AGENDA

May 10, 2018

A1. Call to Order – 2:30 p.m.

A2. Roll Call
Mrs. Gwyn Lurie, President, Mrs. Kate Murphy, Clerk, Mrs. Marilyn Bachman, Member, Mr. Chad Chase, Member, and Mr. Peter van Duinwyk, Member.

B. Public Comment: The Governing Board welcomes and encourages public comments. Members of the public may comment on items included on this agenda; however we ask that your limit your comments to a maximum of three minutes. Persons wishing to address the Board are asked to complete a “Speaker Card” before the agenda item has been fully presented. No business other than the business on the agenda can be considered at special meetings by the governing board (Government Code 54954.3, Education Code 35144) In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Superintendent’s Office at 969-3249 x420.

C. Correspondence
Individual board members may have received correspondence that they want to share with the Board, staff and public.

D. Approval of Agenda and Estimated Time Allocations
The Board reserves the right to change the order of the agenda items as necessary.

Strategic Initiative #5: Staffing

E. Staffing

E-1 Office of Administrative Hearing Ruling (2:30 – 2:45 p.m.)

E-2 Final Certificated Staffing Reductions (2:45 – 3:45 p.m.)

E-3 Resolution to Reduce or Eliminate Particular Kinds of Certificated Services for the 2018-2019 School Year and Issue Final Notices to Affected Employees, Resolution #2017/18-19 (3:45 – 3:50 p.m.)

F. Public Comment – Closed session items only
G. **Closed Session** (3:50 – 4:50 p.m.)

   G-1 Public Employee Performance Evaluation (3:50 – 4:50 p.m.)
   (Government Code Sections 54957), Title: Superintendent

H. **Reconvene to Open Session** (4:50 p.m.)
   Announcement of reportable action taken in closed session

I. **Adjournment** (4:50 p.m.)
Item B    Public Comment

Explanation:    Info/Discussion

The Governing Board welcomes and encourages public comments. Members of the public may comment on items included on this agenda; however we ask that your limit your comments to a maximum of three minutes. Persons wishing to address the Board are asked to complete a “Speaker Card” before the agenda item has been fully presented. No business other than the business on the agenda can be considered at special meetings by the governing board (Government Code 54954.3, Education Code 35144) In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Superintendent’s Office at 969-3249 x420.

Recommendation:    N/A

Attachments:    • None
Item C  Correspondence

Explanation:

Individual board members may have received correspondence that they want to share with the Board, staff and public.

Recommendation:  Info/Discussion

Attachments:  • None
Item D Approval of Agenda and Estimated Time Allocations

Explanation:
The Board reserves the right to change the order of the agenda times as necessary.

Recommendation: Action

Attachments: • None
**Item E-1   Office of Administrative Hearing Ruling**

<table>
<thead>
<tr>
<th>Explanation:</th>
<th>Discussion/Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Administrative Law Judge, Ms. Eileen Cohn has issued a proposed decision as stated on page 10 that states the Statement of Reduction in Force is sustained.</td>
<td></td>
</tr>
<tr>
<td>We recommend the Board to approve this finding.</td>
<td></td>
</tr>
</tbody>
</table>

**Recommendation:**

Discussion/Action

**Attachments:**

- Proposed Decision From Administrative Law Judge, Ms. Eileen Cohn
BEFORE THE
BOARD OF TRUSTEES
MONTECITO UNION SCHOOL DISTRICT
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA

In the Matter of the Reduction in Force Involving:

RONALD ZECHER
Certificated Employee of the Montecito Union School District,

Respondent.

Case No. 2018040060

PROPOSED DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 23, 2018, in Montecito, California.

Elizabeth B. Mori, Attorney at Law, represented Anthony Ranii, Superintendent (Superintendent) and Montecito Union School District (District).

Robert A. Bartosh, Attorney at Law, represented Ronald Zecher (Respondent), who was present.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing, and the matter was submitted for decision on April 24, 2018.

SUMMARY

The Board of Trustees of the Montecito Union School District (Board) has decided to reduce or discontinue particular kinds of services (PKS) and has given Respondent and others notice of its intent not to reemploy them for the 2018-2019 school year as certificated employees. Respondent is a music teacher and music services have been reduced by .55 Full-Time Equivalent (FTE) thereby displacing Respondent. Respondent claims he met the competency criteria set forth by the District and as, such, he was wrongfully laid off instead of more junior certificated elementary school teachers. The sole issue in dispute is whether Respondent meets the competency criteria established by the Board based upon his one year of teaching in a special program. The weight of the evidence established that the Superintendent properly accounted for
Respondent's experience, he did not meet the Board’s competency criteria and, therefore, is subject to layoff pursuant to the Board’s Resolution.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Superintendent filed the Statement of Reduction in Force in his official capacity. The District is an elementary school district located in Santa Barbara County.

2. Respondent is a certificated employee of the District.

3. On April 3, 2018, the Superintendent issued the District Statement of Reduction in Force and served it and other required documents on Respondent.

4. Respondent timely submitted a Request for Hearing/Notice of Participation in Reduction in Force Hearing Form, requesting a hearing to determine if there is cause for not reemploying him for the 2018-2019 school year.

5. All prehearing jurisdictional requirements have been met.

Reduction of Particular Kinds of Services (PKS)

6. (a) On February 20, 2018, at a regular meeting of the Board of Trustees of the District (the Governing Board), upon recommendation of the Superintendent, the Governing Board adopted Resolution No. 2017/2018-12 (Resolution-12), entitled "Establishment of Criteria for Order of Layoff and Reemployment Following Layoff of Certified Employees with Same First Date of Paid Service in a Probationary Position." Resolution-12 provides for the order of termination where two or more certificated employees first rendered paid, probationary service to the District on the same date (tie-breaking criteria). (Ex. 6.) The Board set the following tie-breaking criteria:

//
<table>
<thead>
<tr>
<th>CRITERIA</th>
<th>POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Credentials</td>
<td>2 points per clear credential</td>
</tr>
<tr>
<td>Possession of BCLAD, CLAD, SDIE, or EL Certification</td>
<td>1 point</td>
</tr>
<tr>
<td>Prior K-12 Public School Teaching Experience</td>
<td>1 point per year (5 points maximum)</td>
</tr>
<tr>
<td>Master's Degree</td>
<td>2 points</td>
</tr>
<tr>
<td>Doctorate Degree</td>
<td>1 point</td>
</tr>
<tr>
<td>National Board Certificate</td>
<td>5 points</td>
</tr>
</tbody>
</table>

(Ibid.)

(b) In the event of a tie after the points are applied, the District will use a lottery system with low lottery numbers indicating low seniority. (Ibid.)

(c) The criteria are reasonable as they relate to the skills and qualifications of certificated employees.

7. (a) On March 5, 2018, at a regular meeting of the Governing Board, upon recommendation of the Superintendent, the Governing Board adopted Resolution No. 2017/2018-15, entitled “Resolution to Decrease the Number of Certified Employees Due to a Reduction or Elimination of Particular Kinds of Services” (Resolution-15), to reduce or discontinue continue the following PKS for the 2018-2019 school year:

<table>
<thead>
<tr>
<th>PKS</th>
<th>FTE&lt;sup&gt;1&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>K-6 Elementary Teacher</td>
<td>4.0</td>
</tr>
<tr>
<td>Music</td>
<td>.55</td>
</tr>
<tr>
<td>Art</td>
<td>.33</td>
</tr>
<tr>
<td>Physical Education</td>
<td>.25</td>
</tr>
<tr>
<td>Spanish</td>
<td>.30</td>
</tr>
<tr>
<td>Librarian</td>
<td>.20</td>
</tr>
<tr>
<td>Total FTE</td>
<td>5.63</td>
</tr>
</tbody>
</table>

(Ex. 1.)

(b) The services which the District seeks to discontinue or reduce are PKS that may be reduced or discontinued within the meaning of Education Code<sup>2</sup> section 44955.

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<sup>1</sup> Full time equivalent.
<sup>2</sup> All further statutory references are to the Education Code.
8. On March 5, 2018, at a regular meeting of the Governing Board, upon recommendation of the Superintendent, the Governing Board also adopted Resolution No. 2017/2018-13 (Resolution-13), entitled "Resolution to Establish Competency Criteria Due to a Reduction in Particular Kinds of Certificated Services," which further established competency rules when a less senior employee possesses competency "in those areas of service in which the Board has determined not to reduce services." (Ex. 7.) The Board established the following criteria:

[*] [a]^[1] to any certificated employee who seeks to move into a position requiring certification qualifications held by a less senior certificated employee, the employee who seeks to move into a position requiring certification held by a less senior certificated employee, the employee must have teaching experience in the subject area and/or elementary grade level for at least one (1) year within the last (10) years.

(Ex. 7.)

9. (a) On March 9, 2018, the Superintendent provided notice to Respondent, via personal delivery, that .55 of a FTE of his services will not be required for the 2018-2019 school year due to the reduction of PKS in the area of Music. (Ex. 4.) Another music teacher, more senior than Respondent, did not receive a layoff notice. Respondent is the most junior music teacher.

(b) The Superintendent also provided timely and proper notice of layoff to six other certificated employees. (Ex. 3.) No other certificated employee requested a hearing.^[3] There were no challenges to the service, timeliness or comprehensiveness of the notice.

(c) The layoff notice to HN, a certificated employee, was rescinded.

(d) Three teachers who received layoff notices, PM, KL, and LM have less seniority than Respondent.

10. (a) The reduction of services set forth in factual finding number 7 is related to the welfare of the District’s schools and its pupils, in the context of the loss of revenue and the need to continue providing services to students served by the District, and it has become necessary to decrease the number of certificated employees as determined by the Board.

(b) The Governing Board took action to reduce or discontinue the services set forth in finding 7 at the request of the Superintendent because of the anticipated reduction of funding and the anticipated decline in student enrollment. The District is part of a community that

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^[3] To protect their privacy the names of the other certificated employees, who did not request a hearing, are represented by initials.
has been seriously impacted by extreme flooding, but projected student enrollment for the 2018-
2019 school year is not based solely upon temporary circumstances, but on historical trends.
Student enrollment is declining and is anticipated to decline to 390 students from 420 students
during the 2018-2019 school year. The number of classrooms will be reduced from 26 to 22.

(c) The evidence confirms that the decision to reduce the PKS is neither
arbitrary nor capricious but is rather a proper exercise of the Governing Board and
Superintendent's discretion. The decision involved extensive discussions with administrators
and District leadership and was due to budgetary constraints and decreased enrollment. The
decision for layoffs was made in a manner that would cause the least disruption in services to
students.

(b) The District was able to lower the number of layoffs by accounting for
attrition by granting the request of two teachers to job share one teaching position, and one
teacher's decision to retire. As a result of its accounting, the District was able to reduce the number
of classroom teachers receiving notices.4

11. (a) The District provided foundation for the resolutions and other exhibits, and
the rationale for the layoffs from the testimony of two credible and well-qualified witnesses
directly involved in the reduction in force for the 2018-2019 school year: Virginia Alvarez, Chief
developed the resolutions with the Superintendent and both were present at the Board meetings
where they were introduced and passed.

(b) Ms. Alvarez conducted careful and extensive due diligence to confirm the
accuracy of the seniority list and respondent's competency before determining the layoffs. She
audited teachers' personnel files for their credentials, checked the California Commission on
Teacher Credentialing's public records to make sure all the teachers' credentials were accounted
for, and e-mailed the list to the teachers for their review. No challenges were raised regarding the
accuracy of the seniority list and the evidence established that it is accurate and correct. (Ex. 8.)

(c) Having no record of respondent's employment in the District as a K-6
classroom teacher, Ms. Alvarez also contacted respondent's previous employer, the Santa Barbara
School Districts to ascertain whether Respondent fulfilled the competency requirements within the
last ten years for his work in the Santa Barbara School Districts. The response she received from

4 Respondent is teacher number 30 of 41 teachers with seniority with number one being
the highest and number 41, the lowest. Respondent started the same date as teacher number 31,
RM. Respondent is also more senior than teacher number 33, AC, who started on August 26,
2014, and is also a fourth-grade teacher. Whether Respondent met the tie-breaking criteria with
RM, or is entitled to "bump" AC, is not reached in this decision because Respondent does not meet
the District's competency criteria to "bump" into the positions held by either teacher.
that school district, did not put Ms. Alvarez on notice that Respondent had fulfilled the competency criteria needed to avoid a layoff.\(^5\) That school district reported to Ms. Alvarez that Respondent worked from January 2, 2001 through August 4, 2012, as a child development and music teacher.

**Evidence of Respondent's Competency**

12. Respondent has worked for the District for under five years, and has a start date of August 26, 2013. He is a full-time certificated employee currently assigned as the music teacher (80 percent) and an English-learner (EL) teacher (20 percent). Respondent possesses multiple subject and single subject teaching credentials, a cross-cultural language and academic development (CLAD) certificate, a Master of Arts degree, an administrative services credential and a child development program director permit.

13. Respondent has been an employee of Santa Barbara schools, either with the Santa Barbara School Districts or the District, for many years. He began as a custodian in 1987. For many years he worked half-time for both the Santa Barbara School Districts and the District as a contract employee. At the Santa Barbara School Districts he worked in an administrative position responsible for home instruction for parents with preschool or pre-kindergarten (Pre-K)\(^6\) school children and worked in the child development program as a teacher in the Pre-K /family literacy program. After he worked in the Pre-K program he worked as a music teacher.

14. Respondent provided credible and sincere testimony about his work for the District and for Santa Barbara School Districts. Respondent challenges the Superintendent and Ms. Villegas's conclusion that he does not meet the competency requirements set by Resolution-13 to

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5 Respondent objected to the admissibility of the e-mail communication with the Santa Barbara School Districts. (Ex. 9.) Over respondent's objection it was admitted as administrative hearsay pursuant to Government Code section 11514, to the extent that the e-mail supports and explains the testimony of Ms. Alvarez and Respondent, who also testified about his prior work experience at the Santa Barbara School Districts, which it did. In addition, whether or not the e-mail is direct evidence of Respondent's competency under the reduction in force criteria, it is direct evidence of Ms. Alvarez's due diligence and good faith when she determined Respondent did not meet the competency criteria for retention. Admissibility under the Administrative Procedure Act, which governs this action, is broader than that of proceedings governed strictly by the California Evidence Code. However, when an appropriate hearsay objection is raised, pursuant to Government Code 11514, as it was here, the e-mail can come in only as administrative hearsay, unless, there is another basis for admission. The ALJ considered whether the e-mail constituted a business record pursuant to Evidence Code section 1271, and determined that it did not meet the required criteria.

6 Pre-K and preschool are used interchangeably and refer to the same program in this decision.
teach a multi-subject, K-6 classroom. Respondent does not challenge the District's reduction of music services. Respondent maintains that he meets the competency requirements when he purportedly performed one year in the last 10 in the elementary grade level, and therefore should have been retained over other certificated staff who teach self-contained multi-subject elementary school classes. Respondent asserts that he was competent to teach a multi-subject elementary school class and as a result, he should have been retained instead of teacher RM, based upon his credentials under the tie-breaking criteria for teachers starting the same date, or AC, a more junior certificated multi-subject elementary school teacher. (Ex. 8.) AC and RM teach fourth grade and were not subject to the reduction in force notification. Respondent has not taught one FTE year at the fourth-grade level. He has been a substitute teacher for undisclosed grade-levels but there is no evidence that he has taught for a FTE of one year as a substitute elementary school teacher.

15. (a) The parties do not dispute that if Respondent had taught one FTE year of transitional kindergarten he would have satisfied the competency criteria. Transitional kindergarten (T-K) is essentially a two-year kindergarten. It follows the curriculum of a one-year kindergarten program and uses the curriculum, grading and any common core requirements attendant to a kindergarten program. A T-K is considered "elementary grade level"; Pre-K is not.

(b) Respondent maintains that he fulfilled the competency requirements when he taught a 24-child class during the 2009-2010 school year in the Santa Barbara School Districts identified as a Pre-K family literacy program. During the 2009-2010 school year he was asked to teach a Pre-K Family Literacy Program (PKFL), which would become the model for that school district's T-K. Respondent testified that he taught the full range of subjects, including, language arts, math, science, in addition to physical education and music.

(c) Jennie A. Martinez, the retired child development teacher and child development coordinator of that school district, wrote a letter which supported and explained Respondent's testimony. (Ex. C.) Ms. Martinez hired Respondent as the "ideal teacher candidate" who met the school district's goal of hiring a multi-subject credentialed teacher with experience in "curriculum development, knowledge of the California Teaching Standards and Preschool Learning Foundations, familiarity [with] working with 2nd language learners, confidence with working with families, and knowledge of the community." (Ibid.) Ms. Martinez expressed enthusiasm for Respondent's work and accomplishments, including his application of his multi-subject credential to "prepare the children for the transition to a rigorous kindergarten experience." (Id.) The students scored well on a measure called the "Kindergarten Student Entrance Profile" developed by the University of California, Santa Barbara, and Respondent created "meaningful activities for parent engagement, and " mentored a second teacher." (Id.)

16. Respondent's claim that he taught a class substantively similar to a T-K was not sufficiently supported by the evidence. Respondent admits that he taught in a pilot program and that the T-K program was not technically a required program or introduced in the Santa Barbara School Districts until after the 2010-2011 school year. Respondent's participation ended with his participation in the development of the program as part of his Pre-K assignment during the 2009-
2010 school year. During cross-examination, Respondent candidly stated he used a progress report or rubric used for Pre-K pupils. Significantly, Ms. Martinez did not use language that confirmed that Respondent's class substantively met the requirements of a T-K, and aside from Respondent's testimony and Ms. Martinez's letter there was no supporting documentation of the curriculum. Ms. Martinez wrote that after the 2009-2010 school year "[t]he intention was he would transition to a T-K classroom that would serve as a model for the district." (Ex. C.) Ms. Martinez does not distinguish between a Pre-K and T-K curriculum. She identifies the classroom that he worked to design as continuing today as a "quality Pre-K and T-K experience." (Ibid.) Accordingly, it is unclear what proportion of time was spent on Pre-K, or what part of the curriculum was considered T-K.

17. The Superintendent provided competent testimony that rebutted Respondent's claim that he served one FTE year in a T-K class. Prior to his tenure with the District, the Superintendent worked in a previous school district where he oversaw three preschools and kindergarten programs. He was familiar with T-K as a two-year kindergarten for those children who do not meet the cut-off to begin kindergarten. A T-K is different than preschool as it applies the state standards required for kindergarten, but over the course of two years, instead of one. In contrast, preschool is not driven by state standards and focuses on preacademic skills such as sound-letter correspondence, play-based exercises and skills such as cutting.

18. The weight of the evidence established that Respondent does not meet the Board's competency criteria to "bump" into another certificated position. Accordingly, the District met its burden of proof that no certificated employee junior to Respondent has been retained to render a service which Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (Brown v. City of Los Angeles (2002) 102 Cal.App.4th 155.) As no other law or statute requires otherwise, the standard of proof in this case requires proof by a preponderance of the evidence. (Evid. Code, § 115.) Therefore, the District bears the burden of establishing cause to affirm the proposed layoff decisions by a preponderance of the evidence.

2. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to Respondent by reason of findings 1-5.

3. The District proved by a preponderance of the evidence that it fulfilled the requirements of Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services by reason of findings 6-11. The Board's decision to reduce or eliminate the identified services set forth in
finding 7 was neither arbitrary nor capricious in that the decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949, by reason of Findings 6-11. Boards of Education hold significant discretion in determining the need to reduce or discontinue particular kinds of services, which is not open to second-guessing in this proceeding. (Rutherford v. Board of Trustees (1976) 64 Cal.App.3d 167.) Such policymaking decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (California Teachers Assn. v. Huff (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and action must be reasonable under the circumstances, with the understanding that "such a standard may permit a difference of opinion." (Santa Clara Federation of Teachers v. Governing Board (1981) 116 Cal.App.3d 831.) School districts have discretion to define positions in the manner which they will be taught as long as it is done in good faith. (Hildebrandt v. St. Helena Unified School District (2009) 172 Cal.App.4th 334.)

4. Pursuant to Education Code sections 44845 and 87414 every probationary or permanent employee is deemed to have been employed on the date upon which he or she first rendered paid service in a probationary position.

5. (a) The District met its burden of proof that Respondent did not meet the competency requirements to teach a multi-subject elementary grade class by reason of findings 6-18. The weight of the evidence established that no competent permanent or probationary employee with less seniority is being retained to render a service for which Respondent is certificated and competent to teach pursuant to Education Code section 44955, subdivision (a). There was insufficient evidence that Respondent had one year of experience as a transitional kindergarten teacher or elementary school teacher. Respondent relies on Bledsoe v. Biggs Unified Sch. Dist (Bledsoe)(2009) 170 Cal.App.4th 127, 136-137, where the court determined that the teacher was qualified to teach under the broader qualifications applicable to a community day school. However, the facts in Bledsoe are distinct from the circumstances here where, despite Respondent's credentials, he has not met the reasonable criteria of "teaching experience in the subject area and/or elementary grade level for at least one (1) year within the last (10) years," by reason of findings 6-18.

(b) The District met its burden of proof that it made the appropriate "correlation between the applicant's specific training and experience and the duties of the available position." (King v. Berkeley Unified Sch. Dist. (1979) 89 Cal.App.3d 1016, 1019.) The Governing Board's adoption of competency criteria by Resolution-13 was reasonable. (Daux v. Kern Community College Dist. (1987) 196 Cal.App.3d. 555, 565.)

6. By reason of the findings herein, the District met its burden of proof and may notify the Respondent that his services will not be required for the 2018/2019 school year by reason of the whole of the findings herein.
ORDER

1. The Statement of Reduction in Force is sustained.

2. The Superintendent may notify Respondent Ronald Zelcher that his services will not be required for the 2018-2019 school year due to the reduction of particular kinds of services

DATED: May 1, 2018

[Signature]

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings
Item E-2    Final Certificated Staffing Reductions

Explanation:                                             Discussion/Action

Please refer to attached memo, Executive Summary of Final Staffing Recommendations.

Recommendation: Discussion/Action

Attachments:    • Executive Summary of Final Staffing Recommendations
Section 1: Introduction

The District is faced with the challenges of 1) reduced student population and 2) an expected decrease in revenue. These challenges call for action and a reduction in expenditures.

Reductions of staff are always difficult. It is especially difficult this year when our staff has performed admirably and even courageously during one of the most challenging times in the history of Montecito Union School. Though none of these proposals are meant personally, these proposals can certainly feel very personal to those affected by them. Throughout the process of arriving at these proposals, I have worked to be transparent, establish open-communication, to truly listen to ideas, and to operate with as much kindness as possible. Staff members have had several opportunities to weigh in on these recommendations, and I was able to make a better recommendation after listening to their thoughts. That said, this recommendation is mine and not a consensus statement of the staff.

At the February 20, 2018 Board Meeting, the Board approved a plan for three types of reductions:

- budget reductions which will reduce spending on various supplies and materials
- certificated staffing reductions including both teachers and administrative reductions
- classified staffing reductions including both instructional assistants and office/support staff reductions.

Administrative reductions and classified reductions were made during the March 5, 2018 and April 17, 2018 meetings in the following ways:

- the superintendent’s contractual raise for 2018-2019 was eliminated
- work days and salaries were reduced for the following positions:
  - principal
  - assistant principal
  - chief business official
  - senior accountant
  - instructional assistants
  - payroll/AP clerk
  - senior administrative assistant
  - school office assistant
  - technology support I
During the 2018-2019 budget approval process, various areas of the budget involving supplies, materials, and contracted services will also be reduced.

During the March 5, 2018 and March 9, Board Meetings, the Board approved Resolution 2017/18-15 and Resolution 2017/18-16 which tentatively made the following certificated staffing reductions:

- 4.0 Full Time Equivalent (FTE) K-6 Elementary Teachers
- 0.33 FTE Art
- 0.2 FTE Librarian
- 0.3 FTE Spanish
- 0.15 FTE English Language Teacher
- 0.25 FTE Physical Education
- 0.55 FTE Music

Affected employees were properly notified of these layoffs. At this time, the Board must consider the actual level of reductions and take final action. The Board may not make certificated reductions that are greater than the levels that are listed above at this time, but they can eliminate or lessen some or all of the reductions. Tonight, it is recommended that 1) the K-6 Elementary Teachers reduction, Art reduction, and English Language Teacher reductions be enacted at the same level as listed above, 2) that the Librarian and Spanish reductions be lessened a small amount, and 3) that the Physical Education and Music reductions be lessened significantly.

**Section 2: Classroom Teachers**

Currently, our expected student numbers and class configurations are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Students</th>
<th>Classes</th>
<th>Students in each class</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>TK/Kinder</td>
<td>55 (estimate)</td>
<td>3</td>
<td>18, 18, 19</td>
<td>18.33</td>
</tr>
<tr>
<td>First</td>
<td>50</td>
<td>3</td>
<td>16, 17, 17</td>
<td>16.66</td>
</tr>
<tr>
<td>Second</td>
<td>60</td>
<td>3</td>
<td>20, 20, 20</td>
<td>20.00</td>
</tr>
<tr>
<td>Third</td>
<td>54</td>
<td>3</td>
<td>18, 18, 18</td>
<td>18.00</td>
</tr>
<tr>
<td>Fourth</td>
<td>58</td>
<td>3</td>
<td>19, 19, 20</td>
<td>19.33</td>
</tr>
<tr>
<td>Fifth</td>
<td>58</td>
<td>3</td>
<td>19, 19, 20</td>
<td>19.33</td>
</tr>
<tr>
<td>Sixth</td>
<td>67 (in process of tracking private school numbers)</td>
<td>4</td>
<td>16, 17, 17, 17</td>
<td>16.75</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>402</td>
<td>22</td>
<td>2 classes of 16, 5 classes of 17, 5 classes of 18, 5 classes of 19, 5 classes of 20</td>
<td>18.27</td>
</tr>
</tbody>
</table>

(Expected enrollment numbers as of 5/3/18)
Please note that all numbers above are subject to change. The Kindergarten numbers are estimated (the current enrollment is 41). The sixth-grade numbers are likely to go lower as some students move to a private school experience. At 402 students, our school-wide average would be somewhat higher than 18 (18.27). If we increase to 23 classes, however, our average would be 17.48. As we are working to reduce staffing and expenditures this coming year, the 22-classroom scenario still seems likely the best choice, as these above numbers are preliminary and subject to change. Moreover, class sizes of 15 or fewer have not been shown to be optimal educationally this year.

It is recommended that our 4.0 FTE K-6 Classroom Teacher reduction be finalized. Please note that this 4.0 FTE reduction remains, but because of a retirement and a job-share by two teachers, we had the ability to retain two teachers, and layoff two instead of four. Subsequently, we had another leave of absence. This leave of absence opens a long-term substitute position, which the most senior qualified teacher has the right to fill for the duration of the assignment. This means that of the two classroom teachers that received lay-off notices, one will return as a long-term substitute and the other has the opportunity to accept other substitute positions with us if desired.

Section 3: Certificated Specialist Positions

In order to appropriately determine the level of staffing required for each of our specialist areas, it is reasonable to use one of two different methodologies. The first methodology is to look at staffing through the lens of the “work day.” Teachers are required to be on campus at 8:00am and must stay until 3:00pm (this comes from our Collective Bargaining Agreement) and are given a 45-minute duty-free lunch (for a total of 6 hours and 15 minutes or 375 minutes per day). However, as any teacher will tell you, there are required duties beyond this scope. These include preparing for lessons, assessing student work, attending professional learning communities, etc. This methodology of “work day” can be somewhat problematic as some teachers choose to do preparatory work at home, on the evenings, and on the weekends. It would be difficult to account for all of this. Teachers, after all, are not hourly workers but salaried professionals.

It is somewhat easier, then, to look at student-contact time, as it is easier for all parties to agree on when teachers are working directly with students as a part of their assignment, and this is the primary methodology I have used for comparisons and to reach my recommendations for staffing levels.

Section 4: Determining a Full-Time Position

The first step to determining staff levels, then, is to determine how many student-contact hours constitute a “full time” teacher. To determine this, I used the number of student-contact hours per week in each self-contained classroom during this school year (as these self-contained assignments are the clearest to account for). Those are reported below:

Kindergarten: 4 classes at 19 hours per week (76 hours total)  
First Grade: 4 classes at 19.75 hours per week (79 hours total)  
Second Grade: 4 classes at 22.75 hours per week (91 hours total)  
Third Grade: 3 classes at 22.75 hours a week (68.25 hours total)  
Fourth Grade: 3 classes at 22 hours per week (66 hours total)  
Fifth Grade: 4 classes at 22 hours per week (88 hours total)  
Sixth Grade: 4 classes at 22 hours per week (88 hours total)
Overall Total hours=556.25

Mean is 556.25 divided by 26 classrooms=21.39 hours per week of average student contact time per classroom teacher.

Therefore, one may say that 21.39 hours of student contact per week is a fair determination for a full-time position. So, 21.39 student contact hours would be a 1.0 full time equivalent (FTE), 10.70 student contact hours would be a 0.5 FTE (as 21.39 divided by two is 10.70, rounded to the nearest hundredth), 5.35 student contact hours would be a 0.25 FTE (as 21.39 divided by four is 5.35), etc.

*This does not mean that it is not allowable for the district to assign more student contact time, just that this is a fair accounting for an “average” assignment. The District reserves the right to assign at least 22.75 per 1.0 FTE of student contact time, as it currently does in many assignments.* To be clear, a 0.5 FTE teacher may be initially assigned 10.70 student contact hours per week but may be assigned up to 11.38 student contact hours per week and still be well-within established standards for student contact time.

Section 5: Accounting for Part-Time Certificated Employees Attending 100% of Non-student Days and 100% of Professional Learning Community Meetings

This calculation is fair up to a point. If someone is 0.5 FTE, we would expect them to do half of everything. Determining half of the student contact time is easy enough to determine (see above). We would also expect a half time employee to pick up half as many duties, half as many committee assignments, and do half as much collaboration. This is all fine. What does not work, however, is for a 0.5 FTE employee to attend only half of the non-student contract days. During these days, we are doing needed trainings on important topics such as safety, curriculum, and pedagogy. Even though this employee is half-time, we do not want her or him to have half of the knowledge of these things. We are already paying them for half of these days, but how do we account for the other half? To account for this, the following formula was arrived upon, after consultation with the Montecito Teachers’ Association Leadership Team.

\[ 5(1.0-\text{actual FTE}) = A \]

“5” represents the five non-student work days.
“(1.0-actual FTE)” represents the difference between a full-time employee (1.0) and the actual FTE of the employee.

This fairly accounts for the non-student work days, but we also want to ensure that all employees, including those that work less than full-time, attend 100% of the Professional learning Communities (PLC Meetings/Staff Meetings) on Wednesday afternoons. To account for this, the following formula was arrived upon, after consultation with the Montecito Teachers’ Association Leadership Team.

\[ \frac{22(1.0-\text{FTE})(75)}{375} = B \]
“22” represents the number of PLC Wednesday afternoon meetings during the 185 days of the teachers work year.
“(1.0-actual FTE)” represents the difference between a full-time employee (1.0) and the actual FTE of the employee
“75” equals the number of minutes of the PLC Meeting
“375” equals the number of mandatory minutes in the work day (6.25 hours per day)

In order to turn these formulas into FTE, one must use the following formula:

\[
\frac{A+B}{185} = \text{FTE Fair Calculation}
\]

Section 6: Example of How the Formula is Applied

Here’s an example. Let’s say we had determined there was a need for a 0.4 FTE position. Here’s the way we would employ the formula to determine the additional FTE required to fairly mandate that this employee attend 100% of non-student contact days and 100% of PLCs:

Non-Student Contact Day Calculation:
5(1.0-0.4)=A

A=3 days of pay “owed” to the employee for non-student contact days

100% of PLCs Calculation:
22(1.0-0.4)(75)

\[
\frac{22(1.0-0.4)(75)}{375} = B
\]

B=2.64 days of pay “owed” to the employee for 100% PLCs

FTE Fair Share Calculation:
A+B

\[
\frac{A+B}{185} = \text{FTE Fair Calculation}
\]

\[
\frac{3+2.64}{185} = 0.03
\]

Therefore, the 0.4 FTE employee would be awarded an additional 0.03 FTE to account for attending 100% of PLC Days and 100% of non-student work days. The total FTE would be 0.43 FTE.

Section 7: Art

After continuing to study the initial proposal for art, it has been determined that the 0.33 FTE reduction is appropriate, leaving the kindergarten art teacher at 0 FTE. Therefore, we do not
need to employ the FTE fair share calculation, and it is recommended that the Board finalize the 0.33 art reduction.

Section 8: Library

After continuing to study the initial proposal for library services reduction, it has been determined that the 0.2 FTE reduction is appropriate, leaving the employee at 0.8 FTE. However, we must now employ the FTE fair share calculation to include non-student contact requirements, such as faculty meetings and non-student work days as previously explained. Please see below.

Non-Student Contact Day Calculation:
5(1.0-0.8)=A

A=1

100% of PLCs Calculation:
22(1.0-0.8)(75)
___________________ =B
375

B=0.88

FTE Fair Share Calculation:
A+B
_____  = FTE Fair Calculation
185

1+0.88
_____  = 0.01
185

The total FTE required is 0.81 instead of 0.8. It is therefore recommended that the Board rescind 0.01 of the layoff of this particular kind of service and reduce library by 0.19 FTE rather than 0.2 FTE, thus ensuring the employee attends all non-student days and Wednesday PLCs.
Section 9: Spanish and English Language Teacher

After continuing to study the initial proposal for Spanish reduction, it has been determined that the 0.3 FTE reduction is appropriate. After continuing to study the initial proposal for English Language reduction, it has been determined that the 0.15 FTE reduction is appropriate. This is a total reduction of 0.45 FTE for the employee, leaving the FTE at 0.55 FTE.

However, we must now employ the FTE fair share calculation for the 0.55 FTE Spanish assignment. Please see below.

Non-Student Contact Day Calculation:
\[5(1.0-0.55)=A\]
\[A=2.25\]

100% of PLCs Calculation:
\[22(1.0-0.55)(75)\]
\[=B\]
\[375\]
\[B=1.98\]

FTE Fair Share Calculation:
\[\frac{A+B}{185}=FTE\ Fair\ Calculation\]
\[\frac{2.25+1.98}{185}=0.023\]

The total FTE required is 0.573, requiring us to rescind 0.023 of the layoff of these particular kinds of services. For simplicity, we will apply that change to the Spanish portion of the position. It is therefore recommended that the Board rescind 0.023 of the layoff of this particular kind of service and reduce Spanish by 0.277 FTE rather than 0.3 FTE. It is recommended that the English Language Teacher reduction be finalized at 0.15 FTE.

Section 10: Physical Education

After continuing to study the initial proposal for physical education reduction, it has been determined that the 0.25 FTE reduction was not appropriate. That reduction would result in one full time position (1.0 FTE) and one 0.24 FTE position. As we look at the number of student contact hours required for the part-time position, it was determined that the part-time teacher would need to complete approximately 6 hours of instruction per week. 6.75 divided by 21.39 (the average number of instructional hours per week) results in a 0.316 FTE position. Therefore, we need a 0.316 FTE position.
In addition, we worked with the physical educator and grade level teams to determine if yoga, movement, and mime experiences for Kindergarten, first graders, second graders, and third graders could be provided by the physical educator rather than an outside provider. It was determined that we would be able to do so and maintain the high-quality services to students while making it somewhat easier to schedule these experiences. In addition, there may be cost savings through this restructuring. Though these services are currently partially paid for by the PTA, we hope that the PTA could support us to the same extent through other purchases or reimbursements.

In order to convert these student experiences from a stipend to FTE, we first needed to determine the amount of student contact minutes required for these activities.

Minutes of desired Kindergarten Mime/Movement/Yoga= 540 minutes
Minutes of desired 1st Grade Mime/Movement/Yoga= 1350 minutes
Minutes of desired 2nd Grade Mime/Movement/Yoga= 1125 minutes
Minutes of desired 3rd grade Mime/Movement/Yoga= 810 minutes
Total number of desired Mime/Movement/Yoga= 3825 minutes

3825/375=10.2 days
10.2/185=0.055 additional FTE

We also have been paying a “track” stipend for activities related to optional track experiences for our students. We want to convert these into FTE as well. This was somewhat more difficult since this involves both student contact minutes, organizational activities, and time spent beyond the normal work day. Both parties agree that 0.015 FTE is an appropriate calculation of this duty.

We therefore determined the position to be 0.316 FTE, added 0.055 FTE for mime, movement, and yoga, and 0.015FTE for optional track experiences for a total of 0.386 FTE.

We must now employ the FTE fair share calculation. Please see below.

Non-Student Contact Day Calculation:
5(1.0-0.386)=A
A=3.07

100% of PLCs Calculation:
22(1.0-0.386)(75)
____________________   =B
375
B=2.7

FTE Fair Share Calculation:
3.07+2.7
________  = FTE fair calculation=0.031
185
Total 2018-2019 FTE = 0.031 + 0.386 = 0.417

The total FTE required is 0.417 FTE requiring a reduction of 0.075. In addition, 1) we will no longer pay stipends, travel, or lodging for outside professionals to provide mime, movement, and yoga experiences for students, and 2) we will no longer pay a stipend for optional track experiences for students.

**Section 11: Music**

The initial recommendation was to reduce the music FTE from 1.8 FTE to 1.25 FTE through a reduction of 0.55 FTE. After continuing to study the initial proposal for music, it has been determined that the 0.55 FTE reduction was not appropriate. This reduction would result in one full time position (1.0 FTE) and one 0.25 FTE position (this second position would have both music and English language teacher duties for a total of 0.50 FTE).

In 2018-2019, we would need 19 hours of student contact time for general music class and 6 hours of student contact time for strings. These 25 student contact hours per week require 1.168 FTE for music (25 divided by 21.39, the average number of student contact hours).

In addition to these student contact hours, the following offerings are part of our music tradition in Montecito Union School:

- Students are also offered 4th grade chorus. As this program does not run all year, we must calculate these minutes per year rather than per week. In an average year, there are 3,440 student contact minutes for this activity.

- Students are also offered 5th and 6th grade chorus. As this program does not run all year, we must calculate these minutes per year rather than per week. In an average year, there are 4,440 student contact minutes for this activity. 2,750 of those minutes take place after 8:00 and are included in this calculation. 1,650 of those minutes take place before the start of the work day and will be treated separately as a stipend.

- Students are also offered orchestra, cello and viola, and optional strings rehearsal times. As these programs do not run all year, we must calculate these minutes per year rather than per week. In an average year, there are 2,765 minutes for orchestra, 1,530 minutes for cello and viola, and 1,400 minutes for optional strings.

The above three categories of offerings (not including the portion of the 5th and 6th grade chorus that occurs before the work day) total 11,885 minutes per year. If one divides this total by 180, it results in the average time per day (66.03), so that the average 5-day week has 330.15 minutes (66.03 multiplied by five) minutes or 5.50 hours. This represents an additional 0.257 FTE (5.50 divided by 21.39, the average number of student contact hours). 1.168 FTE plus 0.257 FTE equals 1.425 FTE.

In a series of collaborative, professional conversations with the music department, it was demonstrated that additional factors may need to be considered when assigning final FTE to this department. The music department requested that the following additional factors be considered:
Additional Factors to be Considered

1. Rescheduling of missed lessons due to field trips, vacation days, or other reasons. 54.5 hours.
2. Make up of classes missed due to performances. 22 hours.
3. Choreography, Orf instrument, mallet, and lyric rehearsals due to Sings. 32 hours.
4. String recitals. 6 hours.
5. Graduation rehearsal time. 8 hours.
6. Special rehearsals for Sings and Sings. 16.5 hours.
7. Extra practice for students in order to help them achieve at high levels on report cards. 10 hours.
8. Other additional work for various classes. 6 hours.
9. Kindergarten experiences. 3 hours.
10. Orchestra performances at Friday Flag and other events. 4 hours.
11. Leading students during Friday Flag singing. 9.5 hours.
12. 6th grade musical tech support. 12 hours.
13. Orchestra coaching, coaching of solos for chorus and orchestra. 10 hours.
14. Sowah drumming experience support. 27 hours.
15. 6th grade musical support. 86 hours.

Total 306.5 hours

It is difficult to account for these above duties fairly for a number of reasons.

First, if one is looking through the lens of student contact time, some of the above items actually do not actually constitute additional student contact time. As an example, consider if a class misses a class to attend a field trip (as in #1, above). Those minutes were lost, and then the music educators make up those minutes. Thus, these are not “extra” student contact minutes, but minutes completed during another time. Therefore, the lion’s share of hours in #1 and #2 above do not actually result in additional student contact time. There is certainly extra work associated with rescheduling the missed classes, but not to the degree listed above.

Second, the totals listed above come from a full accounting in the 2016-2017 school year. In the 2018-2019 school year, some of these totals would naturally be reduced. For example, with fewer classes in the school overall (especially in 6th grade), the Sowah totals (#14 above) would be lower naturally.

Third, some of the things listed above are analogous to duties that other teachers on staff complete, and they are not awarded additional FTE. As an example, all teachers attend Friday Flag (#11 above). The music educators may have additional duties at these sings, to be sure, but all staff members are present and have some duties (monitoring their class, for instance). Another example is #7. Many teachers work with students at recess, before school, after school, and at lunch in order to give them some additional one on one time in order for students to achieve.

Well-intentioned, informed professionals may account for these hours differently. One method would be to fully account for all of these minutes. 306.5 hours would be 1.657 hours per paid work day or 8.285 hours in a five day week. This would require an additional 0.387 FTE (8.285 divided by 21.39 as that is the average amount of student contact time).
Upon deep reflection over the course of months, I do not believe that this standard would be reasonable. Here is my annotated accounting of the duties that were reported. My thoughts are bold-faced and in blue.

1. Rescheduling of missed lessons due to field trips, vacation days, or other reasons. 54.5 hours. These do not constitute additional student contact time. If a lesson is missed for a field trip and made up later, that is not additional student contact time. If there was a Monday that was missed for vacation and that lesson was made up, that is actually not additional student contact time as the base of 19 hours of music and 5 hours of strings actually assumes that the week is made up of five days with no vacations. 0 hours.

2. Make up of classes missed due to performances. 22 hours. Again, these do not constitute additional student contact time. If a lesson is missed for a performance and made up later, that is not additional student contact time. 0 hours.

3. Choreography, Orf instrument, mallet, and lyric rehearsals due to Sings. 32 hours. This is difficult to fairly account for. On the one hand, one hopes that these activities can take place in the regularly scheduled classes. On the other hand, we do want our students to be prepared. 6 hours.

4. String recitals. 6 hours. These are required duties and are accepted in full. 6 hours.

5. Graduation rehearsal time. 8 hours. These are required duties and are accepted in full. 8 hours.

6. Special rehearsals for Sings and Sings. 16.5 hours. These are required duties and are accepted in full. 16.5 hours.

7. Extra practice for students in order to help them achieve at high levels in report cards. 10 hours. This is analogous to other teachers, is not a whole-class experience, and is substantively different than student-contact time. 0 hours.

8. Other additional work for various classes. 6 hours. This is analogous to other teachers, is not a whole-class experience, and is substantively different than student-contact time. 0 hours.

9. Kindergarten experiences. 3 hours. These are required duties and are accepted in full. 3 hours.

10. Orchestra performances at Friday Flag and other events. 4 hours. All teachers have duties to perform at Friday Flag. Other specialists who do not have scheduled classes, nonetheless come to Friday Flag and are not awarded additional FTE. 0 hours.

11. Leading students during Friday Flag singing. 9.5 hours. All teachers have duties to perform at Friday Flag. Other specialists who do not have scheduled classes, nonetheless come to Friday Flag and are not awarded additional FTE. 0 hours.
12. 6th grade musical tech support. 12 hours. **These are required duties and are accepted in full. 12 hours.**

13. Orchestra coaching, coaching of solos for chorus and orchestra. 10 hours. **This is difficult to fairly account for. On the one hand, one hopes that these activities can take place in the regularly scheduled classes. On the other hand, we do want our students to be prepared. 2 hours.**

14. Sowah drumming experience support. 27 hours. **This experience is taught by an outside contractor, and thus the music educators are not teaching the lesson as in the other student contact hours. That said, we do want some degree of collaboration and support. In addition, with fewer classes, some of this will naturally diminish. 6 hours.**

15. 6th grade musical support. 86 hours. **These are required duties and are accepted in full. 86 hours.**

**Total 145.5 hours**

145.5 hours would be 0.786 hours per paid work day or 3.93 hours per week. This would equal an additional 0.184 FTE (3.93 divided by 21.39) as the average instructional hours per week.

In this section, we have previously accounted for 1.425 FTE, and we then add the 0.184 FTE for a total of 1.609 FTE. This would result in a 1.0 FTE music educator and one music educator at 0.609 FTE. Let us consider several additional items for each of these professionals.

For the 1.0 FTE music educator, we would need to account for the portion of time between 7:45am and 8:00 am. 5th and 6th grade chorus is offered four days a week during this time (and until 8:25 am), but during these 15 minutes the workday has not begun. Therefore, we will offer a stipend for these additional minutes that are added to the workday and will pay the teacher at her regular rate of pay for these minutes.
For the 0.609 FTE music educator, we assign additional English learner duties to the schedule of up to 0.144 FTE. This combination results in a 0.753 FTE position (full health benefits are awarded at 0.75 FTE and above for certificated employees). We then need to apply the FTE fair calculation to account for 100% attendance at non-student days and PLC meetings.

Non-Student Contact Day Calculation:
5(1.0-0.753)=A
A=1.235

100% of PLCs Calculation:
22(1.0-0.75)(75)
____________________ =B
375
B=1.09

FTE Fair Share Calculation:
1.235+1.09
_________ = FTE fair calculation=0.013
185

Thus, the total for the part-time music educator would be 0.766 FTE. The total FTE for these two positions would be 1.766 FTE, so it is recommended that only 0.234 FTE music be reduced. As the initial reduction was slated for a 0.55 FTE reduction, we must rescind 0.316 FTE. The current plan would be for a 1.0 FTE Music teacher and a 1.766 teacher primarily assigned music, but also providing some English instruction. It is important to note that no employee that is less senior to this part-time music educator and English language teacher will be assigned English language teaching duties. In addition, there will be no need to provide music stipends, except for the 15 minutes between 7:45 am and 8:00 am described above for the full-time music educator.

In order to ensure that the music program reduction described above is at the right level, it is helpful to look at other schedules for comparisons. What follows are the tentative 2018-2019 schedules for:

- a Kindergarten teacher,
- a first grade teacher,
- a second or third grade teacher,
- a fourth, fifth, or sixth grade teacher
- the full-time music educator
- the part-time music educator/English language teacher
Kindergarten teacher

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Percent with Students: 52%
Percent "white": 34%
Percent "break": 14%
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Percent with Students: 56%
Percent "white": 26%
Percent "break": 18%
Second or third grade teacher

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|          | 0      | 0       | 0       | 0       | 0      |

|          | 11:30 AM | 11:45 AM | 12:00 PM | 12:15 PM | 12:30 PM |
|          | Lunch    | Lunch    | Lunch    | Lunch    | Lunch    |
|          |          |          |          |          |          |
|          | 12:45 PM | 1:00 PM  | 1:15 PM  | 1:30 PM  | 1:45 PM  |
|          | Library Yungling | Library Yungling | Library Yungling | Library Yungling | Library Yungling |
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|          | 0        | 0        | 0        | 0        | 0        |
|          | 0        | 0        | 0        | 0        | 0        |

|          | 2:00 PM  | 2:15 PM  | 2:30 PM  | 2:45 PM  |
|          | PE Triguiero | PE Triguiero | PE Triguiero | PE Triguiero |
|          | Art Week B | Art Week B | Art Week B | Art Week B |
|          | 0         | 0         | 0         | 0         |
|          | Spanish Kalin | Spanish Kalin | Spanish Kalin | Spanish Kalin |

Percent with Students: 65%
Percent "white": 18%
Percent "break": 17%
Fourth, fifth, or sixth grade teacher

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Percent with Students: 62%
Percent "white": 20%
Percent "break": 18%
Full-time music educator

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**Stipend Work**

- Percent with Students: 56%
- Percent "white": 26%
- Percent "break": 18%
Part-time music educator/English language teacher

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</tr>
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<td>2B</td>
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<tr>
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<td>Lunch</td>
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</tr>
<tr>
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<td>EL</td>
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<tr>
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</tr>
<tr>
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<td>0</td>
</tr>
<tr>
<td>3:00 PM</td>
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<td>Orchestra</td>
<td></td>
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<td>Orchestra</td>
</tr>
<tr>
<td>3:15 PM</td>
<td>Viola/Cello</td>
<td>Orchestra</td>
<td></td>
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<td>Orchestra</td>
</tr>
<tr>
<td>3:30 PM</td>
<td>Viola/Cello</td>
<td>Orchestra</td>
<td></td>
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</tr>
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</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>3 Prep</td>
<td>7.25 hours</td>
<td>6.5 hours</td>
<td>7.25 hours</td>
<td>2.44 hours</td>
</tr>
</tbody>
</table>

Other Music Tasks: .75 FTE*31.25 hour work week = 23.44 hours

Percent with Students: 61%
Percent "white": 24%
Percent "break": 15%
Analysis of the Schedule Charts

In Kindergarten and First grades, students have a reduced day as compared to the students in Second through Sixth grade. It is therefore predictable that these teachers’ student contact minutes are the lowest of the teachers compared.

The music educators would have less student contact time than second grade, third grade, fourth grade, fifth grade, and sixth grade teachers. In addition, in the part-time music educator/English teacher schedule, the English learner blocks that are set aside are “at the most.” In other words, we may not have student needs to justify this much English learner time. This gives the music educators defined time during the work week to complete the various activities that are discussed above and which we agree are a part of the “music program.” Conversely, if we made no reductions in the area of music, the percentage of time during which educators did not have students would increase dramatically and out of line as compared to the rest of the teachers at the school.

Music Recommendation

We need a total of 1.619 FTE for music instruction, resulting in a full time music instructor (1.0 FTE) and a 0.619 FTE music instructor. This means that we need to reduce music instruction by only 0.237 FTE. In addition, we know we need some English language instruction. The total time needed for English language instruction is constantly in flux as the number of students and the level of their needs are constantly changing. Therefore, we are allocating a total of 0.763 FTE for the second music educator. This teacher’s 2018-2019 assignment will be 0.763 FTE and will be in the areas of music instruction and English language instruction. The music portion of the FTE assignment will be at least 0.619 FTE. If we do not need 0.144 FTE English language instruction, the assignment will be adjusted accordingly. It is important to note that no employee that is less senior to the part-time music educator and English language teacher will be assigned English language or music teaching duties.

In addition, there will be no need to provide music stipends, except for the 15 minutes between 7:45 am and 8:00 am described above for the full-time music educator.
Section 12: Summary of Proposals

<table>
<thead>
<tr>
<th></th>
<th>Resolutions Approved March 5, 2018 and March 9, 2018</th>
<th>May 10, 2018 Proposal</th>
<th>Action Recommended</th>
</tr>
</thead>
<tbody>
<tr>
<td>K-6 Elementary Teacher</td>
<td>4.0 FTE Reduction</td>
<td>4.0 FTE Reduction</td>
<td>Approve Final 4.0 FTE Reduction</td>
</tr>
<tr>
<td>Music</td>
<td>0.55 FTE Reduction</td>
<td>0.234 FTE Reduction.</td>
<td>Approve Final Reduction of 0.234 FTE</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Stipends only for 7:45-8:00am chorus for full-time music educator</td>
<td></td>
</tr>
<tr>
<td>Art</td>
<td>0.33 FTE Reduction</td>
<td>0.33 FTE Reduction</td>
<td>Approve Final Reduction of 0.33 FTE</td>
</tr>
<tr>
<td>Physical Education</td>
<td>0.25 FTE Reduction</td>
<td>0.075 FTE Reduction.</td>
<td>Approve Final Reduction of 0.075</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mime/ Movement/ Yoga duties assigned (these stipends eliminated). Track stipend eliminated</td>
<td></td>
</tr>
<tr>
<td>Spanish</td>
<td>0.3 FTE Reduction</td>
<td>0.277 FTE Reduction.</td>
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</tr>
<tr>
<td>Librarian</td>
<td>0.2 FTE Reduction</td>
<td>0.19 FTE Reduction.</td>
<td>Approve Final Reduction of 0.19 FTE</td>
</tr>
<tr>
<td>English Learner</td>
<td>0.15 FTE Reduction</td>
<td>0.15 FTE Reduction</td>
<td>Approve Final Reduction of 0.15 FTE</td>
</tr>
</tbody>
</table>

Section 13: Conclusion
The proposals summarized in the table above will 1) maintain student programs, 2) right size our staffing levels to our current student population, 3) convert several stipends to FTE, 4) where appropriate, maintain student enrichment activities with staff members rather than outside contractors, 5) work towards greater equity in the teaching positions, 6) reduce costs and 7) still allow some additional staffing levels to account for unforeseen needs (such as the need to add an additional class at some point). These proposals represent months of study and collaborative work, and I believe they represent fair and reasonable reductions. I would also like to take a moment to commend the teachers, classified staff members, parents, and others who helped me to understand the nuances of these programs. These conversations were professional and often difficult. I learned a great deal through these frank exchanges, including the fact that in several instances my initial proposals were too deep and would have resulted in reduced programs for students.

I recommend the Board approve the proposals described above.
Item E-3  Resolution to Reduce or Eliminate Particular Kinds of Certificated Services for the 2018-2019 School Year and Issue Final Notices to Affected Employees, Resolution #2017/18-19

Explanation:  
We are requesting approval of Resolution #2017/18-19. Please see attachments for detailed information.

Recommendation: Discussion/Action

Attachments:  
- Resolution #2017/18-19 to Reduce or Eliminate Particular Kinds of Certificated Services for the 2018-2019 School Year and Issue Final Notices to Affected Employees
- Exhibit “A”
- Exhibit “B”
- Exhibit “C”
- Exhibit “D”
MONTECITO UNION SCHOOL DISTRICT

RESOLUTION NO.1718-19
RESOLUTION TO REDUCE OR ELIMINATE PARTICULAR KINDS
OF CERTIFICATED SERVICES FOR THE 2018-2019 SCHOOL YEAR
AND ISSUE FINAL LAYOFF NOTICES TO AFFECTED EMPLOYEES

WHEREAS, the Governing Board of the Montecito Union School District adopted Resolution No. 2017/2018-15 on March 5, 2018 and Resolution No. 2017/2018-16 on March 9, 2018, both authorizing and directing the Superintendent, or Superintendent’s designee, to initiate and pursue procedures necessary to not reemploy the equivalent of a combined total of 5.78 full-time certificated employees of this District, pursuant to Education Code sections 44949 and 44955, because of a reduction of particular kinds of services;

WHEREAS, on or before March 15, 2017, the District properly served on the employees listed on Exhibit "A" notice that the District did not intend to reemploy them for the 2018-2019 school year;

WHEREAS, the employees listed on Exhibit "B" did not request a hearing; and

WHEREAS, a layoff hearing was convened on April 24, 2018, by the Office of Administrative Hearings, State of California, for those certificated employees listed on Exhibit "A" who timely requested a hearing; and

WHEREAS, a Proposed Decision has been submitted by Administrative Law Judge Eileen Cohn, Office of Administrative Hearings, in the matter of the District's Reduction in Force of Certificated Employees ("Proposed Decision"), a true and correct copy of which is marked Exhibit "C," is attached hereto, and is by this reference made a part hereof; and

WHEREAS the Board has duly considered said Proposed Decision; and

WHEREAS, it is currently necessary to not reemploy certain certificated staff for the 2018-2019 school year, per exhibit D;

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Montecito Union School District as follows:

1. Those matters found in said Proposed Decision do constitute sufficient cause for not reemploying the certificated employee listed in the Administrative Law Judge’s Proposed Decision and that not reemploying that employee does relate to the welfare of the schools of the Montecito Union School District and the pupils thereof; and

2. Said Proposed Decision, including Factual Findings, Legal Conclusions and Order, should be adopted as the decision of this Board; and
3. The aforesaid Proposed Decision be, and it hereby is, adopted the Decision of the Governing Board of the Montecito Union School District and shall be effective immediately; and

4. Considering the certificated staff requirements of the Montecito Union School District for the 2018-2019 school year, as well as the seniority and qualifications of each of the District’s certificated employees, the Superintendent or Superintendent’s designee is hereby authorized and directed to notify those certificated employees listed on Exhibit "D," prior to May 15, 2018 and consistent with Education Code section 44949, that their services, to the extent indicated on Exhibit "D," will not be required by the District for the ensuing 2018-2019 school year; and

5. That declining assignments for less than the full-time equivalency for which they were previously employed, or substitute or temporary employment, will not affect an employee’s right to an offer of reemployment in accordance with Education Code sections 44956 or 44957, as applicable, and to remain on the reemployment list and be notified if a position for the full-time equivalency for which they were previously employed becomes available in the area authorized by his/her instructional credential.

PASSED AND ADOPTED, by the following vote this 10th day of May, 2018.

AYES:   
NOES:   
ABSENT: 
ABSTAIN:   

__________________________
Gwyn Lurie, President
Board of Trustees
EXHIBIT "A"

LIST OF EMPLOYEES WHO RECEIVED AN INITIAL NOTICE OF LAYOFF

Cheryl Hess
Karen Luna
Patricia Malone
Rima Muna
Holly Noble
Anne Yungling
Ronald Zecher
EXHIBIT "B"

LIST OF EMPLOYEES WHO DID NOT REQUEST A HEARING

  Cheryl Hess
  Karen Luna
  Patricia Malone
  Rima Muna
  Holly Noble
  Anne Yungling
EXHIBIT "C"

BEFORE THE
BOARD OF TRUSTEES
MONTECITO UNION SCHOOL DISTRICT
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA

In the Matter of the Reduction in Force Involving:

RONALD ZECHER
Certificated Employee of the Montecito Union School District,

Respondent.

Case No. 2018040060

PROPOSED DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 23, 2018, in Montecito, California.

Elizabeth B. Mori, Attorney at Law, represented Anthony Ranii, Superintendent (Superintendent) and Montecito Union School District (District).

Robert A. Bartosh, Attorney at Law, represented Ronald Zecher (Respondent), who was present.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing, and the matter was submitted for decision on April 24, 2018.

SUMMARY

The Board of Trustees of the Montecito Union School District (Board) has decided to reduce or discontinue particular kinds of services (PKS) and has given Respondent and others notice of its intent not to reemploy them for the 2018-2019 school year as certificated employees. Respondent is a music teacher and music services have been reduced by .55 Full-Time Equivalent (FTE) thereby displacing Respondent. Respondent claims he met the competency criteria set forth by the District and as, such, he was wrongfully laid off instead of more junior certificated elementary school teachers. The sole issue in dispute is whether Respondent meets the competency criteria established by the Board based upon his one year of teaching in a special program. The weight of the evidence established that the Superintendent properly accounted for
Respondent's experience, he did not meet the Board's competency criteria and, therefore, is subject to layoff pursuant to the Board's Resolution.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Superintendent filed the Statement of Reduction in Force in his official capacity. The District is an elementary school district located in Santa Barbara County.

2. Respondent is a certificated employee of the District.

3. On April 3, 2018, the Superintendent issued the District Statement of Reduction in Force and served it and other required documents on Respondent.

4. Respondent timely submitted a Request for Hearing/Notice of Participation in Reduction in Force Hearing Form, requesting a hearing to determine if there is cause for not reemploying him for the 2018-2019 school year.

5. All prehearing jurisdictional requirements have been met.

Reduction of Particular Kinds of Services (PKS)

6. (a) On February 20, 2018, at a regular meeting of the Board of Trustees of the District (the Governing Board), upon recommendation of the Superintendent, the Governing Board adopted Resolution No. 2017/2018-12 (Resolution-12), entitled "Establishment of Criteria for Order of Layoff and Reemployment Following Layoff of Certified Employees with Same First Date of Paid Service in a Probationary Position." Resolution-12 provides for the order of termination where two or more certificated employees first rendered paid, probationary service to the District on the same date (tie-breaking criteria). (Ex. 6.) The Board set the following tie-breaking criteria:

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CRITERIA | POINTS
--- | ---
Active Credentials | 2 points per clear credential 1 point per preliminary credential 1 point per supplementary credential
Possession of BCLAD, CLAD, SDIE, or EL Certification | 1 point
Prior K-12 Public School Teaching Experience | 1 point per year (5 points maximum)
Master’s Degree | 2 points
Doctorate Degree | 1 point
National Board Certificate | 5 points

(Ibid.)

(b) In the event of a tie after the points are applied, the District will use a lottery system with low lottery numbers indicating low seniority. (Ibid.)

(c) The criteria are reasonable as they relate to the skills and qualifications of certificated employees.

7. (a) On March 5, 2018, at a regular meeting of the Governing Board, upon recommendation of the Superintendent, the Governing Board adopted Resolution No. 2017/2018-15, entitled “Resolution to Decrease the Number of Certificated Employees Due to a Reduction or Elimination of Particular Kinds of Services” (Resolution-15), to reduce or discontinue the following PKS for the 2018-2019 school year:

<table>
<thead>
<tr>
<th>PKS</th>
<th>FTE$^1$</th>
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<tbody>
<tr>
<td>K-6 Elementary Teacher</td>
<td>4.0</td>
</tr>
<tr>
<td>Music</td>
<td>.55</td>
</tr>
<tr>
<td>Art</td>
<td>.33</td>
</tr>
<tr>
<td>Physical Education</td>
<td>.25</td>
</tr>
<tr>
<td>Spanish</td>
<td>.30</td>
</tr>
<tr>
<td>Librarian</td>
<td>.20</td>
</tr>
<tr>
<td><strong>Total FTE</strong></td>
<td><strong>5.63</strong></td>
</tr>
</tbody>
</table>

(Ex. 1.)

(b) The services which the District seeks to discontinue or reduce are PKS that may be reduced or discontinued within the meaning of Education Code$^2$ section 44955.

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1 Full time equivalent.
2 All further statutory references are to the Education Code.
8. On March 5, 2018, at a regular meeting of the Governing Board, upon recommendation of the Superintendent, the Governing Board also adopted Resolution No. 2017/2018-13 (Resolution-13), entitled "Resolution to Establish Competency Criteria Due to a Reduction in Particular Kinds of Certificated Services," which further established competency rules when a less senior employee possesses competency "in those areas of service in which the Board has determined not to reduce services." (Ex. 7.) The Board established the following criteria:

[¶] [a]s to any certificated employee who seeks to move into a position requiring certification qualifications held by a less senior certificated employee, the employee who seeks to move into a position requiring certification held by a less senior certificated employee, the employee must have teaching experience in the subject area and/or elementary grade level for at least one (1) year within the last (10) years.

(Ex. 7.)

9. (a) On March 9, 2018, the Superintendent provided notice to Respondent, via personal delivery, that .55 of a FTE of his services will not be required for the 2018-2019 school year due to the reduction of PKS in the area of Music. (Ex. 4.) Another music teacher, more senior than Respondent, did not receive a layoff notice. Respondent is the most junior music teacher.

(b) The Superintendent also provided timely and proper notice of layoff to six other certificated employees. (Ex. 3.) No other certificated employee requested a hearing.³ There were no challenges to the service, timeliness or comprehensiveness of the notice.

(c) The layoff notice to HN, a certificated employee, was rescinded.

(d) Three teachers who received layoff notices, PM, KL, and LM have less seniority than Respondent.

10. (a) The reduction of services set forth in factual finding number 7 is related to the welfare of the District’s schools and its pupils, in the context of the loss of revenue and the need to continue providing services to students served by the District, and it has become necessary to decrease the number of certificated employees as determined by the Board.

(b) The Governing Board took action to reduce or discontinue the services set forth in finding 7 at the request of the Superintendent because of the anticipated reduction of funding and the anticipated decline in student enrollment. The District is part of a community that

³ To protect their privacy the names of the other certificated employees, who did not request a hearing, are represented by initials.
has been seriously impacted by extreme flooding, but projected student enrollment for the 2018-2019 school year is not based solely upon temporary circumstances, but on historical trends. Student enrollment is declining and is anticipated to decline to 390 students from 420 students during the 2018-2019 school year. The number of classrooms will be reduced from 26 to 22.

(c) The evidence confirms that the decision to reduce the PKS is neither arbitrary nor capricious but is rather a proper exercise of the Governing Board and Superintendent’s discretion. The decision involved extensive discussions with administrators and District leadership and was due to budgetary constraints and decreased enrollment. The decision for layoffs was made in a manner that would cause the least disruption in services to students.

(b) The District was able to lower the number of layoffs by accounting for attrition by granting the request of two teachers to job share one teaching position, and one teacher's decision to retire. As a result of its accounting, the District was able to reduce the number of classroom teachers receiving notices.4

11. (a) The District provided foundation for the resolutions and other exhibits, and the rationale for the layoffs from the testimony of two credible and well-qualified witnesses directly involved in the reduction in force for the 2018-2019 school year: Virginia Alvarez, Chief Business Official and Human Resources, and Superintendent Anthony Ranii. Ms. Alvarez developed the resolutions with the Superintendent and both were present at the Board meetings where they were introduced and passed.

(b) Ms. Alvarez conducted careful and extensive due diligence to confirm the accuracy of the seniority list and respondent's competency before determining the layoffs. She audited teachers' personnel files for their credentials, checked the California Commission on Teacher Credentialing's public records to make sure all the teachers' credentials were accounted for, and e-mailed the list to the teachers for their review. No challenges were raised regarding the accuracy of the seniority list and the evidence established that it is accurate and correct. (Ex. 8.)

(c) Having no record of respondent's employment in the District as a K-6 classroom teacher, Ms. Alvarez also contacted respondent's previous employer, the Santa Barbara School Districts to ascertain whether Respondent fulfilled the competency requirements within the last ten years for his work in the Santa Barbara School Districts. The response she received from

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4 Respondent is teacher number 30 of 41 teachers with seniority with number one being the highest and number 41, the lowest. Respondent started the same date as teacher number 31, RM. Respondent is also more senior than teacher number 33, AC, who started on August 26, 2014, and is also a fourth-grade teacher. Whether Respondent met the tie-breaking criteria with RM, or is entitled to "bump" AC, is not reached in this decision because Respondent does not meet the District's competency criteria to "bump" into the positions held by either teacher.
that school district, did not put Ms. Alvarez on notice that Respondent had fulfilled the competency criteria needed to avoid a layoff. That school district reported to Ms. Alvarez that Respondent worked from January 2, 2001 through August 4, 2012, as a child development and music teacher.

Evidence of Respondent's Competency

12. Respondent has worked for the District for under five years, and has a start date of August 26, 2013. He is a full-time certificated employee currently assigned as the music teacher (80 percent) and an English-learner (EL) teacher (20 percent). Respondent possesses multiple subject and single subject teaching credentials, a cross-cultural language and academic development (CLAD) certificate, a Master of Arts degree, an administrative services credential and a child development program director permit.

13. Respondent has been an employee of Santa Barbara schools, either with the Santa Barbara School Districts or the District, for many years. He began as a custodian in 1987. For many years he worked half-time for both the Santa Barbara School Districts and the District as a contract employee. At the Santa Barbara School Districts he worked in an administrative position responsible for home instruction for parents with preschool or pre-kindergarten (Pre-K) school children and worked in the child development program as a teacher in the Pre-K/family literacy program. After he worked in the Pre-K program he worked as a music teacher.

14. Respondent provided credible and sincere testimony about his work for the District and for Santa Barbara School Districts. Respondent challenges the Superintendent and Ms. Villegas's conclusion that he does not meet the competency requirements set by Resolution-13 to

5 Respondent objected to the admissibility of the e-mail communication with the Santa Barbara School Districts. (Ex. 9.) Over respondent's objection it was admitted as administrative hearsay pursuant to Government Code section 11514, to the extent that the e-mail supports and explains the testimony of Ms. Alvarez and Respondent, who also testified about his prior work experience at the Santa Barbara School Districts, which it did. In addition, whether or not the e-mail is direct evidence of Respondent's competency under the reduction in force criteria, it is direct evidence of Ms. Alvarez's due diligence and good faith when she determined Respondent did not meet the competency criteria for retention. Admissibility under the Administrative Procedure Act, which governs this action, is broader than that of proceedings governed strictly by the California Evidence Code. However, when an appropriate hearsay objection is raised, pursuant to Government Code 11514, as it was here, the e-mail can come in only as administrative hearsay, unless, there is another basis for admission. The ALJ considered whether the e-mail constituted a business record pursuant to Evidence Code section 1271, and determined that it did not meet the required criteria.

6 Pre-K and preschool are used interchangeably and refer to the same program in this decision.
teach a multi-subject, K-6 classroom. Respondent does not challenge the District’s reduction of music services. Respondent maintains that he meets the competency requirements when he purportedly performed one year in the last 10 in the elementary grade level, and therefore should have been retained over other certificated staff who teach self-contained multi-subject elementary school classes. Respondent asserts that he was competent to teach a multi-subject elementary school class and as a result, he should have been retained instead of teacher RM, based upon his credentials under the tie-breaking criteria for teachers starting the same date, or AC, a more junior certificated multi-subject elementary school teacher. (Ex. 8.) AC and RM teach fourth grade and were not subject to the reduction in force notification. Respondent has not taught one FTE year at the fourth-grade level. He has been a substitute teacher for undisclosed grade-levels but there is no evidence that he has taught for a FTE of one year as a substitute elementary school teacher.

15. (a) The parties do not dispute that if Respondent had taught one FTE year of transitional kindergarten he would have satisfied the competency criteria. Transitional kindergarten (T-K) is essentially a two-year kindergarten. It follows the curriculum of a one-year kindergarten program and uses the curriculum, grading and any common core requirements attendant to a kindergarten program. A T-K is considered "elementary grade level"; Pre-K is not.

(b) Respondent maintains that he fulfilled the competency requirements when he taught a 24-child class during the 2009-2010 school year in the Santa Barbara School Districts identified as a Pre-K family literacy program. During the 2009-2010 school year he was asked to teach a Pre-K Family Literacy Program (PKFL), which would become the model for that school district’s T-K. Respondent testified that he taught the full range of subjects, including, language arts, math, science, in addition to physical education and music.

(c) Jennie A. Martinez, the retired child development teacher and child development coordinator of that school district, wrote a letter which supported and explained Respondent’s testimony. (Ex. C.) Ms. Martinez hired Respondent as the "ideal teacher candidate" who met the school district’s goal of hiring a multi-subject credentialed teacher with experience in "curriculum development, knowledge of the California Teaching Standards and Preschool Learning Foundations, familiarity [with] working with 2nd language learners, confidence with working with families, and knowledge of the community." (Ibid.) Ms. Martinez expressed enthusiasm for Respondent’s work and accomplishments, including his application of his multi-subject credential to "prepare the children for the transition to a rigorous kindergarten experience." (Id.) The students scored well on a measure called the "Kindergarten Student Entrance Profile" developed by the University of California, Santa Barbara, and Respondent created "meaningful activities for parent engagement, and " mentored a second teacher." (Id.)

16. Respondent’s claim that he taught a class substantively similar to a T-K was not sufficiently supported by the evidence. Respondent admits that he taught in a pilot program and that the T-K program was not technically a required program or introduced in the Santa Barbara School Districts until after the 2010-2011 school year. Respondent’s participation ended with his participation in the development of the program as part of his Pre-K assignment during the 2009-
2010 school year. During cross-examination, Respondent candidly stated he used a progress report or rubric used for Pre-K pupils. Significantly, Ms. Martinez did not use language that confirmed that Respondent's class substantively met the requirements of a T-K, and aside from Respondent's testimony and Ms. Martinez's letter there was no supporting documentation of the curriculum. Ms. Martinez wrote that after the 2009-2010 school year "[t]he intention was he would transition to a T-K classroom that would serve as a model for the district." (Ex. C.) Ms. Martinez does not distinguish between a Pre-K and T-K curriculum. She identifies the classroom that he worked to design as continuing today as a "quality Pre-K and T-K experience." (Ibid.) Accordingly, it is unclear what proportion of time was spent on Pre-K, or what part of the curriculum was considered T-K.

17. The Superintendent provided competent testimony that rebutted Respondent's claim that he served one FTE year in a T-K class. Prior to his tenure with the District, the Superintendent worked in a previous school district where he oversaw three preschools and kindergarten programs. He was familiar with T-K as a two-year kindergarten for those children who do not meet the cut-off to begin kindergarten. A T-K is different than preschool as it applies the state standards required for kindergarten, but over the course of two years, instead of one. In contrast, preschool is not driven by state standards and focuses on preacademic skills such as sound-letter correspondence, play-based exercises and skills such as cutting.

18. The weight of the evidence established that Respondent does not meet the Board's competency criteria to "bump" into another certificated position. Accordingly, the District met its burden of proof that no certificated employee junior to Respondent has been retained to render a service which Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (Brown v. City of Los Angeles (2002) 102 Cal.App.4th 155.) As no other law or statute requires otherwise, the standard of proof in this case requires proof by a preponderance of the evidence. (Evid. Code, § 115.) Therefore, the District bears the burden of establishing cause to affirm the proposed layoff decisions by a preponderance of the evidence.

2. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to Respondent by reason of findings 1-5.

3. The District proved by a preponderance of the evidence that it fulfilled the requirements of Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services by reason of findings 6-11. The Board's decision to reduce or eliminate the identified services set forth in
finding 7 was neither arbitrary nor capricious in that the decision relates solely to the welfare of the District’s schools and the pupils within the meaning of Education Code section 44949, by reason of Findings 6-11. Boards of Education hold significant discretion in determining the need to reduce or discontinue particular kinds of services, which is not open to second-guessing in this proceeding. (Rutherford v. Board of Trustees (1976) 64 Cal.App.3d 167.) Such policy-making decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (California Teachers Assn. v. Huff (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and action must be reasonable under the circumstances, with the understanding that "such a standard may permit a difference of opinion." (Santa Clara Federation of Teachers v. Governing Board (1981) 116 Cal.App.3d 831.) School districts have discretion to define positions in the manner which they will be taught as long as it is done in good faith. (Hildebrandt v. St. Helena Unified School District (2009) 172 Cal.App.4th 334.)

4. Pursuant to Education Code sections 44845 and 87414 every probationary or permanent employee is deemed to have been employed on the date upon which he or she first rendered paid service in a probationary position.

5. (a) The District met its burden of proof that Respondent did not meet the competency requirements to teach a multi-subject elementary grade class by reason of findings 6-18. The weight of the evidence established that no competent permanent or probationary employee with less seniority is being retained to render a service for which Respondent is certificated and competent to teach pursuant to Education Code section 44955, subdivision (a). There was insufficient evidence that Respondent had one year of experience as a transitional kindergarten teacher or elementary school teacher. Respondent relies on Bledsoe v. Biggs Unified Sch. Dist (Bledsoe)(2009) 170 Cal.App.4th 127, 136-137, where the court determined that the teacher was qualified to teach under the broader qualifications applicable to a community day school. However, the facts in Bledsoe are distinct from the circumstances here where, despite Respondent's credentials, he has not met the reasonable criteria of "teaching experience in the subject area and/or elementary grade level for at least one (1) year within the last (10) years," by reason of findings 6-18.

(b) The District met its burden of proof that it made the appropriate "correlation between the applicant's specific training and experience and the duties of the available position." (King v. Berkeley Unified Sch. Dist. (1979) 89 Cal.App.3d 1016, 1019.) The Governing Board's adoption of competency criteria by Resolution-13 was reasonable. (Daux v. Kern Community College Dist. (1987) 196 Cal.App.3d. 555, 565.)

6. By reason of the findings herein, the District met its burden of proof and may notify the Respondent that his services will not be required for the 2018/2019 school year by reason of the whole of the findings herein.

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ORDER

1. The Statement of Reduction in Force is sustained.

2. The Superintendent may notify Respondent Ronald Zelcher that his services will not be required for the 2018-2019 school year due to the reduction of particular kinds of services.

DATED: May 1, 2018

[Signature]
EILEEN CONN
Administrative Law Judge
Office of Administrative Hearings
EXHIBIT "D"

LIST OF EMPLOYEES TO RECEIVE FINAL NOTICE OF LAYOFF
AND EXTENT OF FTE REDUCTIONS

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<tr>
<td>Cheryl Hess</td>
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<td>Rima Muna</td>
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<td>Ronald Zecher</td>
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Item F Public Comment – Closed session items only

Explanation: Public comment on Closed Session items only.

Info/Discussion

Recommendation: N/A

Attachments: • No
Item G  Closed Session

Explanation:

| G-1 | Public Employee Performance Evaluation  
|     | (Government Code Sections 54957), Title: Superintendent |

Discussion/Action

Recommendation:  Discussion/Action

Attachments:  • None
Item H    Reconvene to Open Session

Explanation:                               Info/Discussion

Announcement of reportable action taken in closed session.

Recommendation:  N/A

Attachments:  • None
Item I  Adjournment