

**BEFORE THE GOVERNING BOARD  
SAN FRANCISCO UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA**

**In the Matter of the Statement of Reduction in Force of:  
  
212 FULL-TIME EQUIVALENT CERTIFICATED EMPLOYEES,  
  
Respondents.**

**OAH No. 2022030651**

**PROPOSED DECISION**

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on April 11 and 12, 2022, by videoconference.

William M. Quinn, Jr., Senior Deputy General Counsel, represented the San Francisco Unified School District.

Attorney Stewart Weinberg represented the United Educators of San Francisco (UESF), and all respondents who are in the UESF bargaining unit.

Attorney Robert D. Links represented the United Administrators of San Francisco (UASF), and all respondents who are in the UASF bargaining unit.

The matter was submitted for decision on April 12, 2022.

## FACTUAL FINDINGS

1. Kristin A. Bijur made and filed the District's Uniform Statement of Reduction in Force in her official capacity as the Chief Human Resources Officer of the San Francisco Unified School District (District).

2. On March 1, 2022, the Governing Board (Board) of the District adopted Resolution No. 223-1SO3 (PKS Resolution), reducing or discontinuing particular kinds of services for the 2022-2023 school year, and directing the superintendent or his designated representative to send appropriate notices to all employees whose positions may be affected by the reduction or discontinuation of services.

3. The PKS Resolution identified the services to be reduced by the commencement of the 2022-2023 school year as:

- |  |                               |
|--|-------------------------------|
| • Administrative Services                                      | 61 Full-Time Equivalent (FTE) |
| • Instructional Reform Facilitator Program                     | 3 FTE                         |
| • Resource Teachers - Literacy                                 | 3 FTE                         |
| • Academic Response to Intervention Specialists                | 3 FTE                         |
| • Elementary Instructional Program (Multiple Subjects)         | 90 FTE                        |
| • Bilingual Cantonese Language Program                         | 13 FTE                        |
| • Middle School Core Instructional Program (Multiple Subjects) | 15 FTE                        |
| • World Language Japanese                                      | 1 FTE                         |
| • JROTC Program  | 4 FTE                         |

- Counseling Program 10 FTE
- Wellness Counselors/Social Workers 9 FTE

4. The services set forth in the PKS Resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The Board recommended the reduction of services because of a severe budget deficit.

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

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

7. The PKS Resolution states the Board's determination that it is necessary to retain the services of certain certificated employees regardless of their seniority, pursuant to Education Code section 44955, subdivision (d)(1). These employees are individuals possessing and committing to teach under Special Education or Spanish Bilingual Cross-Cultural Language and Academic Development (BCLAD) credentials, including clear, preliminary, emergency, or intern credentials.

8. Also on March 1, 2022, the Board adopted Resolution No. 223-1SO4 (Tie-Breaking Resolution), which sets forth the District's criteria to establish the relative order of seniority among employees with the same first date of paid service. The District and UESF applied these criteria in the course of a tie-breaking exercise on March 3, 2022, and again on March 24, 2022, after receiving additional information regarding the seniority dates and credentials of the impacted employees.

9. On March 7, 2022, Chief Human Resources Officer Kristin A. Bijur sent, via certified mail, a written "Notice of Recommendation That Services Will Not Be Required" (Preliminary Layoff Notice) to 308 teachers, counselors, and social workers, notifying them that their services will not be required for the 2022-2023 school year, pursuant to Education Code sections 44949 and 44955. That same day, Bijur also sent, via certified mail, a written "Notice of Recommendation That Services Will Not Be Required" to 49 supervisory and administrative employees, including employees belonging to the UASF bargaining unit and unrepresented employees. The notices stated the reasons underlying the Board's PKS Resolution.

10. In determining the number of FTE to be reduced or eliminated, the District took into account all positively assured attrition by asking employees to notify the District of their intent to resign or retire. The District also released all temporary certificated employees who filled positions during the 2021-2022 school year for probationary or permanent certificated employees who were on leave or were working for categorically funded programs.

11. The employees were provided with a "Request for Hearing" form and were directed that the form must be received by the District by March 16 at 5:00 p.m. This deadline was twice extended, first through March 18 and finally through March 22, 2022, at 5:00 p.m.

12. By the March 22, 2022, deadline, 81 UESF-represented employees and 16 UASF-represented employees requested a hearing. No unrepresented employees returned the request for hearing form.

13. A memorandum of understanding between the District and both unions provides for service of a Uniform Statement of Reduction in Force on UESF's and UASF's counsel, in lieu of individual service. It also provides for UESF and UASF to file a Uniform Request for Hearing and Notice of Participation in Reduction in Force Hearing on behalf of all respondents. Pursuant to that agreement, the District served the Uniform Statement of Reduction of Force packet on UASF and UESF counsel on March 25, 2022. The packet contained the Statement to Respondents, the District Statement of Reduction in Force, copies of relevant Education and Government Code sections, a Notice of Participation, and a Notice of Hearing.

14. On March 28, 2022, UESF filed a timely uniform request for hearing on behalf of all teacher respondents. On April 1, 2022, UASF filed a timely uniform request for hearing on behalf of all administrator respondents.

15. The parties stipulate that all prehearing jurisdictional requirements have been met.

## **Administrators**

16. Of the 16 UASF administrative employees who requested a hearing, 14 have bumping rights into teaching positions. UASF argued that their layoff notices should be rescinded because they are entitled to continued employment with the District, albeit as teachers. The District disagreed and requested that the layoffs as to the administrators from their administrative positions be upheld.

UASF also contended that adjudication of the dismissal of administrators is precluded by Education Code section 44951, which establishes procedures for releasing administrators from employment. UASF did not establish that the District may not use the layoff process set forth in Education Code sections 44949 and 44955. Section 44951 specifically states that it does not apply to the termination of employment pursuant to section 44955. Accordingly, the District may issue final layoff notices to the 16 administrators, laying them off from their administrative positions.

17. The remaining two administrators, Dalton Miranda and Janae Smothers, hold multiple subject teaching credentials but remain in the path of the layoff due to their seniority dates.

18. Smothers testified at the hearing. She has a seniority date of March 15, 2022, and is not entitled to a teaching position. Smothers expressed concerns about the District's EMPowerSF employee information platform, stating that it caused errors when she was hired. For example, she stated that she was paid less than she was promised, and had been notified that she was not a UASF member, despite having signed up to be in the union. The District and UASF counsel assured Smothers that she had been represented by UASF throughout the layoff process. Smothers also expressed disappointment in what she views as the lack of respect and accountability shown by the District. Smothers did not establish cause for rescission of her layoff notice.

## **Educators**

19. On the first day of hearing, Cantonese Bilingual language teacher Fong Chieng testified that all of the impacted Cantonese Bilingual language teachers have multiple subject teaching credentials, and inquired whether they had been properly

evaluated for bumping rights into multiple subject credential positions. The District and UESF agreed that this evaluation had not occurred. As a result of Chieng's inquiry, a new seniority list was generated and offered into evidence. All but three of the Cantonese Bilingual teachers are now on the rescission list. The District apologized for the error.

## **Stipulations**

20. The parties agreed to rescind the layoff notices issued to the following UESF employees, as set forth in Joint Exhibit 4. Laura Espino is being retained because she holds a BCLAD credential and is committed to teach in a Spanish BCLAD assignment. The remaining employees are being retained based on seniority. These employees are no longer respondents in this matter:

### **CANTONESE BILINGUAL**

Shang Ying Chen

Jialing Zhu

Della Yan Wong

Lai Yee Tse

Yong You Lin

Whitney Wing Kwan Lau

### **ELEMENTARY AND MIDDLE SCHOOL INSTRUCTIONAL (MULTIPLE SUBJECT)**

Laura Espino

Anthony Kevin Batiste

Devon Xavier Emmanuel Maynard

Carissa Angela Wong

Hannah Ketturah Logsdon

Jennifer Chieh Suen

Jason Yu

Beatriz Elina Solorio

Elizabeth Chih-Ling Hsueh

Raquel Roque

Kimberly Elizabeth Gates

Anaia Elise Gilliam

Anni Wen

Kethmanee Bungo

Xiaoying Lun

Brianna Margaret Dupper

Tina Chan

Emily L. Chandler

Kitty Yuk Kit Jiang



Emily Ann Meyers

Yi Stephy Huang

Codion Deshon Isom

Jessica Tin-Wai Lee

Holly Anne San Miguel Beza

Margaret Campbell Black

Kamoljaree Wong

Alexis Rochelle McCoy

Jessica Arnott

Erasmo Jose Martinez, Jr.

Jennifer Marie Rynning

Robert Vincent Costello

Fletcher L. Cobbsek

Julie Marie Pavlos

Karen Wei Jan Wong

Henry Lien Choi Gee

Monica W. Woodworth

Daney J. Espiritu

Emma Rose Purkey

Heidi Schade Kerscher

Kelly Anne Graber

Veronica Marie Gleason

Nicole C. Doumeng

Yvonne Elisa Hidalgo-Miers

Miriam Nichole Romero Gross

Nidhi Kamlesh Solanki

Tiffany M.S. Chen

Hayley Katherine Lorenz

Veronica Roying Tsuji

Carrie G. Centeno

Cassandra Anastasia Munoz

Thomas DeWayne Spalding

Robert Glenn McGarity

Jenny J. Huang

Jeannie Wai Kwan Chan

Billy Jian Biao Li

Mairin McCracken

Kandice Joy Horton-Gomez

Vivien Hsieh

Jennifer Fosa Sierra Guzman

Megan Elizabeth Dukes

Cindy Chung

Vashti Lynn Ferguson

Kendall Lynn Kincaid

Sophia Moriah Eckert

Jennea Marie Glenn

Beverly A. Flisco

Kyla Marie Langen

Willie Fong

Mary Alexandra Roy

Danielle Monique Castillo

Gretchen Diane Lan

Alaycia R. Nelson

Dorothy Paulina Phillips

Matthew Chung

Joseph Patrick Bly

Elaine Wai Cho

Ashley Ponnell Josias Sejour

Santina Marie Delligatta

Jonie Yun Jone Lau

Yuet Yeung Lee

Nancy Nguyen Yee

Mariah Elena Murga

Anand Vedawala

Alexis Breanna Cortez

Kelli A. Mekkelsen

Jennifer Tori Chew

Kyle Alexander Watkins

Nina C. Schield

Jiale Zhao

Sevasti Konstandina Travlos

Rebecca Parrish Beltramo

Traci M. Wrycza

Eric Dolan

Alexandrea Monique Rawlings-Shen

Alix Rose Snyder

Jasmine Tarah Bell

Nancy D. Keizer

Sophia Yuk Yin Choi

Sophia Meakalia Suzuki-Jones

Santiago Manuel Cuevas

Vicki Eun Cho

Aaron Thomas Aguilar

Anne Lynne Banchero

Rose Marie Soto

Melissa O. Ramirez

Erin Nicole Hamson

Christopher Antonio Martinez Johnson

Andrea Nicole Fontenot

Fong Sai Chieng

Devina Alexis Owens

Erin Patricia Flathers

Sharon K. Thilges

De Trice Rodgers

Charyl P. Dalapit

Angela Marie Rocha Owens

Lynn Hu Hatamiya

Amanda Emily Preston

Nathan David Bernhard-Beckman

Brittany Rose Navarre

Samantha Nikole Levy

Adam Matthew Johnson

### **WORLD LANGUAGE: JAPANESE**

Eriko Matsuura-Schnurpusch

Arisa Hiroi

### **JROTC ARMY PROGRAM**

Gregory Lewis Jenkins

Leonel Nascimento

Stephen S. Hardee

Michael Collier

Doug Bullard

**COUNSELING PROGRAM**

Daesean Kevin Jones

Bethany Lin Kwan

Jennifer N. De Renzi

Erinn Jennifer Tumbokon Perez

John R. Moreno

Stephan Anh Khoa Nguyen

Edith Abigail Melendez

Shelby Lee Steinfeld

Christopher Herrera

Nadia Irteimeh Talbot

Francis Jose Vinas-Reyes

Hazel Barrera

Steven James McDaniel

Marissa E. Rossman

Amber DeShun Mosby

Mariana Libeth Verdin

Diana Carolina Marroquin

Marcela Yerena-Avellan

Erika Carmen Thieu

### **SOCIAL WORKERS**

Albert Rogers III

Hannah Jael Dorman Epstein

Nicole M.K. Kaaina

Natalie Gomez

Michelle R. Vidal

Teresa Keiko Anderson

Rene Paul Kamm

Naomi Violet Forsberg

Jabril Demarcus Rollins

Alyssa Nadene Casimiro

Kniesha Renee Primes

Rosario Beatriz Hayes



Rosa Isela Marcelo Huerta

Stefanie Noreen Eldred

Summer Watkins Santarosa

Maggie Marie Furey

Grace Jon Yan Beaver

Wade James King-Gallman

Ashley Morgan Hildred

LaTonya Evette Carpenter

Denise Elizabeth Martell

Yajaira Jamilette Cuapio

Sarah Meghan Kearney

Robin C. Navarro

Marcus Christmas

## **Individual Issues**

21. Alexandria Liston's seniority date is listed as 8/10/2021 on the seniority list. She testified that she began teaching for the District on 8/11/2020. She taught for more than 75% of the days of the school year as a temporary teacher, filling in for two different employees on maternity leave. She held a district intern credential during the 2020-2021 school year and was hired into an open position as a probationary teacher,

with a preliminary multiple subject credential, for the current school year. She contends that she is entitled to a seniority date of August 11, 2020, when she first performed services for the District.

The District contends that the August 10, 2021 seniority date was properly calculated and therefore that the layoff of Liston is lawful pursuant to Education Code section 44911, which provides that "service by a person under a provisional credential shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district."

Liston contends that a district intern credential is not the same as a provisional credential, and therefore she did not provide services under a provisional credential. The District failed to establish that a district intern credential is equivalent to a provisional credential, and the courts have found otherwise. (See *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260 and *California Teachers Association v. Vallejo City USD* (2007) 149 Cal.App.4th 135.) The District also failed to establish that services provided under a district intern credential are to be excluded when calculating seniority.

Pursuant to Education Code section 44885.5, individuals employed as district interns are to be classified as probationary employees. However, even if the District could properly employ district interns as temporary employees, Education Code section 44918, subdivision (a), provides that:

Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has

performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year.

Accordingly, because Liston was employed for more than 75% of the days of the 2020-2021 school year performing the duties of a certificated employee, she is entitled to be deemed to have served a complete year as a probationary employee. Her seniority date must be adjusted to 8/11/2020. The District may not lay off Liston if any employee with less seniority is being retained.

22. Leah Sanchez testified that her circumstances are almost identical to Liston's. The District's seniority list reflects a seniority date of 8/10/2021. But like Liston, Sanchez worked more than 75% of the days of the 2020-2021 school year on a district intern credential, covering for two different teachers on maternity leave, beginning on 8/12/2020. She was hired as a probationary teacher for the current school year.

Because Sanchez was employed for more than 75% of the days of the 2020-2021 school year performing the duties of a certificated employee, she is entitled to be deemed to have served a complete year as a probationary employee. Her seniority date must be adjusted to 8/12/2020. The District may not lay off Sanchez if any employee with less seniority is being retained.

23. Pirssheng Dizaiy's seniority date is August 10, 2021. Dizaiy noted that she signed a three-year commitment to teach for the District when she entered the District's Pathway to Teaching program, and argued that this should prevent the

District from laying her off. Other teachers hired through the Pathway program argued that their commitment to the District and willingness to teach at hard-to-staff school sites should protect them from layoff. These contentions are unpersuasive. Individuals hired through the Pathway to Teaching program are not entitled to be treated differently from any other employees during the layoff process, which is governed by the Education Code. This hearing is not the forum to resolve any potential contractual issues.

24. Matthew Moran's seniority date is 8/10/2021. He noted that he was offered and accepted a position with the District by email in June 2021, and argued that his seniority date should reflect this. He acknowledged that he did not perform paid services until his August seniority date. Moran did not establish that his seniority date was incorrectly calculated.

25. Latallya Cooper asserted that she never received the Preliminary Layoff Notice. She started with the District as a substitute teacher when she lived on Dakota Street in San Francisco. She moved in the summer of 2021. She was hired as a full-time teacher for the 2021-2022 school year and asserts that she provided her new address when filling out new teacher paperwork at the beginning of the school year.

In January 2022, the District sent all employees an email advising them to update their addresses in the District's Empower employee platform. Cooper does not recall receiving this email, but does not deny that she might have. She explained credibly that there was a Covid-19 outbreak and other pressing issues taking place at her school around that time, and that logging onto Empower did not seem like a priority. Cooper apparently did not confirm whether her address in Empower was correct. The District's records as of March 7 reflected Cooper's old address on Dakota Street, and the Preliminary Layoff Notice was sent there.

Cooper was aware that other employees received layoff notices in early March. She did not receive one and was unsure whether she was on the list of employees to be laid off. On March 11, she went into the Empower platform and updated her address information from the Dakota Street address to her current address. Cooper received an email from her teaching coach advising employees to request a hearing, and explaining that even if they were unsure about whether they were on the layoff list, to simply write, "If I'm on the list, I want a hearing." Cooper did so.

The Preliminary Layoff Notice was sent to employee Latalya Cooper at her last known address reflected in the District's records, pursuant to Education Code section 44949, subdivision (d). It is undisputed that Cooper did not actually receive the notice because she no longer lived at that address. Cooper asserts that she provided an updated address to the District in August 2021, but did not corroborate this assertion. Cooper did not update her address in the EMPowerSF platform when asked to do so by the District in January 2022. The District's notification to Cooper by certified mail prior to March 15, 2022 to the address maintained in the District's records, constituted sufficient notice. Cooper may be given a final layoff notice.

26. Except as noted above in Factual Findings 21 and 22, no permanent or probationary certificated employee with less seniority is being retained to render a service which any of the remaining respondents are certificated and competent to render. The District may issue final layoff notices to all 121 UESF respondents and all 16 UASF respondents listed in Joint Exhibit 3, with the exception of Alexandria Liston and Leah Sanchez, if it is determined that any employee with less seniority is being retained to render a service for which Liston or Sanchez is certificated and competent to teach.

## LEGAL CONCLUSIONS

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

2. The services referenced in the PKS Resolution set forth in Factual Findings 2 and 3 are the kind which may be reduced or discontinued in accordance with applicable statutes and case law. (See Ed. Code, § 44955; *Campbell Elem. Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796; *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167.) The Board's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion in light of a severe budget deficit.

3. As set forth in Factual Finding 16, the District may issue final layoff notices to the 16 UASF-represented administrators laying them off from their administrative positions. Most of these employees have bumping rights into teaching positions within the UESF bargaining unit.

4. As set forth in Factual Findings 21 and 22, the District did not sustain its burden of proof as to the seniority dates of employees Alexandria Liston and Leah Sanchez. Because the evidence established that both are entitled to tack on their prior year of service, their seniority dates must be adjusted to 8/11/2020 and 8/12/2020, respectively. The District may not issue final layoff notices to Alexandria Liston or Leah Sanchez, if it determines that any employee with less seniority is being retained to render a service for which Liston or Sanchez is certificated and competent to teach.

5. Other than as established above, the evidence established that no certificated employee with less seniority than any respondent is being retained to

render services that the respondent is certificated and competent to perform. (Factual Findings 20, 23-26.)

6. In accordance with Education Code sections 44949 and 44955, cause exists for reduction of particular kinds of services by the District by the commencement of the 2022-2023 school year, as established in Factual Findings 2 through 4. The cause relates solely to the welfare of the District and its students, within the meaning of Education Code section 44949.

7. Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to the remaining respondents that their services will not be required for the 2022-2023 school year.

## RECOMMENDATION

1. The Statements of Reduction in Force against all respondents listed in revised Exhibit 36, as described in Factual Finding 20, are dismissed and the Preliminary Notices of Layoff issued to these employees are rescinded. Final notice of layoff may not be provided to any of these employees.

2. The seniority date of Alexandria Liston is corrected to 8/11/2020 and the seniority date of Leah Sanchez corrected to 8/12/2020. Should it be determined that any employee with less seniority is being retained to render a service for which Liston or Sanchez is certificated and competent to teach, the Statements of Reduction in Force against respondents Alexandria Liston and Leah Sanchez will be dismissed and the Preliminary Notices of Layoff issued to them will be rescinded.

3. Notice may be given to the remaining respondents that their services will not be required for the 2022-2023 school year.

DATE: 04/29/2022

*Karen Reichmann*

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings