

**BEFORE THE
GOVERNING BOARD OF THE
CORONADO UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Reduction in Force Involving:

4 Certificated Employees, Respondents

OAH No. 2020040156

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 21, 2020.¹

Melanie Petersen and Jonathan Salt, Attorneys at Law, Fagan, Friedman & Fulfroft, represented the Coronado Unified School District (district).

¹ In light of the Governor's proclamation of a State of Emergency and Executive Orders N-25-20 and N-33-20 arising out of the COVID-19 pandemic; the declarations of county and city public health emergencies throughout the State; the President's declaration of a national emergency over the outbreak; the directives from state and local officials to ensure and facilitate physical distancing and to shelter in place; and in order to protect the health and safety of all public and OAH personnel, this matter was conducted telephonically.

Fern Steiner, Attorney at Law, Smith, Steiner, Vanderpool, represented the three respondents identified in Appendix 1, attached hereto.

Despite being properly served, Osvaldo Mendoza did not file a request for hearing. Pursuant to Education Code section 44949, subdivision (b), he waived his right to a hearing and the matter proceeded as a default against him.

The matter was submitted on April 21, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 12, 2020, the Governing Board adopted Resolution Number 2020-03-03, reducing particular kinds of certificated services and directing the Superintendent or his designee to give appropriate notices to certificated employees whose positions would be affected by the reduction. The resolution called for the reduction or discontinuation of 1.8 full-time equivalent (FTE) positions. The resolution referenced Exhibit "A," which identified those particular kinds of services (PKS) and Full Time Equivalencies (FTEs) that were to be discontinued and reduced, and Exhibit "B," which established the tie-breaking criteria for employees who first rendered paid probationary service to the district on the same date.

2. The decision to reduce or discontinue a particular kind of service is a matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) School districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be

performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.) A school district's decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

3. On March 13, 2020, the district sent notices to employees advising them that their services would not be required for the 2020-2021 school year. The reasons for that decision were set forth in the attached Resolution. Thereafter, the district served Statements of Reduction in Force and other documents on the employees who requested a hearing. All prehearing jurisdictional requirements were met.

Witness Testimony

4. Armando Farias, the district's Director of Human Resources, testified in this proceeding. He explained that financial considerations were the primary rationale behind the district's layoff decision and its desire to increase efficiency. The decision to dismiss teachers was based solely on the welfare of the district and its students. Mr. Farias explained that positively assured attrition was taken into account and that the district will still be able to meet the state's minimum staffing requirements. He also explained that the district issued one more layoff notice than necessary and will rescind it if the district's decision is upheld. The district did not have to use the tie-breaking criteria between Bigkat Manning and respondent Gina Sorensen, because Mr. Manning resigned. No employee with less seniority than any respondent is being retained to perform a service that any respondent is certificated and competent to render.

On cross-examination, Mr. Farias acknowledged that all employees subject to layoff work at the Coronado School of the Arts (CoSA). Approximately 600 students

attend CoSA and he is not aware of any drop in enrollment at CoSA. He acknowledged that there are many inter-district transfer students who attend CoSA, and that the district receives money for those students from those other districts. CoSA also has a Foundation that raises money for the program, but he is not aware of the amount. He did not have any information regarding any changes to the program and did not know who would perform respondent Tiffany Bouchard's CoSA duties next school year should her layoff be upheld.

5. Kelley Englehart, the district's Administrative Assistant in Human Resources, explained that the difference between multi subject or single subject credentials and CTE credentials is that the latter are based on experience whereas the former are academic based. CTE credentials have Industry Sectors, Pathways within each Industry Sector, and Specific Occupations. Because of how these credentials work, a CTE teacher designated for layoff cannot bump² into another CTE position unless that teacher has experience in that pathway. Ms. Englehart explained how Ms. Bouchard, whose position was being eliminated, can bump into Ms. Sorensen's .6 FTE position³ because Ms. Bouchard has the credentials and experience to teach dance. However, neither Ms. Bouchard nor Ms. Sorensen can bump more junior CTE teachers,

² A senior employee whose position is discontinued has the right to transfer to a continuing position in which he or she is certificated and competent to fill. In doing so, the senior employee is entitled to displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 473-474.) No evidence was introduced that the district improperly "bumped" any employees.

³ Ms. Sorenson works .6 FTE, resulting in Ms. Bouchard losing a .4 FTE position.

because they lacked experience in those junior teachers' pathways. Ms. Englehart stated that if the district's layoff decision is upheld, it will rescind the layoff notice issued to Mr. McBean and he will retain his position.

6. Respondents called Jennifer Landry to testify. She has been employed by the district since 1994 and is the President of the Association of Coronado Teachers. She was present for part of the March 12, 2020, board meeting where the Resolution was adopted. Prior to that adoption, Ms. Bouchard led a presentation by CoSA students who performed scenes from "Freaky Friday," a play that was originally set to occur in Spring 2020. Ms. Bouchard also received special recognition from the board for her work on behalf of the district. Ms. Landry was not present for that part of the board meeting when the agenda item regarding layoffs was discussed, but has watched the video of the board meeting. She testified about what she observed on the video.⁴ During the discussion of the layoff agenda item, one board member specifically asked Donnie Salamanca, the Assistant Superintendent who was presenting the agenda item, how the layoff would affect Ms. Bouchard. Mr. Salamanca answered that Ms. Bouchard would be able to seek placement elsewhere in the district. The board member then asked a follow-up question, clarifying that Ms. Bouchard would not lose her job, to which Mr. Salamanca replied, "Correct." In actuality, Ms. Bouchard is losing .4 FTE.

7. Tiffany Bouchard testified that she has been employed by the district since August 23, 2006, making this her fourteenth year in the district. She originally taught dance in a classroom for her first eight years, then became a Teacher on Special

⁴ Although her testimony regarding the discussions she observed was hearsay, no objections to it were made.

Assignment (TOSA) where she served as the Director of CoSA and program specialist for CTE. She led the "Freaky Friday" student presentation at the March 12, 2020, board meeting where students performed excerpts from the musical that was supposed to take place this spring. She was not present for the agenda item regarding layoffs.

She described CoSA as a "pre-professional intense arts educational conservatory," where students apply and audition to participate in one of six conservatory art forms. Educators and administrators from other districts come to CoSA each year to learn about CoSA so they can replicate the program in their own districts. 53 percent of CoSA students are inter-district transfer students, students from other districts, and the district receives funding from those districts for those students. There is also a Foundation that raises money for CoSA, with its goal to raise \$250,000 each school year, and the majority of the money is raised by parent donations. During the 2019-2020 school year, the Foundation increased its fundraising. The Foundation covers two-thirds of CoSA's costs, the district funds the other one-third. Recently, the Foundation presented the Governing Board with a check for \$197,015.97.

Ms. Bouchard described her job duties; no one has advised her who will take over those duties. Her duties have included providing extensive support to the 16 employees who collectively teach at the high school, overseeing 17 different grants, overseeing and applying for other grants, two of which she is currently working on, obtaining a grant that will fund a full-time college and career counselor for the 2020-2021 school year, and constant fundraising efforts to ensure that the program survives and thrives. She described the detrimental impact the layoffs will have on the CoSA program, the difficulties that will be encountered if her duties are absorbed by a current high school principal given the unique CoSA program, and how there will be a decrease in the program, explaining how CoSA is a pre-professional, specialized, "one

of kind” program. She also testified about the “domino effect” the layoff will have because she will bump Ms. Sorensen, a highly skilled teacher who has taught dance in the district for 12 years, who also serves as an adjunct college professor and dance director. Ms. Bouchard described her fears that students will leave the program and she was very concerned that the layoff eliminates the only remaining leadership position at CoSA.

Ms. Bouchard’s testimony established that she is a caring, dedicated, employee, who is extremely passionate about her profession and the CoSA program.

Parties’ Arguments

8. The district acknowledged the work of the teachers but argued that fiscal concerns led to these difficult decisions. The decision was not arbitrary and capricious and the services being reduced were the kinds the board may reduce.

9. Respondents recognized the district’s authority to reduce services, but only one program, CoSA, was being affected by the reduction. In addition to the stellar reputation of CoSA, two-thirds of CoSA is funded by the Foundation, and 53 percent of CoSA students are from other districts with the district receiving funds for those students from those districts. Thus, there is no need to reduce this program, especially as there is no plan on how the district will replace Ms. Bouchard’s CoSA activities. Moreover, reducing 1.8 FTEs does not cure the district’s budget deficit.

Evaluation

10. Although it was clear from the testimony that CoSA is a highly regarded program, and serves a valuable need in the district, the services identified in Resolution Number 2020-03-03 are particular kinds of services that may be reduced or

discontinued within the meaning of Education Code section 44955. The board's decision to reduce or discontinue those services was neither arbitrary nor capricious. It was a proper exercise of the board's discretion. The reduction and discontinuation of services was related to the welfare of the district and its pupils, and it became necessary to decrease the number of certificated employees as determined by the board. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections were provided as required.

2. 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.)

3. A preponderance of the evidence sustained the statements set forth in the district's statements of reduction in force served on respondents concerning the services that will not be required.

4. The district identified the certificated employees who are providing the particular kinds of services that the board directed be reduced or discontinued. Because of the reduction of particular kinds of services, cause exists pursuant to

Education Code section 44955 to give notice to respondents that their services will not be required for the 2020-2021 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

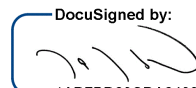
5. No employee with less seniority than any respondent is being retained to perform a service that any respondent is certificated and competent to render.

RECOMMENDATION

It is recommended that before May 15, 2020, the Governing Board give notice to Tiffany Bouchard and Gina Sorenson that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2020-2021 school year.

The Notice of Recommendation that Services Be Reduced, the Statement to Respondent, and the District's Statement of Reduction in Force issued to David McBean shall be rescinded.

DATE: May 1, 2020

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MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix 1

Tiffany Bouchard

David McBean

Gina Sorenson