondent Arriaga submitted documentation showing she has all the required health and safety certification to be a sports coach. (Test. of Arriaga; Ex. 101.)

84. Respondent Marquez testified to defend her position. Her testimony established she has the health and safety certification required by the District, and is imminently qualified to be a cross-county and track coach, having superior prior and current experience as a runner and running coach. (Test. of Marquez.)

85. Both respondents are credentialed to handle respondent Marquez's current blended assignment. Both have the requisite health and safety certifications. Both have experience coaching runners and track-and-field athletes. The only thing that separates the two teachers is their level of experience, as respondent Marquez is more qualified than respondent Arriaga. However, the Education Code is clear that seniority must be honored in all situations, unless the District has articulated a particular skipping category.

86. Sports coaching, as it intertwines with the whole assignment rule, has been skipped by the District, when the teacher in question is performing an entire blended assignment. Where a senior teacher is not performing such a blended assignment that can be skipped, the District still will allow a more senior employee to bump into an entire blended assignment if credentialed and competent to perform the entire assignment. (Test. of McCullough.) The District does not dispute respondent Arriaga has the proper credential and required health and safety certification to perform respondent Marquez's blended assignment. Boiled to its essence, the District

instead argues respondent Marquez has greater and better experience and competency to perform her position, which is true.

87. Resolving bumping disputes by weighing the competing teachers' past experience and competency is an invitation to ignore the rules of seniority, and to submerge layoff cases into the quagmire of judging peers by subjective standards. Put another way, the issue to be resolved is whether one teacher is credentialed and competent to perform another's assignment, not whether the teacher is credentialed and *more* competent. In this case, all of the objective standards, i.e., credentials and health and safety certification, are in respondent Arriaga's favor. Thus, while respondent Marquez is more competent to coach cross-country and track-and-field, respondent Arriaga is competent to do so as well, and that is all that is required for her to bump into the assignment.

88. Respondent Arriaga should be allowed to bump into respondent Marquez's position at the high school, and therefore respondent Arriaga is not subject to lay off.

LITERACY COACHES

89. Carla Villa (# 1235) and Jessica Rodriguez (# 1290). Respondent Villa is an Instructional Coach, and respondent Rodriguez is an elementary school teacher. Both seek to bump into Literacy Coach positions being held by less senior employees, Jill Hubbart (# 450) and Marisol Nemetz (# 1194). The District is not reducing its Literacy Coach service. (Test. of Villa, Rodriguez, McCullough; Ex. 1.)

90. Respondents Hubbart and Nemetz testified, and their testimony was corroborated by Ms. McCullough in her cross-examination testimony. Diana Torres, District Executive Director of Teaching and Learning, also testified about the Literacy

Coach position, and the training required to hold the position. Both respondents Hubbard and Nemetz currently serve as Literacy Coaches under a specific three-year grant providing funds to the District from an outside source. Under that grant, both respondents have received almost 100 hours of training this school year specific to their positions. That specific training is needed to perform this assignment. (Test. of Hubbard, Nemetz, McCullough, Torres; Ex. 1.)

91. Ms. McCullough agrees respondent Villa has the necessary credential to perform the Literacy Coach assignment. The record is not clear whether respondent Rodriguez has the necessary credential to fulfill this position. However, Ms. McCullough was clear that neither respondent has the specific Literacy Coach training provided under the grant.

92. Under these circumstance, respondents Villa and Rodriguez are not credentialed and competent to perform the Literacy Coach service, and therefore they may not bump less senior employees currently performing that position. (Test. of Villa, Rodriguez, Hubbard, Nemetz, McCullough; Ex. 1.)

USING MUSIC VACANCIES

93. Maya Avila (# 1148). Respondent Avila is a kindergarten teacher with a multiple subject credential. The District proposes bumping her with David Lofink (# 2629), who holds a music credential as well as a multiple subject credential. (Ex. 12, p. A435.) The District decided not to bump Mr. Lofink into a vacant music position because staff felt he is better suited for an elementary position due to his experience teaching reading, and he did not have recent experience teaching music. Ms. McCullough also suggested there were no music vacancies for Mr. Lofink. However,

the District's position on the bump of respondent Avila is problematic for several reasons. (Test. of McCullough.)

94. First, the District failed to establish by a preponderance that there is no vacant music position for Mr. Lofink. Music is part of the VAPA skip, meaning the District has maximum flexibility in this area. Also, Ms. McCullough initially testified there are some music positions available for Mr. Lofink. When Ms. McCullough researched the issue and reported back in her rebuttal testimony, she equivocated, but still testified there were limited vacancies in music.

95. Second, the articulated reason for channeling Mr. Lofink into respondent Avila's position, i.e., he is better suited as an elementary teacher, is not a valid basis for making a bumping decision. As noted above, bumping is based on credentialing and competency, not on the subjective intuition that one teacher is "better suited" than another. While Mr. Lofink does not have recent experience teaching music, the District failed to establish that anything other than a music credential was required to be credentialed and competent to teach it.

96. Third, several other teachers with much lower seniority than respondent Avila, and thus in jeopardy of being laid off, are being bumped into vacant music positions, including Fatimah Khan (# 860), Nicole Galardo (# 720), and Brandon Stuhl (# 4). Mr. Stuhl currently teaches high school English; there are only three teachers in the District with less seniority than Mr. Stuhl. No logical reason was presented by the District explaining why Mr. Stuhl was bumped into a music vacancy, but not Mr. Lofink. Further accentuating the point is that three probationary teachers currently teaching music, who are very junior to Mr. Lofink, are not being laid off. Those teachers are Gabrielle Poveda (#46), Jessica Ulloa (# 56), and Alejandra Morales (# 57). (Test. of McCullough.)

97. As the legal authority above indicates, school districts have great flexibility in their skipping and bumping analysis. On the other hand, Education Code section 44955, subdivision (c), requires school districts to 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." While the ALJ is hesitant to disturb the District's discretion in organizing its layoff, such discretion is not properly exercised where assignments and reassignments are not being made to honor seniority, resulting in very junior employees being retained over more senior employees without a valid reason established by fact. In this case, the District failed to establish by a preponderance of the evidence that it is appropriate for Mr. Lofink to bump respondent Avila, and therefore, respondent Avila should not be laid off.

Seniority Date Challenges

98. Seniority is measured from the first date on which an employee renders paid service in a probationary position. (Ed. Code, §§ 44845, 87414.) Several respondents contend their seniority dates are earlier than those assigned by the District.

AGREED UPON CHANGE IN SENIORITY DATE

99. Maria Cielo-Medina (was # 510, now 665A). The District agrees respondent Cielo-Medina's seniority date should be changed from August 10, 2021, to the new date of August 9, 2021. Her new seniority number is 665A. However, this change in seniority will not prevent her from being subject to lay off. (Test. of Cielo-Medina, McCullough; Ex. L.)

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EARLY REPORT DATE FOR TRAINING

100. Kayla Bruner (# 600) and Denise Torres (# 583). Their assigned seniority date is August 9, 2021. Both respondents attended two days of District-wide professional development on August 9 and 10, 2021, which established their seniority date. However, both respondents testified their site-principal required them to attend site-specific training on August 5 and 6, 2021, and that therefore their seniority date should be advanced to August 5, 2021. (Test. of Bruner, Torres.)

101. Respondent Torres presented an e-mail from her principal, Dr. Kim Garcia, advising that teachers would report for work “for Professional Development beginning around Aug. 5” for the 2021/2022 school year. (Ex. V, p. B369.) The e-mail is not clear whether this training was District-wide or site-specific. Both respondents testified they attended professional development on August 5 and 6, 2021. Both respondents presented paystubs from this time period showing they were compensated for two days of “extra duty” “PD [professional development]” that month, although none of the paystubs show specific dates for such activity. (Test. of Bruner, Torres; Exs. N, V.)

102. Ms. McCullough testified she spoke with the site’s principal, Dr. Garcia, who denied there had been any training on August 5 or 6, 2021, and that only program verification took place then.

103. On balance, respondents’ evidence does not establish by a preponderance that they attended training on August 5 and 6, 2021. It is clear District had two days of professional development on August 9 and 10, 2021, and both respondents’ paystubs only show compensation for two days of such training. If respondents had attended four days of compensated training as they contend, the

paystubs should have shown that. The e-mail from Dr. Garcia only advises that teachers would report “around” August 5th, so the e-mail just as easily could have referred to the District’s professional development everyone agrees happened on August 9 and 10, 2021. As these events occurred almost four years ago, it is not likely respondents’ memories now are better than the contemporaneous documentation they presented. This level of evidence is insufficient to rebut the District’s seniority list, constructed after many rounds of review described above, and as bolstered by the information from Dr. Garcia.

LONG-TERM SUBSTITUTE OR TEMPORARY ASSIGNMENTS

104. Several respondents performed long-term substitute or temporary teaching assignments prior to their recognized seniority dates, and therefore requested an earlier seniority date than as determined by the District.

105. Education Code section 44918, subdivision (a), provides that a teacher may receive credit toward probationary or permanent status if he or she serves as a long-term substitute or temporary teacher for 75 percent of the school days in a school year, and is employed as a probationary employee “for the following school year.” This is known as “tacking on.” On-call or day-to-day substitute assignments do not count for this purpose. (*Ibid.*)

106. A teacher who starts a school year as a long-term substitute or temporary teacher, but is offered a probationary position prior to serving 75 percent of the school days in the same school year, is not entitled to tack on the substitute service. In such a case, the probationary employment did not begin the following school year. Similarly, an employee who serves less than 75 percent of the school year

as a substitute or temporary teacher, but is reemployed the following school year as a probationary employee, is not entitled to tack on the prior year's service.

107. Misty Omar (was # 173, now 235A). The District agrees respondent Omar's prior substitute teaching experience warrants changing her seniority date from August 9, 2023, to the new date of October 11, 2022. This change also results in respondent Omar's seniority number being changed to 235A, and her status being changed from probationary to permanent. However, respondent Omar is still subject to being laid off. (Test. of Omar, McCullough; Ex. G.)

108. Selena Qafaiti (was # 841, now 857A). The District agrees respondent Qafaiti's prior substitute teaching experience warrants changing her seniority date from November 5, 2018, to the new date of August 13, 2018. This change also results in respondent Qafaiti's seniority number being changed to 857A. However, respondent Qafaiti is still subject to being laid off. (Test. of McCullough, Qafaiti; Ex. K.)

109. The preponderance of the evidence established that respondents Sara Renderos (# 1287), Saray Magdaleno (# 1223), and Humbelina Lopez (# 1142), all worked less than 75 percent of the school days in the school year prior to when they obtained probationary status, and therefore none of them are entitled to tacking on earlier service for purposes of changing their seniority dates. (Test. of McCullough, Renderos, Magdaleno, Lopez; Exs. 12, E, F, H.)

110. Kelly Ramirez (# 1217). Respondent Ramirez's seniority date is February 2, 2014, which was confirmed during the District's last layoff in 2017. During the 2013/2014 school year, respondent Ramirez had substitute assignments for nine different teachers, some lasting 20 days or less. Because respondent Ramirez was offered probationary employment the same school year as when she performed her

substitute service, not the following year, she is not entitled to tack on the earlier service from the same school year. (Test. of McCullough, Ramirez; Ex. I.)

111. Marilena McTigue (# 964). Respondent McTigue is not scheduled to receive a final layoff notice because she is able to bump a junior certificated employee (# 470) using her social science authorization. However, respondent McTigue disputes her seniority date of January 17, 2017, arguing her prior hourly substitute service work during the 2015/2016 school year allows her to tack on the earlier service. According to respondent McTigue, she worked every school day that prior school year and over 1,000 hours in total. However, the documents she presented (Ex. J) do not support her contentions. In any event, Ms. McCullough testified the District's review of respondent McTigue's personnel file shows she served as an hourly employee the prior school year; there were gaps in some months of her service that school year; and she did not work 75 percent of that school year. Based on the above, the preponderance of the evidence establishes respondent McTigue is not entitled to tack on her service during the 2015/2016 school year, and the District's seniority date for her is correct. (Test. of McCullough, McTigue; Ex. J.)

Other Represented Respondents

112. Lizbeth Pulido (# 76). Respondent Pulido is an Outreach Consultant, a position in which she works with high school students struggling with their attendance and grades. No special credential is needed for this assignment; respondent Pulido has a multiple subject credential. She testified as to her extensive experience in her assignment. The District does not expect to give her a final layoff notice. (Test. of McCullough, Pulido.) It is not clear why respondent Pulido testified. No argument was advanced for her in a closing brief.

113. Julie Rodriguez (#561). Respondent Rodriguez also serves as an Outreach Consultant. She testified as to her extensive experience in this assignment. The District does not expect to give her a final layoff notice either, as there are two vacancies not filled for the position of Outreach Consultant next school year. It is not clear why respondent Rodriguez testified. No argument was advanced for her in a closing brief.

114. Aimee Gallagher (#65). Respondent Gallagher has a theatre credential, and teaches theatre, drama, ethnic studies, and activism. She testified as to her extensive experience in these areas. Her position receives grant funding from Proposition 28, and she has received training from that grant. Respondent Gallagher believes she cannot be replaced by another teacher within the District, due to her unique training from the grant funding. For that reason, she believes it is possible replacing her with another teacher may result in the District having to return the grant funding relative to her position. (Test. of Gallagher; Ex. S.) The District initially did not expect to give respondent Gallagher a final layoff notice. However, the District determined a teacher with either an English or theatre credential can perform respondent Gallagher's assignment. Therefore, the District has decided to bump respondent Morgan Riley Waite (# 235) into respondent Gallagher's position, notwithstanding her unique training and the grant funding. (Test. of McCullough.) On balance, respondent Gallagher failed to establish a factual or legal reason to prohibit her from being laid off.

Self-Represented Respondents

115. Of the 14 self-represented respondents, only four testified and/or submitted documentary evidence. The issue contested by respondent Arriaga is discussed above.

LORENNA NUNES

116. Respondent Nunes (# 41) has an English credential and is one of the most junior teachers in that service area being reduced. She has no credential or authorization that would allow her to bump a less senior employee not being laid off. While she served the District in a unique and important position at Chavez Continuation High School, the District established by a preponderance of the evidence there are more senior certificated employees who are credentialed and competent to perform her assignment and that she is properly subject to lay off.

Ivy Do

117. Respondent Do (# 188) provided in her testimony additional information the District did not know in making its layoff determinations. However, she is among the most junior in the group of certificated employees providing her particular kind of service, and she is not credentialed and competent to bump a less senior teacher. Therefore, the District established by a preponderance of the evidence that she is properly subject to lay off.

CINDY BUI

118. Respondent Bui (# 287) has a social science credential, and is assigned to teach sections of middle school social studies and two sections of PAL Peer Leadership. She is subject to lay off as part of the social studies service reduction. She is being bumped by a more senior certificated employee (# 1867), an instructional coach with a social sciences credential who was not given a layoff notice. Respondent Bui contends she is performing a blended assignment because in order to perform the PAL Peer Leadership sections, a teacher needs to complete a two-day certified PAL advisor training program offered by the OCDE, which respondent Bui has completed.

Therefore, respondent Bui contends she should be skipped under the District's whole assignment rule skip. Respondent Bui does not believe the senior employee bumping her has such training and therefore cannot bump her. (Test. of Bui; Ex. 100.)

Respondent Bui also filed a closing brief reiterating these points. (Ex. 102.)

119. Respondent Bui is not eligible for the whole assignment rule skip because she is a middle school teacher, not a high school teacher. (Test. of McCullough; Ex. 12.)

120. On the other hand, the District has presented no evidence establishing that the more senior employee (# 1867) has completed the two-day certified training offered by OCDE. After hearing respondent Bui's testimony, Ms. McCullough simply testified on rebuttal that the PAL Peer section is an elective, and if it is offered next school year the District will look to assignments or reassignments to cover it with a credentialed and competent teacher; if not, the District will rehire someone with seniority rights. The problem with the District's position is that the District has failed to establish that the person scheduled to bump respondent Bui is competent to teach the PAL Peer sections, because she does not have the required two-day certified training from OCDE. Put another way, in bumping respondent Bui, the District has violated the Resolution's prohibition of fractional bumping of split assignments, which is not limited to high school teachers. Respondent Bui performs a split assignment: some sections require a social science credential, and some sections require the two-day certified training from OCDE. The teacher scheduled to bump respondent Bui can only perform respondent Bui's social studies sections, but not the PAL Peer sections.

121. Based on these unique circumstances, the District failed to establish respondent Bui is being lawfully bumped, and therefore respondent Bui may not be laid off.

CLOSING ARGUMENTS

122. Respondent De La Torre gave a closing argument at the end of the hearing. Respondents Nunes, Howard, Fierle, Do, and Soto filed closing briefs. In their various closing remarks, these respondents question the propriety of the Board's decision to lay off personnel, the decisions made and articulated in the Resolution, and/or the impact layoffs will have on the students served by the District. However, the Education Code does not provide jurisdiction to entertain these arguments in this layoff proceeding.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1-7.)

2. In administrative hearings involving personnel matters, the burden of proof is on the agency bringing the action. (See, e.g., *Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; *Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.) Thus, a school district seeking to skip junior teachers bears the burden of proving the skip is valid. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 138.) In this case involving the employment rights of respondents, the District bears the burden of proof.

3. As no other law or statute requires otherwise, the standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.) A preponderance means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

4. A school district may reduce or discontinue services within the meaning of Education Code 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.)

5. The services identified in the Resolution are particular kinds of services that can be reduced or discontinued under Education Code 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 Education Code section 44949. (Factual Findings 9-14.)

6. A school district has discretion in determining whether an employee is certified and competent, as provided by Education Code section 44955, subdivision (b), to be reassigned and, as a result, to bump or displace a junior employee, as provided by subdivision (c). (See also *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 565.) The criteria used to determine a teacher's competence must be reasonable. (*Id.*, p. 566.)

7. During the hearing, the District advised it would not issue final layoff notices to respondents Calderon, Riley Waite, and Whittington. (Factual Finding 8.) Therefore, the Statement of Reduction in Force as against these three respondents shall be dismissed.

8. Based on the above legal principles, it is concluded the District engaged in a proper and lawful layoff of certificated staff, with a few necessary modifications

noted below. For example, the District's final version of the seniority list in evidence, after modifications made during the hearing (Ex. 12), is accurate. (Factual Findings 29-34.) The only exceptions are a few respondents' seniority dates that have been adjusted, which still do not affect the District's layoff decisions. (Factual Findings 99, 107, 108.) The District's method of breaking ties for certificated employees with the same seniority date is valid and withstood a glancing challenge. (Factual Findings 15-20, 35-41.) The District's designated skipping categories are valid, and respondents did not challenge them. (Factual Findings 25-28, 42-43.) A few respondents who were not skipped argued they should have been, but those arguments are rejected. (Factual Findings 21-24, 44-53, 119.) A number of respondents argued they either are being improperly bumped by unqualified certificated employees, or they should have been allowed to bump less senior certificated employees. (Factual Findings 54-97.) Some of those challenges are successful, and the involved respondents may not be laid off because otherwise the District would be employing next school year less senior certificated employees whose positions the affected respondents are credentialed and competent to perform. (Factual Findings 54-62, 63-67, 71, 72-77, 83-88, 93-97, 120.)

9. Because there is insufficient evidence for the ALJ to redetermine the seniority of the 192 and 202 Counselors when combined, the District is ordered below to re-rank all affected respondents in both service areas based solely on their seniority dates, without regard to the number of school days worked. (Factual Findings 54-62.)

10. With respect to respondent Davidson, his notice and an opportunity to respond to this lay off as it affected him was impaired to the extent the District was unable to review his final evidence submitted at hearing. The District therefore is ordered below to engage in that analysis before issuing the final Decision in this matter. (Factual Findings 78-82.)

11. Aside from the successful bumping challenges noted above, no junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render. Cause therefore exists for the District to reduce the number of certificated employees of the District due to the reduction or discontinuation of particular kinds of services identified in the Resolution, and as revised during the hearing and herein. (Factual Findings 1-122; Legal Conclusions 1-10.)

ORDER

The District's Statement of Reduction in Force is dismissed as against the following respondents: Rodolfo Calderon, Morgan Riley Waite, Cheryl Whittington, Sandra Guillen, Lexy Rens, Danissa Colombana, Alejandra Salazar, Pablo Flores, Yariza Amaton, Patricia Reyes, Jazmina Amado, Cristina Zavala-Venegas, Ana Harvey, Elizabeth Alvarez, Marcela Santillan, Isabelle Arriaga, Maya Avila, and Cindy Bui.

The District shall not give the respondents identified above a final layoff notice for the 2025-2026 school year.

As for respondent Justin Davidson, the District shall review the health and safety certification he submitted at hearing (Ex. U) and determine if it is valid and complies with the District's requirements used for sports coaches. If so, the District shall not give respondent Davidson a final layoff notice, and shall determine whether a final layoff notice for respondent Vi Pham is necessary. If respondent Davidson's certification does not comply with District requirements used for sports coaches, the District may give respondent Davidson a final layoff notice.

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The District shall re-determine its layoff of the 192 and 202 Counselors based solely on seniority, without consideration of the number of school days worked in the position, and shall provide final layoff notices only to the number of counselors necessary to effectuate the total number of layoffs for the two combined service areas articulated in the Resolution and as modified during the hearing, i.e., 47.

The District's Statement of Reduction in Force is sustained against the remaining respondents. The District may give a final notice of layoff to those respondents. Notice shall be given to those respondents that their services will not be required for the 2025-2026 school year, and such notice shall be given in inverse order of seniority.

DATE:



Eric C. Sawyer (May 12, 2025 13:04 PDT)

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings