

**BEFORE THE
GOVERNING BOARD OF THE
SWEETWATER UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Reduction in Force Involving:

Certain Certificated Employees, Respondents

OAH No. 2020030202

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter telephonically on May 27 and 28, 2020, from San Diego, California. The hearing was originally scheduled to take place on April 14 to 16, 2020, at the Sweetwater Union High School District (District). In an order dated April 10, 2020, on the joint motion of the parties, the hearing was continued and a prehearing conference took place on May 11, 2020, for further scheduling. After the prehearing conference, in an order dated May 15, 2020, the hearing was scheduled to take place on May 27 to 29, 2020, as a telephonic hearing in light of the Governor's proclamation of a State of Emergency and Executive Orders N-25-20, N-33-20, and N-63-20 arising out of the COVID-19 pandemic.

Mark Bresee, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Roma, represented the Sweetwater Union High School District (District).

Fern Steiner, Attorney at Law, Smith Steiner Vanderpool, APC, represented certain respondents ("represented respondents").

Elena Bolanos, Roman Coronado, Sean Hanashiro, Michelle Ivers, Thea Means, John Stubbs, Stephanie Rabelo, David Reyes Cornejo, Elizabeth Tran, Saul Yescas, and Alfredo Zamora, respondents, represented themselves.

By agreements of the parties, in lieu of opening and closing statements, the parties were given the opportunity to submit closing briefs by 5:00 p.m. on May 29, 2020. District and represented respondents submitted closing briefs on May 29, 2020, which have been marked and made part of the record. On May 29, 2020, the matter was submitted.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 24, 2020, Karen Janney, District Superintendent, recommended to the District Board of Education ("Board") that it adopt Resolution No. 4658, which authorized a reduction in particular kinds of certificated services (PKS) for the 2020-2021 school year and directed that respondents be given notice that their services will not be required for the 2020-2021 school year.

2. On February 24, 2020, the Board adopted Resolution No. 4658. The services identified in Resolution No. 4658 are "particular kinds of services" within the meaning of Education Code section 44955(b).

3. In its resolution, the Board identified a reduction in PKS between this year and next year equal to 237.71 full-time equivalents (FTEs). Subsequently, the number of FTEs proposed for reduction was reduced to a total of 210.13 FTEs. This number has been further reduced to 209.13 FTEs based on the District's decision to

retain one respondent. (See Appendix A below for list of respondents.) According to the following chart, the District has identified the following PKS for reduction both as identified in its February resolution and currently:

PKS FTE Reduction in February Resolution	Current Reduction
Art 4.00	4.00
Biology 2.00	1.60
Chemistry 3.00	2.80
Counselor - Secondary School 7.40	7.40
Counselor - Learning Center 12.00	12.00
Counselor on Special Assignment 1.00	1.00
CTE - Business & Finance 0.50	0.50
CTE - Arts, Media & Entertainment 0.70	0.74
CTE - Engineering & Architecture 0.40	0.40
English 28.00	28.00
General Science 18.00	17.60
Health 1.00	0.80
Japanese 0.40	0.40
Librarian 23.00	21.00
Math 27.00	27.00
Physical Education 10.00	10.00
Social Science 25.00	25.00
Spanish 11.00	10.80
Teacher - Learning Center 32.00	22.00
Teacher on Special Assignment - After School 1.20	1.00
Teacher on Special Assignment - AVID 0.80	0.80
Teacher on Special Assignment - Computer Science 0.40	0.00
Teacher on Special Assignment - CSI & Equity/Culture 1.20	1.00
Teacher on Special Assignment - CTE 2.38	0.89
Teacher on Special Assignment - ELA 1.20	1.00
Teacher on Special Assignment - ELD 1.20	1.00
Teacher on Special Assignment - Induction 2.40	2.00
Teacher on Special Assignment - Math 1.20	1.00
Teacher on Special Assignment - PE & Health 0.40	0.40
Teacher on Special Assignment - Restorative Practices 2.40	2.00

Teacher on Special Assignment - Science 0.60	0.00
Teacher on Special Assignment - Social Science 0.53	0.40
Teacher on Special Assignment - World Language 0.40	0.40
Resource Teacher Athletics - Middle School 1.20	1.00
Resource Teacher Induction 1.80	1.20
Management - Assistant Principal 8.00	0.00
Management - Coordinator 1.00	1.00
Management - Program Manager 3.00	2.00
TOTAL 237.71 (per February Resolution)	210.13 (Current Reduction)
Non-Respondent Reductions	36.24
TOTAL (with Non-Respondent Reductions):	173.89

4. As noted, the District withdrew the 1.0 FTE in General Science PKS from the layoff, which reduced the total FTEs for reduction to 209.31 and includes the 36.24 FTEs non-respondents hold. (District's Closing Brief, p. 1, fn. 1, "Exhibit A" attached to District's brief.) This 1.0 FTE is held by respondent Ebber Nava. After correcting Mr. Nava's seniority date the District decided to retain him. Thus, the total FTE reductions, after non-respondent reductions are factored, are 172.89. (*Ibid.*)

5. The resolution references the competency criteria under Education Code sections 44955, 44956, and 44957, for the purposes of bumping and reemployment. It also details the tie-breaking criteria for the order of termination to be applied between employees sharing the first date of paid probationary service.

6. On or before March 15, 2020, all respondents were served with a Notice of Recommendation Not to Reemploy Certificated Employees, which included a notice letter, a copy of Resolution No. 4658, a copy of Education Code sections 44949 and 44955, and a request for hearing form.

After receiving the Notice of Recommendation Not to Reemploy Certificated Employees, the respondents identified in Appendix A timely requested a hearing, in writing, to determine if there is cause for not reemploying them for the ensuing year.

7. On or about March 27, 2020, the District served all respondents with a Cover letter; a Notice of District Statement of Reduction in Force; a District Statement of Reduction in Force; copies of Education Code sections 44949 and 44955; copies of Government Code sections 11506, 11507.5, 11507.6, 11507.7 and 11520; and a copy of Office of Administrative Hearings General Order, March 19, 2020.

8. As noted, respondents who requested a hearing and who are subject to the reduction in force action hold a total of 172.89 FTEs.

9. All jurisdictional requirements under Education Code sections 44949 and 44955 have been met in order that an evidentiary hearing may commence to determine if there is cause for not reemploying the respondents for the 2020-2021 school year.

Testimony of District Witnesses and Evidence

10. The District called three witnesses: Jenny Salkeld, Ph.D., Milena Aubry, and Thomas Glover, Ph.D.

11. Dr. Salkeld is the District's Chief Financial Officer and has held this position since August 24, 2018. She oversees the District's restricted and unrestricted budgets and other funds and manages the day-to-day operations including payroll.

12. Dr. Salkeld described in detail the District's dire financial projected fiscal situation from 2016 through the present. As documented in three interim budget status reports between March 9, 2020 and May 11, 2020, she presented to the Board,

the District projects a budget shortfall of \$31,730,000 for the 2020-2021 school year as of March 9, 2020. (Exhibit 2, page 221.)¹

This budget shortfall is due to a variety of factors: declining enrollment, increased pension contributions, increased expenses of employees moving on salary schedules, and increases in the District's expenses. Dr. Salkeld stressed that declining enrollment is at the top of the list of reasons for the District's financial situation. Since 2014, 40,000 fewer students are enrolled in the District. To highlight the degree of the District's declining enrollment, she noted that recently the Chula Vista school district expanded its program with the result that it is anticipated that even fewer students will be enrolling in the District.

The District's financial predicament is not recent. From the prior fiscal year, the District has carried over a \$3.5 million deficit. The District also has been unable to maintain the budget reserve required for economic uncertainty. As a result, the District is "negatively certified," and has to submit reports to a financial advisor in the San Diego County Office of Education.

13. Dr. Salkeld also stressed, as she reported to the Board in the May 11, 2020, third interim report, the District's financial situation has "gotten very much worse" due to revisions in the Governor's proposed budget relating to reductions in the cost of living increase (COLA) that is factored into the local control funding

¹ This represents an increase from the \$30,000,000 projected deficit, as of March 9, 2020, due to updated student enrollment numbers. (Exhibit 2, page 221.)

formula. The proposed lowering of the COLA will result in an increase in the budget deficit.

14. Due to the District's dire financial predicament, Dr. Salkeld believes that the District's financial situation requires that layoffs be initiated and they are necessary for the welfare of the District's students and the District.

15. Ms. Aubry is the District's Human Resources Director, a position she has held since 2012. Related to the District's decision to reduce PKS, Ms. Aubry prepared a number of documents. These documents are identified as follows: a "Certificated Seniority List" (Exhibit 5), "Tie Breaker Documents" (Exhibit 6) relating to employees with the July 18, 2016, seniority date, a "Reemployment Tie Breaks" (Exhibit 7) for employees with seniority dates other than July 18, 2016, a "Layoff Analysis" report (Exhibit 8), "Bumping Charts for PKS Areas" (Exhibit 9), and a list of employees proposed to receive final notice of layoff reduction. (Exhibit 10.)

16. Respondents do not challenge the District's seniority dates, the District's application of the tie-breaking criteria identified in the February 25, 2020, resolution, or the District's layoff analysis in general, except in one instance regarding the District's bumping of Mr. Nava, whose matter will be discussed below. For the most part, represented respondents broadly challenge the District's decision to reduce specific categories of PKS. As detailed in represented respondents' closing brief, they question the District's decision to eliminate all District librarian positions, a number of

counselors, and a .40 FTE reduction for a "Teacher on Special Assignment Induction" and .60 FTE reduction for a Resource Teacher Induction. (Exhibit 4, page 252.)²

17. Dr. Glover is the Assistant Superintendent for Human Resources for the District.

Dr. Glover stated that he was "involved in determining" the reduction in PKS as documented in the list identified as "Exhibit A," which the Board incorporated in its resolution. The initial list identified 237.71 FTEs in PKS for reduction. For purposes of issues respondents raised related to the categories of PKS in this proceeding, the District, initially, proposed for reduction of all District librarians, 32 FTEs for Learning Center Teachers, 20.40 FTE of counselors, and 1.80 FTE for Resource Teacher Induction and 2.40 FTE for a Teacher on Special Assignment Induction.

18. The number of FTEs identified for reduction has been reduced from 237.71 FTEs to 210.13 FTEs. (Exhibit 4, page 252.)³ This reduction in FTEs identified for reduction was due to multiple teachers from the District's Learning Center with special education credentials being retained which reduced the FTEs proposed for elimination from 32 to 22. In addition, two librarians with special education credentials are also being retained. Also, eight FTEs under the management assistant principal PKS were reduced to zero. Dr. Glover stated the eight FTEs Assistant Principal PKS are being

² "Induction" refers to the support given to new teachers to help them develop their professional skills.

³ As discussed earlier, the total FTEs to be reduced are 209.13. After the hearing the District withdrew its reduction in force action against Mr. Nava and has retained him. Mr. Nava holds a 1.0 FTE in the General Science PKS category.

retained for the position for “safety reasons.” He explained that the distance learning caused by the COVID-19 pandemic requires that, while students distance learn, assistant principals be at school sites.

19. Dr. Glover was asked, on cross-examination, who would provide librarian services next year. He answered that teachers will bring their students to the libraries and supervise them. Principals and vice-principals, as a “management function,” will do some of the librarian’s tasks, including preparing “The Williams Report.”⁴ He added that principals and library media technicians can collect library fines. He does not know who will teach digital literacy or who will select books for the libraries.

20. Regarding the District’s plan to close its Learning Centers⁵ and the impact these closings will have on students who benefit from its programs, Dr. Glover said that students at the Learning Center can choose to return to the campus, continue through the “Options” online learning program or the District’s Independent Study program.

21. Dr. Glover also addressed the District’s plans with respect to the .40 Teacher on Special Assignment (TOSA) Induction PKS and .60 Resource Teacher Induction PKS positions. In the modified layoff list, the District plans to retain both of

⁴ Dr. Glover was referring to the “Williams Reporting for School Accountability” report, which is a report that the District is required to complete regarding the library services schools provide. It is discussed in more detail later in this decision.

⁵ The District’s Learning Centers provide students with an alternative way to meet their educational goals through independent and one-on-one self-paced education.

these positions. Dr. Glover stated that the District does not plan to have induction services. But, in anticipation of the layoff, the District “plans” on reassigning the persons performing induction services to teaching assignments. The persons holding these positions have not been subject to a bumping analysis.

Corrections to Exhibit 8 by Stipulation of the Parties

22. Before it completed its case, the District made the following corrections to the record, which respondents did not oppose, and which are summarized as follows:⁶

First, at Exhibit 8, page 460, row 362, Mr. Nava’s seniority date was changed to July 22, 2015 from July 18, 2016.

At page 458 of Exhibit 8, Row 316, under the “Status” column, “Layoff: Learning Center Teacher – Bumped by Ana Munoz” is changed to read: “Layoff: Learning Center Teacher – Bumped by Sylvia McBride.”

At page 460 of Row 354, also in the “Status” column, “Layoff: Librarian – Bumped by Sylvia McBride” is changed to read “Layoff Learning Center Teacher bumped by Ana Munoz.”

⁶ At the start of the hearing, the District withdrew its reduction in force action against two respondents, Janette Gomez-Lamadrid and Karen Saiki. The District further did not oppose Michelle Ivers and Elizabeth Tran appearing in this matter as respondents who timely asked to participate in this matter. These changes are reflected in Appendix A below.

At Exhibit 8, page 507, Row 1125, again under the "Status" column, "Librarian: Bumps Daniel Arreola" is stricken and replaced with "Librarian: Bumps Crystal Scott."

Furthermore, at Exhibit 8, page 565, Row 2078, "Learning Center Teacher: Bumps Crystal Scott" is changed to "Learning Center Teacher: Bumps Daniel Arreola."

The parties agreed that these corrections do not change the reduction in force action.

Testimony of Respondents

23. The following respondents testified: Janice Gilmore-See, Barbara Chappell-Brown, Misael Virgen, Graciela Medina, Jennifer Schafran, Kristina Lopez, Stephanie Rabelo, John Stubbs, and Elena Bolanos. In addition, in lieu of his testimony, Pedro Fuentez, Jr. submitted a letter, which was marked and made part of the record.

24. Ms. Rabelo has been a high school English and Social Studies teacher since 2007. She has been employed at Sweetwater Union High School District for the last two years with a seniority date of February 27, 2018. The District proposes laying her off under the .80 FTE in Social Studies PKS category. (Exhibit 8, page 447.) Ms. Rabelo holds a single subject credential in English and Social Science and supplementary authorizations in Psychology and Comparative Political Systems and International Relations. While at the District, Ms. Rabelo testified she has sometimes been assigned teaching assignments using both her single subject credentials for different English and Social Science classes. Ms. Rabelo supplemented her testimony with an opening statement and documents, which have been admitted and considered. (Rabelo Exhibits A to O.)

Ms. Rabelo asks that her position on the seniority list be changed from #147 to #358. As she put it in her opening brief, she asks for this change because she has the “ability to uniquely fulfill the District’s need for assigning courses to appropriately credentialed teachers.” (Ms. Rabelo’s Opening Statement, page 903 [capitalizations removed from original].) In essence, Ms. Rabelo asks that the District deviate from the layoff list because she holds multiple single subject credentials and, because of her multiple credentials, she is more competent than more senior teachers who hold fewer credentials or who have preliminary credentials. In support of her argument, she highlighted, using the District’s Layoff Analysis report, numerous teachers with preliminary English and Social Science credentials who have been proposed for layoff. (Rabelo Exhibit G.) She further highlighted, using the District’s seniority list, teachers with clear English and Social Science credentials who are more senior than she is. Although her point in highlighting these teachers was not perfectly clear, Ms. Rabelo appeared to suggest that her experience and credentials should allow her to be placed higher on the seniority list than these teachers. (Rabelo Exhibit F.)

As the District and represented respondents noted in their closing briefs, Ms. Rabelo is asking that the District be compelled to “skip” her above more senior teachers pursuant to Education Code section 44955, subdivision (d)(1), based on her training and experience and, more specifically, because she holds clear single subject credentials in English and Social Science and has had teaching assignments in both areas.

Ms. Rabelo’s argument is not persuasive. Section 44955, subdivision (d)(1), gives such “skipping” authority to the District, as the District correctly stated in its closing brief. The authority to skip over more senior teachers is an exception to the general rule that the services of a senior employee must be retained over the services of more

junior employees. This exception involves “skipping” a junior employee and retaining the junior employee’s unique and necessary services over the services of a more senior employee who does not have special training and/or experience. (*Bledsoe v. Biggs* (2008) 170 Cal.App.4th 127, 138 and fn. 8.)

In this matter, the District did not find it needed to use Ms. Rabelo’s specialized skills and education as a program requirement and thus retain her by skipping her over more senior teachers. Within the scope of this record, thus, it is not proper to question the District’s decision to not exercise its authority to allow Ms. Rabelo to skip over more senior employees. Presumably, the District knew its program requirements and made budgetary decisions consistent with these requirements. At any rate, the District’s election to not make such an assessment does not appear arbitrary or capricious, to the extent this is a feature of Ms. Rabelo’s argument. The District also elected not to exercise its “skipping” authority for numerous other teachers with Ms. Rabelo’s same single subject credentials who also have been identified for the layoff. (Exhibit 9, page 583.) A number of these teachers are more senior than Ms. Rabelo.

25. Ms. Chappell-Brown is employed as a librarian at the District and has a seniority date of July 18, 2016. She holds a 1.0 FTE position, which the District has proposed for elimination along with all librarians. She holds a clear credential as a “Teacher Librarian Services”.

Ms. Chappell-Brown has a master’s degree in library science. She is “regional leader” for the California School Library Association. She stressed the role librarians have in promoting literacy, collaborating with teachers to complement their lesson plans, and helping ensure that students have access to digital resources. Ms. Chappell-Brown cited this as especially important given the prevalence of distance learning due to the COVID-19 pandemic.

26. Ms. Lopez is also a librarian at the District. She has a seniority date of September 21, 2009, and she holds a clear credential in library media services.

Ms. Lopez stressed the important role librarians have in the schools where they are assigned. Only librarians, Ms. Lopez stated, can complete the mandatory "Williams Reporting for School Accountability," a report that is required to ensure that all students are provided with sufficient instructional materials. They collaborate with administrators on master calendars and conduct text book analyses. Librarians are experts in teaching curricula; they make sure library collections are in compliance with the curricula and they support the curricula. Librarians make sure there are primary resources, and library books are cataloged.

27. Ms. Gilmore-See holds a 1.0 FTE PKS as a librarian at Chula Vista High School (CVHS) and holds a clear credential as a "Teacher Librarian Services". She has a seniority date of April 23, 2018. Ms. Gilmore-See took particular issue with the District's decision to have library technicians and assistant principals perform the duties of certificated librarians for the next budget year. To Ms. Gilmore-See, this would mean they would be taking over duties only librarians can perform. These duties include preparing reports, including the above-mentioned "Williams" report, inventory reports, student fine reports, reports regarding different databases, and also looking at the master calendars to determine how many texts are needed. Also, librarians are required to monitor student behavior while they are in the library.

28. Mr. Stubbs holds a clear credential in Social Science and has a seniority date of August 7, 2017. Mr. Stubbs supplemented his testimony with a statement ("Exhibit 1-John Stubbs-Unrepresented Respondent", pages 662-665), which was received into evidence.

Mr. Stubbs graduated from the District and would like to return to teach at the District. He holds no ill-will against anyone from the District and does not question the right of the District to layoff teachers, although he wonders if the District is in fact putting students first by its reduction in force action. He asked that consideration be given to the current stressful employment environment, and he is concerned what the reduction in force will do to students and teachers. Mr. Stubbs further questioned the accuracy of the seniority list, although he did not question the accuracy of his seniority date, and it was unclear what "inaccuracies" in the seniority list he was alleging. He wondered why it is not possible to consider the merits of teachers, as a "metric" for continued employment. Mr. Stubbs stated that he was not given enough time to prepare for the matter because the full seniority list was not released to him until recently. He did not detail how he was prejudiced or make any further argument in this regard.

29. Ms. Bolanos holds clear credentials in Foundational-Level Math and Bilingual, Cross-Cultural, Language and Academic Development (BCLAD), and a Spanish and Reading Certificate. In addition to holding a Clear Multiple Subject credential, Ms. Bolanos holds a Subject Teaching Credential. She has 20 years of math teaching experience.

Ms. Bolanos has a seniority date of September 17, 2018. Her current assignment is to teach Integrated Math-IB at CVHS. She is proposed for layoff as a 1.0 FTE under the math PKS category. In addition to her testimony Ms. Bolanos submitted a statement, which was submitted into the record and has been considered. (Page 660 of Unrepresented Respondents Exhibits.)

Ms. Bolanos believes her work as a bilingual math teacher is vital because she works with at-risk/high-need students. Over the two years she has taught at CVHS, she

has developed a rapport with students who lacked an interest in learning math fundamentals and now have moved forward in their high school achievements.

30. Ms. Virgen holds preliminary credentials in Social Science and English Learner Authorization (ELAS), and in Career Technical Education (CTE)-Arts, Media and Entertainment. She has a seniority date of January 16, 2019. Her .56 FTE TOSA-CTE PKS position is being bumped by Ricardo Cisneros. Mr. Cisneros has a seniority date of August 29, 2005. Ms. Virgen did not challenge Mr. Cisneros's ability to bump her.

Ms. Virgen stated that she wanted to express her disagreement with the District's budgetary decision.

31. Ms. Medina holds a Clear Pupil Personnel Services (PPS) credential in School Counseling and has a seniority date of October 6, 2014. She has a .60 FTE assignment. Her .40 FTE position as a Secondary School Counselor is proposed for elimination and her .20 FTE appears to be bumped by employee "Tran." According to the District's seniority list, this person appears to be "Tich Tran", who has a seniority date of August 30, 2007. (Exhibit 5, pages 328 and 473; Exhibit 9, pages 576 and 577.) Ms. Medina did not raise an objection to the District's bumping analysis.

In her testimony Ms. Medina expressed concern that the welfare of students could be affected without counselors available to them, particularly due to the stress of isolation.

32. Ms. Schafran teaches accelerated English and English in a 1.0 FTE position. She holds clear credentials in Social Science and English. Ms. Schafran has a seniority date of July 19, 2016. She is proposed for layoff under the TOSA-ELD category. (Exhibit 9, 607.) She is being bumped by Dorothea Charles Dickey. (Exhibit 5,

page 459.) Ms. Dickey also has clear credentials in Social Science and English and has a seniority date of August 30, 2005. (Exhibit 8, page 514.)

Ms. Schafran stated that she has been teaching for 10 years and this is the seventh time she has been laid-off. She noted that per the District's website, the District is advertising for teaching positions through the "EdJoin" education job positing website, for the 2020-2021 school year, including for her position.

33. In addition to the testimony of these teachers, Mr. Fuentez submitted a letter which was submitted into the record. (Exhibit C.) Mr. Fuentez holds a clear credential in Social Science and has a supplemental BCLAD certification. Mr. Fuentez is a resource teacher in Social Science at CVHS where he has taught the last four years and holds a 1.0 FTE position. He has a seniority date of October 4, 2016. He is being laid-off under the 1.0 FTE Social Science PKS category. At CVHS he stated he works as a teacher on temporary assignment (TOSA) as an attendance coordinator.

Mr. Fuentez stressed his ability to teach courses in English and Spanish and his efforts to get students "back on track" so that they can graduate. He noted he is the only teacher who teaches in a bilingual setting and does the TOSA attendance. He further noted he has made over 100 home visits every year for the last four years as attendance coordinator. As a result of his efforts the attendance rate at CVHS increased from 88 percent four years ago to 96.7 percent. CVHS's graduation rate has also increased from 86 percent four years ago to 91 percent today.

34 These teachers are recognized as dedicated professionals who have committed themselves to the profession of teaching and education for the betterment of District students and the District as a whole. Their frustration with the District's budgetary situation and consequent reduction in force action is understandable.

Represented Respondents' Arguments and Evaluation

35. Represented respondents in their closing brief raised several arguments concerning the District's proposed reduction in force action. These arguments have been considered and are addressed in turn as follows:

36. Respondents argue, with respect to the decision to propose for layoff all librarians, that the District cannot take this action consistent with the Education Code and relevant court decisions. Citing *Chambers v. Board of Trustees* (1940) 38 Cal.App.2d 561, respondents argue that the District cannot eliminate all librarian positions while it continues to provide the identical kind of service and positions held by the terminated librarians. (Post-Hearing Brief of Certain Respondents, p. 6, citing *Chambers v. Board of Trustees, supra*, 38 Cal.App.2d 561, 566.) While recognizing the District may choose to continue a PKS in a different manner, the duties of a credentialed librarian require that these duties only be performed by librarians. The District, as it stated in its closing brief, argues that there is no statutory requirement that the District employ librarians. (District's Closing Brief, at pp. 8 to 9, citing *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, at p. 639 citing *Campbell Elementary Teachers Assn. Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 811.) The District, further, disputes respondents' contention that the District plans to continue library services in the "identical" manner.

37. Respondents' argument that the District's plan to eliminate all librarian positions violates the Education Code is rejected. As the District correctly noted, the District is not required to employ librarians, and as long as the District is not offering the same services performed by the terminated employees, it may eliminate all librarian positions. (*Campbell Elementary Teachers Assn. Inc., supra*, 76 Cal.App.3d 796, at pp. 881-812.) And, contrary to respondents' claim, the District does not plan to offer

the identical services certificated librarians perform, per Dr. Glover's testimony. The District plans to have teachers and assistant principals supervise students when they are brought to the libraries, and principals will perform required reports per their management duties. Principals and library media personnel will collect fines.

38. Respondents make a similar argument against the District's plan to reduce counselors and teachers associated with the District's Learning Center. The evidence does not support respondents' contention that the District plans to offer the identical services the terminated employees provide. Dr. Glover testified that students at the Learning Center can choose to return to the campus, continue through the Options online learning program, or participate in independent study.

39. Respondents also argue that the District failed to make assignments and reassignments per Education Code section 44955, subdivision (c). This section requires districts to "make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render."

40. Respondents first assert here that the District's failure to assign or reassign the .40 TOSA induction PKS and .60 Resource Teacher Induction PKS within the layoff process violates Education Code section 44955, subdivision (c).

Respondents argue that the District must reassign these positions within this layoff process in order to comply with Education Code section 44955. Citing the Court of Appeal's decision in *Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567, respondents state, "If the District were seeking to deviate from seniority to retain a teacher in a specific course, the District must show that the junior teachers being retained will actually be employed in the specific course requiring the special training

and experience before they may be given preference over more senior teachers lacking that special training.” (Post-Hearing Brief of Certain Respondents, p. 8.) The *Alexander* court identified the principle that a district should follow per Education Code section 44955 as follows: “Upon determining a need for a reduction in the number of permanent employees, a school district is required to comply with the lay-off procedures enumerated in section 44955.” (*Alexander v. Board of Trustees, supra*, 139 Cal.App.3d at p. 570.)

41. Respondents are correct that the District is not applying the proper criteria under Education Code section 44955 and is operating outside the layoff process for both PKS categories. Dr. Glover, in his testimony, said as much. He stated that the District is reserving the teaching assignments for both the .40 TOSA Induction PKS and .60 Resource Teacher Induction PKS categories until sometime in the future. Because the District is holding off on making assignments or reassignments under these two PKS categories, the District is not following the steps under Education Code section 44955 for these two categories. As a result, the District may impermissibly deviate from the seniority list.

42. To correct this violation of Education Code section 44955, the District will be required to follow the layoff process under that section for both PKS categories. Within two weeks of the adoption of this decision, the District will identify any employee or employees designated for assignment or reassignment under both PKS categories based on the seniority list and, as needed, the District will perform the appropriate bumping analysis and issue any required notices per Section 44955. If necessary, after it performs this analysis, the District will modify the list of employees designated to be laid-off.

43. Respondents further assert the District violated Education Code section 44955 by its decision to layoff Mr. Nava. The District does not oppose respondents' request that the reduction in force action against him be dismissed due to the revision to his seniority date and that he be retained. In its closing brief, the District withdrew its action against Mr. Nava, based on this revision of his seniority date, and has now decided to retain him. ("Exhibit B" attached to District's Closing Brief.) The District, further, in its brief reduced by 1.0 FTE the total FTEs to be reduced to 172.89 FTEs based on the District's retention of Mr. Nava due to the revision in his seniority date. (District's Brief, page 1, fn. 1.)

44. Except as discussed above, the District's decision to dismiss teachers was based solely on the welfare of the District and its students and, also, except as noted, no respondent is being terminated while any junior employee is being improperly retained.

Parties' Arguments

45. The District, in its closing brief, asked that its decision to layoff the identified teachers be affirmed. The District selected the appropriate employees to be laid-off considering their seniority, assignment, and credentials and the District's decision is necessary.

46. Represented respondents, in their closing brief, in addition to the arguments discussed above, asserted that the District's massive layoff is not in the best interest of the students and does not meet their needs. Further, represented respondents questioned the District's assertion that layoffs are necessary given that, as Ms. Schafran testified, the District is advertising to fill teaching positions, including the position Ms. Schafran holds. Represented respondents hope that the District will

acknowledge that no one could be hired to be a counselor or to teach a subject in which there are teachers or counselors on the layoff recall list.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections were provided as required. A district may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) School districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.) A school district's decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

The District has the burden of proof by a preponderance of the evidence in this matter to show that its decision to reduce or discontinue PKS complied with the Education Code.

2. Education Code section 44955, subdivision (b), provides, in pertinent part that, "the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less

seniority, is retained to render a service which said permanent employee is certificated and competent to render.”

3. Education Code section 44955, subdivision (c), provides that:

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee’s major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

Cause Does Not Exist to Delay Assigning or Reassigning the TOSA and Resource Teacher Induction PKS

4. Cause does not exist to affirm the District’s decision to delay assigning or reassigning the .40 TOSA induction PKS and .60 Resource Teacher Induction PKS positions. The District’s decision violates the Education Code section 44955 mandate that the District operate within the layoff process for both PKS categories and “make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.” (Ed. Code, § 44955, subd. (c).) By delaying the assignment or reassignment of both PKS categories until sometime in the future, the District may deviate from the seniority list

it is required to follow. To ensure that this does not happen, within two weeks of the adoption of this decision, the District will assign or reassign any employees under the .40 TOSA induction PKS and .60 Resource Teacher Induction PKS and perform any required bumping, or other analysis, that may be necessary for the District to perform under the Education Code section 44955 criteria. If the assignment or reassignment of both PKS categories requires modification of the employees designated to be laid-off as identified in Appendix A, the District will modify this list accordingly, and as appropriate, provide affected employees with required notices.

Cause Exists to Affirm the Layoff Notices Issued to the Respondents and the Other Teachers Identified in Appendix A

5. Cause exists to affirm the layoff notices issued to the teachers identified in Appendix A below whose services are proposed for reduction or discontinuance per the District's resolution. A preponderance of the evidence sustained the District's statements of reduction in force served on respondents concerning the PKS that will not be required. The District's action to reduce or discontinue particular kinds of services relates solely to the welfare of the District's schools and the pupils thereof within the meaning of Education Code sections 44949 and 44955.

ORDER

According to, and within the limits of, Resolution No. 4658 identifying PKS for reduction or elimination by Full-Time Equivalents, notices may be given to the respondents identified in Appendix A that their services will be reduced or will not be required for the 2020-2021 school year.

Within two weeks of the adoption of this decision the District will assign or reassign the .40 TOSA induction PKS and .60 Resource Teacher Induction PKS positions consistent with the criteria under Section 44955. As appropriate, the District may modify the list of employees designated to be laid-off who are identified in Appendix A and provide employees impacted by any modification of this list with required notices.

DATE: June 16, 2020

DocuSigned by:
Abraham M. Levy
C84194237D2243C...

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings

List of All Employees Proposed to Receive Final Notice of Layoff

Appendix A

LAST	FIRST	RESP	PKS-FTE RED
Agosto	Andrea	X	1.00
Aguilar	Steven	X	1.00
Aguilar Jr	Rigoberto	X	0.80
Ainsworth	Sage	X	1.00
Alaama	Erica	X	1.00
Aleman III	George	X	1.00
Alexio	Taylor		1.00
Alfonso	Carolina		1.00
Althof	Jennifer	X	1.00
Alvarado	Giovanna	X	1.00
Alzate	Hunter	X	1.00
Angood	Trevor	X	1.00
Apodaca	Alsacia	X	1.00
Arellano	Kristopher		1.00
Arreola	Daniel	X	1.00
Arroyo	Jose	X	1.00
Atchason	Kyra	X	1.00
Avalos	Mariel	X	1.00
Balbaneda	Stephanie	X	1.00
Ballez	Anthony	X	0.80
Banuelos	Carolina	X	1.00
Barron	Liliana	X	1.00
Barry	Adam	X	1.00
Bedoya	Irasema	X	0.80
Bedoya	Jessica	X	1.00
Beltrano	Matthew	X	1.00
Bena	Alicia	X	1.00
Bendah	Golda		1.00
Berromilla	Priscilla	X	1.00
Bolanos	Elena	X	1.00
Bonner	Jennifer	X	1.00
Borquez	Brenda	X	0.80
Bradshaw	Hank		1.00
Briney	Michael	X	1.00
Bringas	Sonia	X	1.00
Bruan	Janel	X	1.00
Calantoc	Mario		1.00
Cardenas	Jisselle		0.15
Carrasco	Susano	X	1.00
Castellanos	Llacneli	X	1.00
Chappell-Brown	Barbara	X	1.00
Chranowski	Jennifer	X	1.00
Clark	Morgan	X	1.00
Collins	Candace		1.00
Conner	Alexander	X	1.00

LAST	FIRST	RESP	PKS-FTE RED
Contreras	Alec		0.80
Cooke	Andrea	X	1.00
Coronado	Ramon	X	1.00
Cortez Guzman	Daisy	X	1.00
Croese	Jacob	X	1.00
Cruz	Christopher	X	1.00
Cuellar	Anahi	X	1.00
Cueva	Jannet	X	1.00
Cuevas	Arturo	X	1.00
Daily	Ashley		1.00
Daniels	Erika	X	1.00
Dare-Engstrom	Janine	X	1.00
Davis	Jessica	X	1.00
Davis	Alexandra	X	1.00
De Donato	Eric		1.00
De Leon Pardini	Rebeca	X	1.00
Delgado	Dorian		1.00
Dukerschein	Jessica	X	1.00
Dye	Joshua	X	1.00
Echeverria	Bianca	X	1.00
Ehlert Cash	Antje	X	1.00
Einfalt	Kaylynn		1.00
Ellevold	Amy	X	0.80
Ereno	Kristen	X	1.00
Esteves Manzo	Heidy	X	1.00
Exum	Steven		0.80
Flores	Elaine	X	1.00
Fojtik	Erica	X	1.00
Fox	Yurani		1.00
Fredricksen	Amy	X	1.00
Freeman	Jordan	X	0.80
Fuentez Jr	Pedro	X	1.00
Gallegos	Marie	X	0.40
Gampel	Scott	X	1.00
Garcia Jr	Marco	X	1.00
Gautsche	Julie	X	1.00
Gianola	Francis	X	0.40
Gilles	Stephanie		1.00
Gilmore See	Janice	X	1.00
Glasco	Nora		1.00
Glen-Lambert	Isabelle	X	1.00
Golden-Reyna	Carmela		1.00
Gomez	Priscilla	X	1.00
Gonzalez	Brenda	X	1.00
Guerrero	Valeria	X	1.00

LAST	FIRST	RESP	PKS-FTE RED
Hale	Jesse	X	1.00
Hamann	Natasha	X	1.00
Hanashiro	Sean	X	1.00
Hanson	Jenna	X	1.00
Harney	Jason	X	1.00
Heinz	Joe		1.00
Hennekam	Brianna	X	1.00
Hernandez	Alvie John	X	1.00
Hernandez	Cristina		1.00
Hernandez	Elizabeth	X	1.00
Herrera	Wendy	X	1.00
Hiley	Andrea	X	1.00
Ivers	Michelle	X	1.00
Jacobo	Carla	X	1.00
Jimenez	Myra	X	1.00
Jimenez	Elizabeth	X	1.00
Jimenez-Shawcroft	Cristina		1.00
Jones	Bibiana	X	1.00
Jordan	Rachel	X	1.00
Knox	Victoria	X	1.00
Kramer	Katie	X	1.00
Lainez Laguia	Daniel		1.00
Lamb	Raquel	X	0.60
Lampert	Jeffrey		0.60
Lane	Lisa	X	1.00
Langel	Katharine	X	1.00
Lapid	Ma Rosario		1.00
Ledezma	Edrey	X	1.00
Lee	Amy		1.00
Lee	Jae Won	X	1.00
Leon	Erika	X	1.00
Leones	Jhune Kristophe		1.00
Leyva	Jose		0.50
Llamas	Ilda	X	1.00
Lopez	Yilliams	X	0.60
Lopez	Kristina	X	1.00
Macias	Jessica	X	1.00
Maher	Stefanie	X	1.00
Malo	Maria	X	1.00
Marroquin	Moises	X	1.00
Martinez	Brianne	X	1.00
McClain	Priscilla	X	1.00
McFarr	Alexander	X	1.00
McKee	Rebecca	X	1.00
McPherson	Vanessa	X	1.00

LAST	FIRST	RESP	PKS-FTE RED
Means	Thea	X	1.00
Medina	Graciela	X	0.60
Mendoza	Allison	X	1.00
Molina	Abigail		0.60
Montano	Michelle	X	1.00
Morris	Kimberly		1.00
Muturi	Moses		0.30
Nava	Sophia		1.00
Nevarez	Che		0.10
Nona	Lubna		1.00
Ocampo-Tenorio	Reyna	X	1.00
Ornelas	Lizbeth	X	1.00
Orozco Jr	Ramon	X	1.00
Ortega	Manuel	X	1.00
Oyorzabal Diaz	Ricardo	X	1.00
Pacheco	Raymond		1.00
Paje	Arielle	X	1.00
Perez	Dennis	X	1.00
Perez	Cristina	X	1.00
Perry	Samihah	X	1.00
Pirnie	Christopher	X	1.00
Plascencia	Jessica	X	0.60
Prado	Angel	X	1.00
Preston Jr	William	X	0.30
Puga	Laura	X	1.00
Quezada	Jorge		1.00
Rabelo	Stephanie	X	0.80
Rame	Reem	X	1.00
Rangel Jr	Benjamin	X	0.80
Ravenscroft	Molly		1.00
Reyes Cornejo	David	X	1.00
Ritchie	David	X	1.00
Rodriguez	Yvette	X	1.00
Rodriguez	Alexa	X	1.00
Rodriguez	Octavio	X	1.00
Rogero	Rachelle	X	1.00
Romano	Lauren		0.60
Romero	Enrique	X	1.00
Romero Murillo	Jorge		0.44
Rosas	Daniela		1.00
Roth	Caitlin	X	1.00
Rueda	Irma	X	1.00
Ruiz	Daniel	X	1.00
Ruiz	Megan	X	1.00
Rymer	Magdalena		0.15

LAST	FIRST	RESP	PKS-FTE RED
Salazar	Stephanie	X	1.00
Santa Cruz	Renae	X	1.00
Sarao	Nevin		0.20
Schafran	Jennifer	X	1.00
Scott	Anamar	X	1.00
Scott	Crystal	X	1.00
Short	Erin	X	1.00
Sigala	Clara	X	1.00
Siscon	Bernadette	X	1.00
Stough	Amy	X	1.00
Stubbs	John	X	1.00
Takahashi	Todd	X	0.40
Templeton	Tiffani	X	1.00
Tilburg	Robert	X	1.00
Torres	Mildred	X	1.00
Torres	Julian	X	1.00
Torres	Alma	X	1.00
Torres	Lalaine	X	1.00
Torres-Mathews	Lizzette	X	1.00
Tran	Elizabeth	X	0.60
Turner	Megan	X	1.00
Upham	Abigale		1.00
Valdez	Julian	X	1.00
Vallejo-Paez	Eleina	X	1.00
Van Nostrand	Tori	X	1.00
Vazquez	Carolina	X	0.80
Virgen	Misael	X	0.59
Wagner	Paula	X	1.00
Wagner	Bryan	X	1.00
Wegenka	Michael	X	1.00
Welch	Christian	X	1.00
Wittak	Randi	X	1.00
Woehl	Maria	X	1.00
Wong	Sharon	X	1.00
Woolston	Timothy	X	1.00
Yau	Kristine	X	1.00
Yerka	Alexandra	X	1.00
Yescas	Saul	X	0.80
Younger	Andrew		1.00
Zamora	Alfredo	X	1.00
Zapata	Cory	X	1.00
Zaragoza	Tara	X	0.80
Zavala	Erika	X	1.00
TOTAL			209.13