

**BEFORE THE BOARD OF TRUSTEES
MOUNT DIABLO UNIFIED SCHOOL DISTRICT**

In the Matter of the Statement of Reduction in Force

Involving:

**45 CERTIFICATED EMPLOYEES OF MOUNT DIABLO UNIFIED
SCHOOL DISTRICT,**

Respondents.

OAH No. 2022030645

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, State of California, Office of Administrative Hearings, heard this matter on April 15, 2022, by videoconference.

Attorney Joshua A. Stevens represented the Mount Diablo Unified School District.

Respondent Danielle Blake represented herself.

Attorney Ernest H. Tuttle III represented all other respondents.

The record closed and the matter was submitted for decision on April 15, 2022.

FACTUAL FINDINGS

1. All respondents are probationary certificated employees of the Mount Diablo Unified School District (district).

2. On March 9, 2022, the Governing Board of the district (Board) adopted Resolution No. 21/22-60 (reduction resolution), reducing or discontinuing particular kinds of services for the 2022-2023 school year, and directing the district's superintendent to send appropriate notices to all employees whose positions may be affected by the reduction or discontinuation of services.

3. The Governing Board of the district also adopted Resolution No. 21/22-47 (tie-breaking resolution), regarding criteria to determine the order of termination by virtue of their credential, competence, assignment, experience, or certification for those employees with the same seniority date. In the tie-breaking resolution, the criteria were listed in priority order as follows:

- (a) Possession of a valid credential authorizing service in special education.
- (b) Possession of a valid BCLAD certificate.
- (c) Possession of a valid regular credential.
- (d) Possession of a valid CLAD or other valid certificate authorizing instruction to English learners.
- (e) Possession of a valid credential or supplemental subject authorization permitting instruction in math or science.

(f) Possession of a valid Designated Subjects Career Technical Education credential.

(g) Possession of valid credentials which authorize a broader scope of service.

(h) Possession of valid supplemental subject authorizations permitting instruction outside of the subject areas of math or science.

(i) Possession of a National Board Certification.

(j) The certificated employee holding the highest current placement on the salary schedule. If there is a tie between employees who hold the same placement on the salary schedule, higher priority will be given to the employee holding the most stipends, i.e., master's degree stipend, doctorate stipend, etc.

4. The reduction resolution identified the services to be reduced for the 2022-2023 school year as:

Elementary Teaching Positions

- Multiple Subject 27 full time equivalent (FTE)
- Enrichment and Support 4 FTE
- Instrumental Music 6.10 FTE

Middle and High School Teaching Positions

- 7th grade core .33 FTE
- ALD .40 FTE

• ELD	.37 FTE
• English	.17 FTE
• Social Science	1.17 FTE
• Math	.71 FTE
• Chemistry	.20 FTE
• Physics	.20 FTE
• Life Science	1.14 FTE
• Physical Science	1 FTE
• Physical Education	.67 FTE
• Alternative Education	9 FTE
• APEX (General Fund)	.20 FTE
• Choir	.34 FTE
• Computers I	.17 FTE
• IB Theory of Knowledge	.20 FTE
• Math Exploration – Personal Finance	.17 FTE
• On Your Own	.34 FTE
District Wide Positions	
• Administrator Community Day School	1 FTE

- Behavioral Health Specialist I 2 FTE
- Behavioral Health Specialist II 2 FTE
- IB Coordinator .60 FTE
- Librarian 3 FTE
- Program Specialist Educational Technology 1 FTE
- Resource Specialist 1 FTE
- School Counselor .40 FTE
- Social Emotional Education Program Leader 4 FTE
- Special Day Class Teacher 2 FTE
- Speech Therapist 2 FTE
- Teacher on Special Assignment 1 FTE

5. The services set forth in the reduction resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

6. On March 15, 2022, Superintendent Adam Clark provided written notice to 45 certificated employees that their services would not be required for the 2022-2023 school year pursuant to Education Code sections 44949 and 44955, and that they had the right to request a hearing.

7. Of those receiving notices, 38 certificated employees submitted timely requests for hearing.

8. The district rescinded the notice of layoff for the following 10 employees:

- Kristen Reamy
- Melissa Houseman
- Jamie Bohannon
- Megan Jacobsen
- Kelly Drake
- Julia Nau
- Stacey Flurscheim
- Lauren Wood
- Morgan Wilmoth
- Angela Meneghetti

9. On March 18, 2022, Clark made and filed the District Statement of Reduction in Force in his official capacity as superintendent of the district.

10. On March 18, 2022, respondents were served, by certified mail, return receipt requested, with a Reduction in Force Packet, which included: a Statement to Respondent, the District Statement of Reduction in Force, copies of relevant Education Code and Government Code sections, and a Notice of Participation form.

11. On April 6, 2022, respondents were served with a Notice of Hearing notifying them of the date and time set for hearing.

12. Respondents submitted Notices of Participation, and this hearing ensued.

13. All respondents are probationary full-time certificated teachers for the district with various assignments.

14. Emily Lopez Frizzell, a human resources worker, credibly testified about the reduction resolution and the steps taken by the district to implement it. Lopez Frizzell prepared the district's seniority list, noting each certificated employee's first date of paid service, job class description, assignment, permanency status, credentials, and certifications, and ranking employees in order of seniority. She obtained information regarding employees' credentials and certifications from the database maintained by the Commission on Teacher Credentialing. There were no objections to the seniority list.

15. Lopez Frizzell prepared a seniority layoff list by comparing the reduction resolution list of services to be reduced to the seniority list to identify those individuals teaching those subjects. Lopez Frizzell applied the criteria from the tie-breaking resolution to bypass several individuals who possessed a BCLAD certificate. There were no objections to the seniority layoff list.

16. No permanent or probationary employee with less seniority is being retained to render a service for which respondents are certificated and competent.

LEGAL CONCLUSIONS

1. The district complied with all notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955.

2. Pursuant to Education Code section 44955, subdivision (b), when a governing board reduces particular kinds of services resulting in a decrease in the number of certificated, permanent employees, the services of a permanent employee may not be terminated if another employee with less seniority is retained to render a service that the more senior employee is "certificated and competent to render."

3. The seniority date of certificated employees is determined in accordance with Education Code section 44845, which provides: "Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position."

4. Cause exists under Education Code sections 44949 and 44955 for the reduction of particular kinds of services by the district for the 2022-2023 school year as set forth in the reduction resolution. (Factual Findings 2 through 15.) The cause relates solely to the welfare of the District and its students, within the meaning of Education Code section 44949.

RECOMMENDATION

Notice may be given to all respondents, except for the 10 certificated employees listed in Exhibit 15 whose layoff notices were rescinded, that their services will not be required for the 2022-2023 school year.

DATE: 05/01/2022



TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings

