

BEFORE THE  
GOVERNING BOARD OF THE RANCHO SANTA FE SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force  
of Certain Certificated Employees of the  
Rancho Santa Fe School District  
Identified in Appendix A.

OAH No. 2019030657

**PROPOSED DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Rancho San Diego, California, on April 4, 2019.

Richard J. Currier and Kendall C. Swanson, Attorneys at Law, Currier & Hudson, APC, represented Rancho Santa Fe School ("District").

Richa Amar and Stephanie Joseph, Attorneys at Law, California Teachers Association, represented respondents Julie Green, Allison Munson, Elena Colvin and Andrea Grillot.

The remaining respondents identified in the attached Appendix A either did not request hearings, elected to not participate in this hearing, or withdrew their election to participate.

The record was left open until April 26, 2019, to allow the parties to submit closing briefs. Both parties submitted briefs, which have been made part of the hearing record. The matter was submitted on April 26, 2019.

**FACTUAL FINDINGS**

*Background and Jurisdiction*

1. On February 25, 2019, the Governing Board of the Rancho Santa Fe School District (Board) approved the "Resolution Reducing or Discontinuing Particular Kinds of Services for the 2019-2020 School Year Implementing Education Code Section 44955." The resolution directed the District Superintendent to initiate layoff procedures and give appropriate notices under the Education Code to certificated employees. This resolution stated that "no permanent employee will be terminated while any probationary employee, or

any other employee with less seniority, is retained to render service which said permanent employee is certificated and competent to render.”

The decision to reduce or discontinue a particular kind of service is a matter reserved to the district’s discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167, 178-179.) A school district’s decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

2. The Governing Board determined that it will be necessary to reduce or discontinue, by 13.45 FTE, the following services beginning the 2019-2020 school year:

<b><u>PKS</u></b>	<b><u>FTE</u></b>
Literacy Support Teacher	.52
Literacy Support Teacher	.52
Literacy Support Teacher	.52
Literacy Support Teacher	.68
Literacy Support Teacher	.68
Literacy Support Teacher	.68
K-5 Literacy Coach	1
K-5 Math Coach	1
Media Center Specialist	1
K-5 Art Teacher	.5
K-5 Classroom Teacher	3
3-5 Science Teacher	.5
1-5 Computer Science Teacher	.35
Physical Education Teacher	.65
Middle School Earth Science Teacher	1
Middle School English Language Arts	.5
Middle School Dance Teacher	.35

To determine which certificated employees, for tie breaking purposes, would be laid off the Board approved on February 25, 2019, “Resolution on Criteria to Determine the Order of Termination as Between Certificated Employees Who First Rendered Paid Service on the Same Date Implementing Education Code Section 44955, subdivision (b). The District did not apply these criteria. The District also did not adopt competency standards that would allow it to “skip” any of the respondents.

3. Based on the Board’s direction to reduce full time certificated employee positions, on February 27, 2019 Donna Tripi, Superintendent, Rancho Santa Fe School District, in her official capacity, utilizing a Credential and Seniority List of Permanent/Probationary certificated employees (seniority list) from February 8, 2019,

recommended to the Board that 17 certificated employees be given notices that their services would not be required for the 2019-2020 school year.<sup>1</sup>

4. The District timely served these employees with preliminary layoff notices pursuant to Education Code sections 44949 and 44955. All respondents were properly noticed of the date, time and location of the April 4, 2019, hearing.

Ten of these respondents timely filed Requests for Hearing with the District and the District in turn provided each of these employees with Notice of the District's Statement of Reduction in Force, including a copy of the District's Statement of Reduction in Force, relevant Government Code sections, Notice of Hearing, and Notice Participation form. The District advised each respondent that failure to request a hearing would waive their right to a hearing and they would not be able to contest the District's recommendation that their positions be reduced or eliminated. (Ed. Code, § 44949, subd. (b).)

Six respondents timely filed Notices of Participation. Two withdrew their Notices of Participation, including Brenda Carlson, who holds a .68 FTE position as a Literacy Support Teacher. The following four employees participated in this hearing and testified: Elena Colvin, Julie Green, Andrea Grillot, and Allison Munson.

The District met all prehearing jurisdictional requirements.

#### *Testimony of Superintendent Tripi*

5. Ms. Tripi testified that the reductions are necessary because of declining enrollment in the elementary school and that the District is not reducing services that it is required to provide. Regarding the science teacher reduction specifically, Ms. Tripi stated that all elementary school teachers can teach science at the elementary school level because elementary school science is not a "departmentalized" position that would prevent a senior teacher whose position is discontinued to transfer to a continuing position which he or she is certificated and competent to fill.

In a PowerPoint presentation she gave to teachers on March 14, 2019, entitled "Realign and Reset," Ms. Tripi explained the District's plans for the 2019-2020 school year in light of "declining enrollment" and "rising costs." With reference to science instruction specifically, Ms. Tripi described the plan for science instruction for the 2019-2020 school year as follows: "Plan to continue with a specialist at the lower grades, look at team model at upper elementary."

Ms. Tripi testified that that the District released all temporary teachers and took into account all positively assured attrition when it issued preliminary layoff notices. In determining the actual number of layoff notices to be delivered to its employees the District

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<sup>1</sup> Appendix A identifies 16 of these employees. As found in this decision, the preliminary notice of layoff issued to Ms. Colvin is rescinded.

properly considered all known attrition, resignations, and retirements. (*San Jose Teachers Association v. Allen, supra.*)

Ms. Tripi further stated that the District did not “over-notice” teachers for layoffs. She testified that the District reassigned an administrator back to the classroom which the District argued in its closing brief caused another teacher to receive a layoff notice. In their closing brief, respondents disputed this contention but did not point to anything in the record to counter it.

### *Testimony and Arguments of Teachers*

#### ELENA COLVIN

6. Elena Colvin holds a Single Subject - Biological Science credential and is a part-time permanent employee with a .40 FTE assignment. Ms. Colvin testified that she teaches 11 K-3 science classes a week, 19 periods a week, and she loves her work as a teacher.

Ms. Colvin does not understand why she is being laid off and she asks that the proposed notice be rescinded. She has worked at the District since August 23, 2005, and she would be willing to work full time next year if given that option. Ms. Colvin disagreed that she is less senior than other employees who are full-time employees. She also disagreed with Ms. Tripi’s testimony that science instruction in elementary school is not “departmentalized” and that to teach science at the elementary school level it is not necessary for a teacher to have a science credential.

7. In her Closing Brief Ms. Colvin asserts that the district improperly issued a layoff notice to her, and the district did not meet its burden to show the reduction was authorized and justified. More specifically, Ms. Colvin made the following arguments: first, the district is not proposing to eliminate her specifically itemized .4 FTE Science Teaching position; the board is proposing to eliminate a .5 FTE Science Teaching position. Also, the district is not “really” eliminating the position, and the science teaching position requires a credentialed science teacher per the District’s plan as detailed in Ms. Tripi’s March 14, 2019, PowerPoint presentation.

In its Reply Brief, the District argues that its layoff notice to Ms. Colvin is authorized and justified because a more senior part time employee, Brenda Carlson, is “bumping” Ms. Colvin. In the resolution, Ms. Carlson’s .68 FTE Literacy Support Position is identified for elimination. Ms. Carlson’s hire date is August 25, 2000, and she holds a Multi-Subject Teaching Credential. If the layoff notice to Ms. Colvin is affirmed, the District states that Ms. Carlson will be given the opportunity to “bump” into Ms. Colvin’s .4 FTE position as she has the seniority and competency to do so. The District noted in its argument that if the proposal to layoff Ms. Colvin is not affirmed, Ms. Carlson will be released.

The District argues further that, per Ms. Tripi's testimony, because District elementary school students will continue to have science instruction the District "was not required to list this position on the Governing Board's PKS Resolution because it is not being reduced or discontinued." This statement made no sense because the resolution identified a .5 FTE 3-5 Science Teaching Position for elimination, which, presumably, could encompass the .4 FTE Science Teaching Position held by Ms. Colvin.

Additionally, the District disputes Ms. Colvin's contention that science instruction is "departmentalized." The District asserts that "the Administrator's Assignment Manual" does not support her "departmentalization" position because it does not *require* a credentialed science teacher for instruction in the elementary school setting. Further, the District argued that it did not adopt a competency standard that would allow it to "skip" Ms. Colvin.

8. After considering the parties' arguments, it is found that the District failed to show that its proposed layoff notice to Ms. Colvin was justified.

Although the District correctly notes that its Administrator's Assignment Manual did not require a credentialed science teacher for instruction in the elementary school setting, the District elected for many years to have Ms. Colvin, who holds a single subject science credential, teach elementary school science. The District did not have a teacher without a single subject science credential teach science. For the 2019-2020 school year the District plans to "continue with a specialist" to teach science.<sup>2</sup> The evidence established that Ms. Colvin is a "specialist" who can teach science. The District did not explain how Ms. Carlson qualified as a "specialist" to justify "bumping" Ms. Colvin, and Ms. Carlson, as noted, did not participate in this hearing. The District's arguments that it did not adopt a competency standard to allow it to skip Ms. Carlson is not persuasive. It is also not necessary to address the "departmentalized" argument given the "specialist" finding.

#### ANDREA GRILLOT

9. Andrea Grillot is a Literacy Support Teacher, has worked at the District since August 31, 2009, and is a permanent .52 FTE. Ms. Grillot holds a Multiple Subject Credential - General and Single Subject English credential. Ms. Grillot testified that she has worked as a full-time teacher for the District in the past. As documented in a letter she wrote to the District Superintendent dated May 14, 2013, she elected to resign 50 percent of her position. Ms. Grillot disagreed that she should be laid off because she is not a full-time employee. She stated that, as a matter of fairness and due process, had she been told that she could lose her position with the District she would have elected to work full time.

Ms. Grillot seeks to "bump" into a full-time position and cites *Hildebrandt v. St. Helena School District*, 172 Cal. App. 4th 334 (2009) and *Ferner v. Harris* (1975) 45

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<sup>2</sup> At the hearing Ms. Tripi was given the opportunity to explain what she meant by "specialist" as referenced in her PowerPoint presentation. Ms. Tripi did not explain what she meant or why Ms. Colvin was not considered a "specialist."

Cal.App.3d 363 in support of her position. Neither case, however, stands for the proposition that a part time teacher may bump a junior full-time teacher.

In *Hilldebrandt*, the court addressed whether two-part time psychologists could require the school district to split the single full-time position held by a junior psychologist. (*Id.* at 343-344.) That court noted that it was not deciding whether either part time psychologist was entitled to the full-time psychologist position for the simple reason that that issue was not before the court. (*Id.* at 345.) After hearing evidence regarding the school's "programmatic" need to have a full-time psychologist, the court concluded that the District was not required, "in effect," to split the full-time psychologist position into two-part time positions. (*Ibid.* at 345-346.) In its analysis, the court emphasized that a district has broad discretion to define a service in terms of the hours required to perform the service. (*Id.*)

The court's decision in *Ferner* also does not advance Ms. Grillot's argument. In *Ferner*, a community college teacher held a full-time position and his position was reduced. After a full-time position opened, he sought reemployment to his pre-layoff full time status under his right of reemployment and the court found that he was entitled to reemployment based on his full-time pre-layoff status. (*Ferner, supra*, 45 Cal.App.3d at 369-370.) The facts involving the teacher in *Ferner* are distinguishable from Ms. Grillot's situation. Unlike the community college teacher in *Ferner*, Ms. Grillot cannot claim her pre-layoff status was as a full-time teacher.

In its Reply Brief, the District argues that Ms. Grillot is not entitled to "bump" a junior teacher. In support of its position, the District principally relies upon *Waldron v. Sulphur Springs Union School Dist.* (1979) 96 Cal. App.3d 503. That case involved a part time teacher with a .4 assignment. After a hearing, she was reemployed in a .2 service status. On her petition for a writ of mandate, the trial court ordered her employed full-time with the next vacancy. (*Id.* at pp. 504-505.) The court of appeal reversed and in so doing found that the teacher subject to layoff was entitled to "the same employment rights that she would have had if no layoff had intervened, but to no greater rights." (*Ibid.* at p. 505.) Accordingly, the teacher was entitled to her .4 pre-layoff assignment but not to a full-time position.

10. Consistent with these decisions, Ms. Grillot is not entitled to "bump" a junior full-time teacher; her argument to the contrary is not accepted.<sup>3</sup> Ms. Grillot's rights under

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<sup>3</sup> The decision in *Murray v. Sonoma County Office of Education* (1989) 208 Cal.App.3d 456 is also instructive on the issue of a part-time employee's right to a "bump" a junior employee. That court concluded that a school nurse who held a .60 FTE position was not entitled to reinstatement to a .16 FTE position held by a full-time nurse for one day of work at the school where the appellant nurse had worked. The court found that the .16 FTE as a "service" was one day of nursing per week, the Office of Education could use this "service" as it "saw fit," and the nurse was entitled to "the same" employment rights prior to the layoff but not "greater rights." (*Id.* at pp. 460-461, citing *Waldron v. Sulphur Springs Union School Dist., supra*, at p. 505, emphasis not included.)

Section 44955 apply only to the .52 FTE position she holds and not to a full-time FTE position.

ALLISON MUNSON

11. Allison Munson holds a Multiple Subject - General credential and holds a permanent 1 FTE assignment. She has worked at the District since August 19, 2015. She is a K-5 reading intervention teacher. Ms. Munson was assigned this position after she returned from maternity leave. She previously was a second-grade teacher. Ms. Munson requested this hearing for assurance that the District is following the law regarding its proposed layoffs.

In her Closing Brief, Ms. Munson asserts that only five of the six K-5 teachers should have received preliminary layoff notices and the notice to her should be rescinded. The District responded that Ms. Munson's position is incorrect and per Ms. Tripi's testimony the District did not over-notice one teacher.

Ms. Munson's assertion here is not accepted. Ms. Tripi testified that the District reassigned an administrator to the classroom which caused a classroom teacher to receive a preliminary layoff notice. Accordingly, the District did not over-notice K-5 teachers by one notice.

JULIE GREEN

12. Julie Green is a full-time education specialist and teaches physical education. She holds a Single Subject Physical Education credential. The District is proposing reducing her services from a 1 FTE assignment to a .35 FTE assignment and she wants to remain at a 1 FTE assignment. This action would, in effect, eliminate her as a District employee because she needs full-time employment. Ms. Green has 21 years of experience as a physical education teacher and wants the opportunity to be able to retire from the District.

Ms. Green challenges her proposed layoff because the District failed to provide sufficient evidence that the Board understood that when it approved the reduction of "Physical Education," it was also approving the reduction of "Health, Fitness, and Nutrition." Ms. Green characterized the "Heath, Fitness, and Nutrition" class as an "elective." The District disputed Ms. Green's contention that "Health, Fitness, and Nutrition" is an elective class. Ms. Tripi testified that it is a required class that students must take to fulfil their required physical education minutes required by the Education Code.

Ms. Green's argument is not persuasive. Courts have allowed school districts leeway in describing the particular kinds of services being reduced. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d at p. 638 [holding that "'classroom teaching'" is a particular kind of service at the elementary level which is subject to PKS reduction].) In this case, "Physical Education" is included in the "Heath, Fitness, and Nutrition" service and the Board is deemed to have understood this in its resolution when it identified "Physical Education" for reduction by .65 FTE.

### *Other Matters*

13. During their testimony the teachers expressed sincere concerns regarding the District's budgetary decisions in light of the District's reserve funds. As noted, the Board's decision regarding the budget and its allocation are properly within its discretion.

14. The evidence of record shows that no permanent employee will be terminated while any probationary employee, or any other employee with less seniority, is retained to render service which said permanent employee is certificated and competent to render.

15. No evidence was presented that the layoffs will reduce any of the District's offerings in Education Code mandated courses.

### LEGAL CONCLUSIONS

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

2. A district may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178.)

3. The district has identified the certificated employees who are providing the particular kinds of services that the board directed be reduced or discontinued. Because of the reduction of particular kinds of services, except for Elena Colvin, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2019-2020 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

#### *Cause Does Not Exist to Affirm the Preliminary Layoff Notice Issued to Elena Colvin*

4. Cause does not exist to affirm the preliminary layoff notice issued to Elena Colvin under Section 44955, subdivision (b). The evidence established that the District plans to have a specialist teach science and Ms. Colvin is certificated and competent to teach science as this specialist. No evidence established that a more senior employee was competent to teach science given the District's "specialist" designation.

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*Cause Exists to Reduce or Eliminate Particular Kinds of Services*

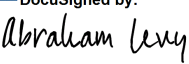
5. Cause exists to reduce or eliminate 13.45 FTE of particular kinds of services and to give notice to the remaining respondents that their services will be reduced or will not be required for the 2019-2020 school year because of the reduction or elimination of particular kinds of services. The services of no permanent employee shall be terminated while any other employee with less seniority is retained to render a service the permanent employee is certificated and competent to render.

ORDER

1. The preliminary layoff notice issued to Elena Colvin is rescinded. The District's Statement of Reduction in Force against Ms. Colvin is dismissed.

2. According to, and within the limits of, the Resolution identifying PKS for reduction or elimination by Full Time Equivalents, notices may be given to the remaining respondents identified in Appendix A that their services will be reduced or will not be required for the 2019-2020 school year.

DATED: May 2, 2019

DocuSigned by:  
  
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ABRAHAM M. LEVY  
Administrative Law Judge  
Office of Administrative Hearings

## Appendix A

1. HALEY CAMERON
2. BRENDA CARLSON
3. REBECCA CARP
4. JAMIE FONTAINE
5. MIRANDA FORD
6. NICOLE GERBARG
7. APRIL GOODSPEED
8. JULIE GREEN
9. ANDREA GRILLOT
10. KIMBERLEY KORNMAN
11. ALEXANDRA KURN
12. KIMBERLIE McCOWAN
13. ALLISON MUNSON
14. CAITLIN RHODES
15. ANNELIESE ROBERTS
16. KARINA SALMON