

**BEFORE THE
GOVERNING BOARD
SAN FRANCISCO COMMUNITY COLLEGE DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Reduction in Force Involving:

**58 FACULTY MEMBERS,
Respondents.**

OAH No. 2022030935

PROPOSED DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on April 18 through 21 and 26, 2022, by videoconference.

Attorneys Kathryn Meola, Georgelle Cuevas, and Jacqueline Hang represented complainant David Martin, Chancellor of the San Francisco Community College District.

Attorneys Patricia Lim, Robert Bezemek, and Tanya Smith represented all respondents.

The record closed and the matter was submitted for decision on April 26, 2022.

FACTUAL FINDINGS

Board Resolution to Reduce Particular Kinds of Services

1. At its meeting on February 24, 2022, the Governing Board of the San Francisco Community College District (Board)¹ adopted District Resolution No. 22.02.24 10.B.16 (the Resolution). The Resolution declares the District's intention at the end of the 2021–2022 academic year to reduce particular kinds of services, as stated in the Resolution and as listed in Exhibit A to this Decision, in a total amount of 50 full-time equivalent (FTE) faculty employee positions.

2. The Board determined, consistent with the recommendation of Chancellor David Martin, that the reductions stated in the Resolution are in the best interests of the District and its students, based on the District's financial concerns.

Prior to the Resolution, on April 7, 2021, the Fiscal Crisis and Management Assistance Team (FCMAT) reported to the California Community Colleges Chancellor's Office (State Chancellor) that the District had experienced a 35 percent decline in student enrollment over a period of eight years without reducing staffing.² California community colleges are funded mainly based on the number of full-time equivalent students. FCMAT noted the District's ongoing structural deficit spending and other

¹ The San Francisco Community College District governs and operates City College of San Francisco, or City College.

² The District engaged in a layoff proceeding last year, but no layoffs ultimately occurred, because the District and the union agreed to one-year salary concessions.

factors, and found that the District could no longer fulfill its commitments to its staff, faculty, administration, and students while also remaining solvent. FCMAT found that correctly sizing its staffing will be the largest factor in improving the District's fiscal situation.

On October 8, 2021, the Accreditation Commission for Community and Junior Colleges (ACCJC) reported that the District was assessed as an at-risk institution and was being placed on enhanced monitoring status for a second consecutive year based on concerns about its fiscal stability. In addition to declining student enrollment, deficit spending, and other financial factors, the ACCJC noted audit findings that the District was listed as a "going concern," meaning its fund balance and historical structural deficit raise substantial doubt about the District's ability to continue as a going concern. The District's independent auditors have assigned a going concern finding for four consecutive years.

3. In his testimony at hearing and in his recommendation to the Board, Chancellor Martin explained that staffing adjustments for 2022–2023 are critical, because that budget year will be considered by the ACCJC during its accreditation evaluation in Spring 2023. In order for City College to keep its accreditation, it must demonstrate an institutional plan to ensure solvency and financial stability, and to respond to the financial concerns identified by the ACCJC and auditors. If City College loses its accreditation, the credits earned by its students will not qualify for transfer to other institutions or be recognized by professions, and the institution would lose its ability to issue financial aid to students.

4. For several years, the District has received "hold harmless" funding in excess of the enrollment-based funding formula, receiving about \$10 million this year. However, "hold harmless" funding is set to expire after the 2024–2025 academic year.

Notices to Faculty Member Respondents

5. On March 9, 2022, Associate Vice Chancellor of Human Resources Clara Starr gave timely notice in writing to 50 full-time District faculty members that it had been recommended to the Board that the services of these faculty members will not be required for the 2022–2023 academic year. Each such preliminary layoff notice stated that it was being sent “because you are serving within a particular kind of service, as listed [in the Resolution], which is being discontinued or reduced, or because an employee with greater seniority and qualifications is entitled to reassignment into the service you are currently providing.” Each such notice also stated that pursuant to Education Code section 87740, the faculty member may request a hearing to determine if there is cause for discontinuing their services for the 2022–2023 academic year.

6. Also on March 9, 2022, Starr gave timely notice in writing to eight other full-time District faculty members that it had been recommended to the Board that the services of these faculty members will not be required and that they would be reassigned for the 2022–2023 academic year. Each of the eight “precautionary” layoff notices stated that it was being sent “because you are serving within a particular kind of service, as listed [in the Resolution], which is being discontinued or reduced, and as notification that you have bumping rights into another position and your reassignment for the ensuing 2022–2023 academic year will be in [name of Department].” Each such notice also stated that pursuant to Education Code section 87740, the faculty member may request a hearing to determine if there is cause for discontinuing their services for the 2022–2023 academic year.

7. All 58 faculty members who received the notices described in Factual Findings 5 and 6 requested hearings.

8. Acting in his official capacity of Chancellor, on March 25, 2022, complainant David Martin signed an accusation alleging the District's grounds for not re-employing respondents for the 2022–2023 academic year. Each faculty member received timely service of the accusation, and each became a respondent in this matter by filing a timely notice of defense. The names of the 58 faculty member respondents are listed in Exhibits B (50 people) and C (8 people) to this Decision.

Particular Kinds of Service and the Seniority-FSA List

9. The State Chancellor regularly publishes and revises a handbook listing Minimum Qualifications for Faculty and Administrators in California Community Colleges (the MQ Handbook). The MQ Handbook lists many disciplines, corresponding roughly to academic subjects of study and instruction and to discrete types of non-instructional student service. For each discipline, the MQ Handbook identifies educational credentials, and in some cases professional experience, constituting the minimum qualifications to serve as a California community college faculty member teaching a course in that discipline or rendering student service in that non-instructional discipline. The MQ Handbook provides that community college districts may also establish local qualifications beyond the minimum standards prescribed in the MQ Handbook, and that districts have flexibility in how they organize courses within disciplines and in how to apply equivalency. The District has established local qualifications for some disciplines that are above those in the MQ Handbook.

10. The District organizes its faculty members, courses, and student services into departments. These departments are long-standing administrative units.

11. Some District departments include only one MQ Handbook discipline. Some District departments combine several distinct MQ Handbook disciplines in one

department. For example, faculty members in the District's Social Sciences department teach courses in history, economics, political science, and philosophy, which are distinct disciplines in the MQ Handbook. A few disciplines occur in multiple departments; for example, the MQ Handbook identifies "physics/astronomy" as a single discipline, but the District has separate Physics and Astronomy departments.

12. District faculty members are assigned at least one faculty service area (FSA), which is to be considered in the event of a layoff. FSA's are a construct of the statutory layoff process. In identifying faculty members whose services may become unnecessary because of service reductions, the District must evaluate whether any faculty member qualifies for reassignment to render a service in which that faculty member is relatively more senior. (Ed. Code, § 87743.) Because formal credentials from the California Commission on Teacher Credentialing are not necessary for community college faculty, the Education Code requires the District to make this evaluation with reference to the faculty member's FSA, defined as "a service or instructional subject area or group of related services or instructional subject areas performed by faculty and established by a community college district." (Ed. Code, § 87743.1.) The process of assigning FSA's and considering them to determine whether a faculty member has reassignment ("bumping") rights is discussed further in Factual Findings 18 through 28.

13. Human Resources staff at the District compiled a list of all full-time faculty members (Seniority-FSA List), using information from the District's personnel records. The Seniority-FSA List is sorted by department and seniority date. Each faculty member has an entry listing a department, seniority date, lottery number, and one or more FSA's. The lottery numbers are for use if necessary to break ties in seniority dates for faculty members hired at the same time.

14. The Resolution identifies service reductions with reference to the District's academic departments, for a total of 50 full-time equivalent faculty positions. Each kind of service listed in the Resolution and in Exhibit A to this Decision corresponds to a single District department. Human Resources staff used the Seniority-FSA list in identifying the specific faculty members within each department who would receive the notices described above in Factual Findings 5 and 6. For each department, staff reviewed the department's list of full-time faculty members according to seniority. Staff then identified faculty members whose re-employment would not be necessary if the District reduced the department's services to the extent stated in the Resolution, beginning with the most junior full-time member of each department and accounting for the possibility that faculty members may have FSA's and sufficient seniority that would allow them to bump into another department. If a faculty member had an FSA and seniority to bump into another department, the least senior faculty member in the destination department was identified to receive a preliminary layoff notice. By this method, a list was prepared of 50 faculty members to receive preliminary layoff notices and 8 faculty members to receive precautionary layoff notices.

15. The Resolution defined "competency" as described in Education Code section 87743.5 for the purposes of bumping as including: (1) an FSA in the relevant subject matter area; (2) a specific and compelling need to employ and retain faculty members who meet the minimum qualifications to serve as community college faculty members to teach students with disabilities pursuant to California Code of Regulations, title 5, section 53414; (3) a specific and compelling need to employ and retain faculty members who meet the minimum qualifications to serve as community college faculty members in the area of Foreign Languages in the language of Spanish; and (4) for faculty members with the same seniority date, the order of termination is

determined by the lottery number recorded on the seniority list. The District used these criteria to “skip,” or exempt from layoff, faculty who teach Spanish.

16. No respondents claimed that their seniority dates were inaccurate.

17. District witnesses testified that while lottery numbers are generally assigned upon hiring faculty members, in some semesters if there were only a few probationary hires, the District might wait for two or three semesters before conducting a lottery drawing. The faculty member union, Local 2121 of the American Federation of Teachers (AFT or the union), is notified when the District conducts lotteries, and a union representative is present at lottery drawings. No respondents specifically claimed that their lottery numbers were inaccurate.

FSA’s and Cross-Service Qualifications (Bumping)

18. Article 23 of the 2015 collective bargaining agreement (CBA) between the District and the union governs FSA’s.

19. A faculty member’s primary FSA is assigned at the time of initial hiring, reflecting the teaching assignment for which they were hired. Article 23 provides that a faculty member is assumed to be competent in the primary FSA corresponding to the discipline in which the faculty member is hired and assigned to teach. When a full-time faculty member is being hired to fill a position, there is an analysis of the minimum qualifications required to teach that subject matter area, and those qualifications are listed on the job description. Human Resources staff confirm in the hiring process that the faculty member meets minimum qualifications. Article 23 also provides that faculty employed prior to the date of ratification of the 2015 CBA shall be assigned to one or more primary FSA’s based on qualifications as of their hiring.

20. Article 23 sets forth the process by which a faculty member can request the addition of one or more secondary FSA's to be considered in the event of a layoff. It is the faculty member's responsibility to request a secondary FSA, and to provide the District with all records necessary to substantiate a claim of competency. Article 23 states that the annual deadline for such secondary FSA applications is September 1, but at hearing the witnesses for all parties agreed that the statutory deadline set in the Education Code is February 15 of each year.

Article 23 provides that secondary FSA applications are to be evaluated by a Committee consisting of representatives from Academic Affairs, a Dean, the Academic Senate, and the union. The Committee decides by majority vote whether the applicant has demonstrated meeting the competency criteria for the requested FSA. Any denials shall be explained in writing. Any dispute about whether a faculty member has been improperly denied a secondary FSA is addressed through the CBA's grievance process. (See also Ed. Code, § 87743.3.) Article 23 does not specify when the Committee is to conduct or complete its evaluation process.

21. District witnesses testified that primary FSA's and secondary FSA's are recorded in the District's human resources database. FSA assignments may or may not be reflected on documents contained in an individual faculty member's personnel file, although the personnel file documents do reflect the teaching assignment into which the faculty member was hired.

22. District staff posted a list of faculty member FSA's on the District's website in early February 2022.

23. During the 2021–2022 academic year, 39 faculty members applied for secondary FSA's prior to the deadline of February 15, 2022. Human Resources staff

made a preliminary review of these secondary FSA applications and provided recommendations to the Committee. The Committee convened after the application deadline to begin the review process, with a weekly meeting schedule. As of the dates of hearing in this matter, the Committee's work was still in progress. The Committee prioritized its review of secondary FSA applications for those faculty members who had been identified as affected by this year's layoff proceeding. That group of priority applicants consisted of approximately 20 faculty members.

24. The preliminary and precautionary layoff notices described in Factual Findings 5 and 6 were issued based on the preliminary review of Human Resources staff regarding seniority and FSA's for faculty members in departments affected by the Resolution. For some of those faculty members, a subsequent decision by the Committee was rendered after reviewing secondary FSA applications, and in some cases the Committee disagreed with the preliminary recommendation of Human Resources. All parties agreed at hearing that the decisions of the Committee supersede the recommendations of Human Resources regarding secondary FSA's.

SPECIALTY COUNSELING DEPARTMENTS: EOPS AND DSPS

25. In addition to a general Counseling department, the District has two specialty counseling departments: EOPS (Extended Opportunity Programs and Services) and DSPS (Disabled Student Programs and Services).

26. The MQ Handbook distinguishes general counseling from EOPS counseling, and prescribes minimum qualifications for EOPS counseling that are in addition to the minimum qualifications for general counseling.

27. The MQ Handbook also distinguishes general counseling from “community college counselor of students with disabilities,” and prescribes different minimum qualifications for these two non-instructional disciplines.

28. Some faculty members of the District’s DSPS department are instructors and some are counselors. The corresponding FSA’s are “DSPS-INSTRUCTOR” and “DSPS-COUNSELOR.” There are different minimum qualifications for serving as an instructor and as a counselor in the DSPS department.

THE DISTRICT’S ANALYSIS OF WHICH FACULTY MEMBERS SHOULD RECEIVE FINAL LAYOFF NOTICES

29. At the close of the hearing in this matter, the District provided an updated list of which faculty members it contends should receive final layoff notices, based on a bumping analysis using the decisions of the Committee regarding FSA’s. This analysis of FSA qualifications and bumping rights is discussed as pertinent below.

Faculty Members Who Received Precautionary Layoff Notices

30. **Elaine Avrus** is a faculty member in the Learning Assistance department. This department was not slated for a reduction in services based on the Resolution. However, Avrus received a precautionary layoff notice, because Human Resources staff determined that Avrus would be bumped out of the Learning Assistance department by Tanaka Gaines, but that Avrus also met minimum qualifications for Counseling and could bump into that department. The Committee has not issued any contrary subsequent decision. Thus, Avrus should not receive a final layoff notice and the District must withdraw its accusation.

31. **Tanaka Gaines** is a faculty member in the Business department. She received a precautionary layoff notice, because Human Resources staff determined that she would be subject to layoff in Business based on seniority but that she met minimum qualifications for Learning Assistance and could bump into that department. The Committee agreed. Thus, Gaines should not receive a final layoff notice and the District must withdraw its accusation.

32. **Adriana Garcia** is a faculty member in the Counseling department. She received a precautionary layoff notice, because Human Resources staff determined that she would be subject to layoff in Counseling based on seniority but that she met minimum qualifications for EOPS and could bump into that department. The Committee agreed. Thus, Garcia should not receive a final layoff notice and the District must withdraw its accusation.

33. **Tamika Jones** is a faculty member in the Computer Networking and Information (CNIT) department. She received a precautionary layoff notice, because Human Resources staff determined that she would be subject to layoff in CNIT based on seniority but believed based on her FSA of "COMPUTER INFO SYSTEMS" that she met minimum qualifications for Computer Science and could bump into that department. However, a subsequent review of her transcripts revealed that Jones does not have the master's degree required to teach in the Computer Science discipline. Jones did not apply for a secondary FSA.

Because Jones does not meet the qualifications for the Computer Science department, **Daniel O'Leary** is not bumped out of Computer Science by Jones. The Computer Science department was not targeted for service reductions. Thus, O'Leary should not receive a final layoff notice and the District must withdraw its accusation.

34. **Paula Jung** is a faculty member in the Counseling department. She received a precautionary layoff notice, because Human Resources staff determined she would be subject to layoff in Counseling based on seniority but believed she met minimum qualifications for DSPS and could bump into that department. However, the Committee subsequently reviewed Jung's secondary FSA application and determined that she does not meet the minimum qualifications for DSPS Counseling. Jung also has an FSA in EOPS, but she cannot bump into that department based on her seniority.

35. **Kathleen Marquez** is a faculty member in the Counseling department. She received a precautionary layoff notice, because Human Resources staff determined she would be subject to layoff in Counseling based on seniority but believed she met minimum qualifications for Sociology and could bump into the Behavioral Sciences department with a Sociology FSA. However, the Committee subsequently reviewed Marquez's secondary FSA application and determined that she does not meet the minimum qualifications for Sociology, but that she does meet the minimum qualifications for both EOPS and Learning Assistance. While Marquez has FSA's in EOPS and Learning Assistance, she cannot bump into either department based on her seniority.

36. **Michael Needham** is a faculty member in the Business department who received a precautionary layoff notice regarding bumping into the Social Sciences department to teach Economics. Human Resources staff determined that Needham would be subject to layoff in Business based on seniority but believed that minimum qualifications for an FSA in Economics had been met. However, the Committee subsequently reviewed Needham's application for a secondary FSA in Economics, and determined that while the MQ Handbook requirements had been met, Needham did

not meet the additional City College local requirements to teach Economics. Needham's qualifications are discussed further in Factual Findings 62 through 65.

If Needham does not meet the qualifications to bump into Economics, then **Deniz Demiray** is not bumped out of Social Sciences, a department that was not targeted for service reductions, and should not receive a final layoff notice.

37. **Lorenzo Ubungen** is a faculty member in the Counseling department. He received a precautionary layoff notice, because Human Resources staff determined he would be subject to layoff in Counseling based on seniority but believed he met minimum qualifications to bump into EOPS. The Committee agreed that Ubungen meets minimum qualifications for both EOPS and Learning Assistance. Ubungen cannot bump into Learning Assistance based on his seniority, but he can bump into EOPS. Thus, Ubungen should not receive a final layoff notice and the District must withdraw its accusation.

Faculty Members Who Received Preliminary Layoff Notices and Whose Secondary FSA Applications Were Reviewed

38. The Committee has reviewed secondary FSA applications for faculty members who received preliminary layoff notices, as discussed below.

39. **Lori Admokom** is a faculty member in the ESL (English as a Second Language) department. She applied for a secondary FSA in "Vocational ESL in Hospitality." The Committee denied her application because this is not a separate FSA.

40. **Gabriela Alvarenga** is a faculty member in the Counseling department. The Committee determined that Alvarenga met minimum qualifications for FSA's in both EOPS and Psychology, but denied her request to add Student Services because it

is not a separate FSA. Based on the Committee's decision, Alvarenga can bump into the Behavioral Sciences department to teach Psychology. Thus, Alvarenga should not receive a final layoff notice and the District must withdraw its accusation.

41. **Alexandra Kaplan** is a faculty member in the Counseling department. The Committee found that she met minimum qualifications for both EOPS and Learning Assistance. The Committee denied her request to add Health/Safety because it is not a separate FSA, and denied Work Experience because faculty already qualify for teaching work experience classes in their respective disciplines. While Kaplan has FSA's in EOPS and Learning Assistance, she cannot bump into either department based on seniority.

42. **Carina Lin** is a faculty member in the Counseling department. The Committee found that she meets minimum qualifications for EOPS, but denied her request to add Career Counseling because this is not a separate FSA. While Lin has an FSA in EOPS, she cannot bump into that department based on seniority.

43. **Patricia Miller** is a faculty member in the Theatre Arts department. She has an FSA in "DRAMA/THEATRE ARTS." Miller applied for a secondary FSA in "Film Broadcasting." The Committee determined that this request does not directly correspond to any FSA in use, and asked her to clarify whether she would like to be considered for the FSA's of "Film and Media Studies," or "Broadcasting Technology," or both. The record did not reflect that Miller had responded as of the date of the hearing. The Committee's decision noted that Miller meets the standards for Film and Media Studies. The District stated that Miller meets the minimum qualifications for Cinema, but that she cannot bump into that department based on seniority.

44. **Michelle Nermón** is a faculty member in the Architecture department. The Committee granted her request to add secondary FSA's in Building Codes, Drafting/CADD, and Interior Design. The record did not establish that these FSA's would qualify Nermón to teach courses in any department other than Architecture.

45. **Wynn Newberry** is a faculty member in the ESL department. The Committee denied his request to add a secondary FSA in Architecture, finding he had not shown the work experience required to accompany his degree for this FSA.

46. **Adriana Rivera** is a faculty member in the Counseling department. She applied for secondary FSA's in several areas. The Committee determined that she was already assigned a Counseling FSA. The Committee granted her request to add Education. However, the record did not establish that an Education FSA would qualify Rivera to teach in another department than her current assignment. The Committee denied her request to add EOPS, based on lack of specific coursework for that FSA. The Committee also found that she did not meet the requirements for Economics or Interdisciplinary Studies. Lastly, the Committee denied her request to add Student Services and Veteran Counseling, because those are not distinct FSAs.

47. **Mia Rusali** is a faculty member in the Business department. The Committee granted her request to add a secondary FSA in Office Technology. The record did not establish that this FSA would qualify Rusali to teach courses in any department other than Business.

48. **Erica Tom** is a faculty member in the Counseling department. The Committee found that she meets the minimum qualifications for both EOPS and DSPS. Based on the Committee's decision, the District agrees that Tom can bump into the

DSPS department. Thus, Tom should not receive a final layoff notice and the District must withdraw its accusation.

Tom bumping into the DSPS department results in **Olga Galvez**, the least senior faculty member in DSPS, receiving a final layoff notice.

49. **Kenyon Verbeckmoes** is a faculty member in the Aircraft Maintenance Technology department. The Committee granted his requests to add Engineering and Engineering Technology as secondary FSA's. However, there are no faculty members less senior to Verbeckmoes in the District's Engineering and Technology department and thus he cannot bump into that department.

Challenges Raised by Respondents to Layoff Process

BUDGET AND FUNDING

50. Respondents argued that the District's fiscal concerns based on declining student enrollment are undermined by the receipt of "hold harmless" funding. However, the evidence established that the "hold harmless" funding will expire soon, that the District still has a structural deficit, and that the District faces an accreditation evaluation in the coming academic year that requires it to demonstrate a plan for fiscal stability. (Factual Findings 2-4.)

LOTTERY PROCESS

51. Malaika Finkelstein, the president of AFT Local 2121, testified regarding faculty member lottery numbers. During last year's layoff proceeding, it was discovered that two faculty members have the same lottery number, leading Finkelstein to have concerns about the lottery process. Neither of those two faculty members received a preliminary layoff notice this year or is a respondent this year.

52. Education Code section 87414 requires that a district assign new full-time faculty members lottery numbers within 30 days of hire. Respondents point to the evidence that this was not always done by the District, argue that this prejudiced faculty members for whom a lottery draw was delayed, and argue that the failure to comply with the deadline requires rescission of all layoff notices. However, respondents did not identify any specific respondent faculty member for whom this would have made a difference in this year's layoff process. Finkelstein also confirmed that AFT has not filed any grievances regarding the lottery process.

ASSIGNMENTS OF PRIMARY FSA'S AND MAINTENANCE OF FSA RECORDS

53. Education Code section 87743.3 provides that each faculty member shall qualify for one or more FSA's at the time of initial employment, based on state minimum qualifications and district competency standards. Education Code section 87743.4 states that the district shall maintain records of each faculty member's FSA's, in the faculty member's personnel file. Respondents argue that the District has not properly followed these requirements. Respondents also point to confusion during last year's layoff proceeding because there had been no layoff process in recent memory, and some faculty member FSA's were based on old versions of the MQ Handbook or an FSA list from 1990 that does not neatly correlate with current discipline listings. However, these issues do not require resolution in this Decision. No respondents claimed that their initial FSA or departmental assignments were improper.

SECONDARY FSA APPLICATION REVIEW PROCESS

54. Last year, more than 80 faculty members applied by the deadline of February 15, 2021, for corrections or additions to their FSA designations. Many of those FSA applications were not resolved during the last academic year. AFT and the

Academic Senate requested that the District reconvene the Committee for review of pending FSA applications, but it was not reconvened until mid-February 2022.

55. This year, 39 applications for secondary FSA review were submitted by the deadline of February 15, 2022. The Committee prioritized about 20 for review. However, the Committee had not yet rendered decisions by the time preliminary layoff notices were served based on the initial review of Human Resources staff. As discussed in this Decision, for some faculty members, the Committee's later decision was contrary to and superseded the initial analysis of Human Resources.

56. Respondents contend that the District was dilatory for not reconvening the Committee earlier, and that any inaccuracies in the initial FSA analysis create a situation in which all preliminary layoff notices must be rescinded. This argument is not persuasive. It is undisputed that under Article 23 of the CBA, the decisions of the FSA review Committee are controlling, and that any challenges to the Committee's decisions go through the grievance process. Nor does Article 23 specify at what time the Committee must perform its evaluations. The District reviewed decisions rendered by the Committee for respondents in this matter and applied those decisions to the bumping analysis in order to identify who should receive final layoff notices.

GABRIELA ALVARENGA (COUNSELING)

57. Alvarenga contended that her preliminary layoff notice was issued in error because she can bump into another department. The evidence established that Alvarenga can bump into Behavioral Sciences to teach Psychology, as set forth in Factual Finding 40, and she should not receive a final layoff notice.

OLGA GALVEZ (DSPS)

58. Olga Galvez is a counselor in the DSPS department, and currently serves as the department chair for DSPS. The Resolution did not target the DSPS department for a reduction in services. However, Galvez received a preliminary layoff notice due to another faculty member with more seniority and an FSA in DSPS bumping into the department.

59. The District did not use the skipping criterion described in Factual Finding 15 for faculty members qualified to teach students with disabilities to exempt Galvez from layoff, because the Resolution's criterion is for instructors of disabled students, and not counselors. As set forth in Factual Findings 27 and 28, there are different minimum qualifications for serving as an instructor and as a counselor in the DSPS department. Galvez has an FSA of "DSPS-COUNSELOR" and does not have an FSA of "DSPS-INSTRUCTOR." Galvez did not apply for a secondary FSA this year.

60. Galvez contends that the decision to lay her off is unreasonable under the circumstances. She testified that the DSPS department is funded by a separate budget directly from the state, and that the department had completed most of a hiring process to hire additional counselors. However, the evidence established that the hiring process has been frozen and that no offers have been made. No faculty member less senior to Galvez in DSPS is being retained.

MICHAEL NEEDHAM (BUSINESS)

61. Needham contends that he cannot be laid off because he is on sabbatical leave this semester (Spring 2022), relying on the language of Education Code section 87774, which states that after expiration of a leave of absence, an employee shall be reinstated to the position held at the time of granting the leave of absence.

62. Needham also disputes the Committee's determination that he does not meet the requirements for an FSA in Economics, which would have allowed him to bump into the Social Sciences department. (See Factual Finding 36.) Needham has a bachelor's degree in economics and a master's degree in business administration with a concentration in finance. Human Resources staff believed that Needham met the requirements for an FSA in Economics based on the state minimum qualifications, and an FSA of Economics for Needham was included on the FSA list described in Factual Finding 22. However, the Committee subsequently determined that Needham had not met additional local requirements of a master's degree in economics and graduate level coursework in statistics. Needham testified at hearing and admitted that he did not possess the additional local requirements relied on by the Committee, but contends that he should be found to meet equivalency for those requirements.

63. Last year, Needham applied for FSA's in Economics, Real Estate, and Small Business (Entrepreneurship), but never received a determination on those FSA requests. He filed three grievances regarding these FSA's in March 2021, but has never received a formal response from the District. Needham contends that if the District had responded to his grievances, or to his requests to reconvene the Committee for consideration of FSA applications, he would have been able to timely provide further information about his qualifications to teach Economics.

64. To the extent that Needham contests the Committee's FSA decision, or the District's failure to timely resolve his grievances, those issues should be resolved within the CBA's grievance process and its subsequent provisions for arbitration.

65. As of the time of hearing, the Committee had not yet made a decision regarding Needham's applications for FSA's in Real Estate and Small Business (Entrepreneurship). However, the evidence did not establish that if Needham were to

receive either of these FSA's, it would provide qualification to teach in a department other than Business.

IMPACT OF PROPOSED LAYOFFS ON INSTRUCTIONAL PROGRAMS

66. The District has established a Board Policy and Administrative Procedure (Number 6.17) governing the suspension or discontinuance of instructional programs. The District has engaged in the required process with respect to the Aircraft Maintenance and Technology department, although a final determination has not yet been made by the Chancellor. Respondents contend that other instructional programs will be discontinued as a result of the planned layoffs in this matter, and that the program discontinuance policy and procedure should have been invoked. Respondents argue that the District acted arbitrarily in seeking to lay off faculty members without first determining whether others in the affected departments can teach the courses students still need to graduate.

67. Thomas Boegel, Vice Chancellor of Academic and Institutional Affairs, testified credibly regarding the District's identification of departments for reductions in service. Boegel explained that the District tried to mitigate the impact on students and their ability to complete degree and certificate programs, and considered enrollment areas, class sizes, and numbers of students enrolled in degree programs. The District also considered whether proposed layoffs would affect the classes required for students to complete degree and certificate programs.

68. Boegel also testified credibly that some departments in the District are staffed with only part-time faculty members, and that there are no District courses that are reserved specifically for full-time faculty members and cannot be taught by part-time instructors.

69. The evidence did not establish that the proposed layoffs will result in instructional programs being discontinued, or that courses required by students for graduation will not be offered.

RESPONDENTS WHO ARE THE ONLY FULL-TIME FACULTY TEACHING COURSES REQUIRED FOR DEGREE OR CERTIFICATE PROGRAMS

70. More specifically, four respondents contend that the District abused its discretion in issuing preliminary layoff notices to them, because they are the only full-time faculty that teach particular courses required by their departments' degree or certificate programs, as set forth below.

Michelle Nermon (Architecture)

71. Michelle Nermon is a faculty member in the Architecture department, which also houses the Interior Design and Construction Management programs. Nermon testified credibly that she is the only full-time faculty member who can teach classes in the software programs AutoCAD and Revit that are required for the Architecture degree, the Interior Design degree, and four certificate programs. George Lin, the Architecture department chair, testified credibly that neither he nor any other full-time faculty in the department is qualified to teach these classes, because they have not used the software programs professionally in recent years. Nermon is qualified based on recent professional experience using these software programs as a practicing architect. Nermon has also signed a contract with the District to develop and teach an online AutoCAD course in the fall.

72. The District has not taken formal steps to suspend or discontinue its Architecture department or any of the degree and certificate programs the department offers.

73. If the District does not re-employ Nermon as a full-time faculty member for the 2022–2023 academic year, or if these courses were to be taught by a part-time instructor, they may not be offered as frequently or on schedules as convenient to students. The evidence did not establish, however, that the District will be unable to offer Architecture or Interior Design degrees or any certificates without continuing to employ Nermon as a full-time faculty member.

74. Nermon did not testify that her education or experience should qualify her to teach in any department other than Architecture.

Mia Rusali (Business)

75. Mia Rusali is a faculty member in the Business department. Rusali testified credibly that she is the only full-time faculty member who is qualified to teach a number of the courses required for the degree and certificate programs in Human Resources Management, and Supervision and Management.

76. The District has not taken formal steps to suspend or discontinue its Business department or any of the degree and certificate programs the department offers.

77. Rusali did not testify that her education or experience should qualify her to teach in any department other than Business.

Jenny Tabarracci (Environmental Horticulture & Floristry)

78. Jenny Tabarracci is a faculty member in the Environmental Horticulture and Floristry department. Tabarracci teaches a number of floristry classes required for the department's Floristry degree, Retail Floristry certificate, and Floral and Special Events Coordinator certificate. Tabarracci and department chair Steven Brown testified

credibly that Brown is the only other full-time faculty member in the department who can teach those floristry classes.

79. Brown testified that without Tabarracci, the required floristry classes would not be offered as frequently, and it may take students longer to complete a degree. He reports that there are no other floral design programs at nearby schools.

80. The District has not taken formal steps to suspend or discontinue its Environmental Horticulture and Floristry department or any of the degree and certificate programs the department offers.

81. Tabarracci also runs the student chapter of the American Institute of Floral Designers, an industry group that provides scholarships and national student competitions. She believes that this student chapter would not continue if she were to be laid off from the District.

82. Tabarracci did not testify that her education or experience should qualify her to teach in any department other than Environmental Horticulture and Floristry.

Patricia Miller (Theatre Arts)

83. Patricia Miller is a faculty member in the Theatre Arts department. Miller testified credibly that she is the only full-time faculty member who can teach the performance classes required for the Theatre Arts degree and Acting certificate. Department chair Patrick Toebe testified credibly that he is the only other full-time faculty member in the Theatre Arts department, and that he is not qualified to teach acting classes because his expertise is in stagecraft and lighting.

84. Toebe testified that the Theatre Arts department does not currently have any part-time instructors. Miller and Toebe are both presently teaching more than a full-time load, due to the retirement of a part-time acting instructor.

85. Miller testified that if the performance classes she teaches are not offered by the District, students would need to commute to other schools to take such classes.

86. The District has not taken formal steps to suspend or discontinue its Theatre Arts department or any of the degree and certificate programs the department offers.

87. Miller testified regarding her professional experience, including her experience in acting for the camera, as a voice-over actor, and in film and broadcast. Miller applied for a secondary FSA in Film Broadcasting. The Committee determined that this request does not directly correspond to any FSA in use, and asked Miller to clarify whether she would like to be considered for the FSA's of Film and Media Studies, or Broadcasting Technology, or both. The record did not reflect that Miller had responded as of the date of the hearing. The Committee's decision noted that Miller meets the standards for Film and Media Studies. The District stated that Miller meets the minimum qualifications for Cinema, but no one less senior is being retained in the Cinema department.

OTHER MATTERS

88. As to the 58 respondents, this Decision addresses all challenges these respondents have identified to the accusations against each of them. Any contentions not specifically addressed in this Decision are found to be without merit and are rejected. To the extent that other challenges may have been possible but were not

identified during testimony or in oral or written argument, respondents have waived those challenges.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 87740 and 87743. The District's and complainant's pre-hearing notices and actions, described in Factual Findings 1, 2, and 5 through 8, satisfied these statutes' requirements, making all 58 respondents proper respondents in this proceeding.

2. The rights and status of any part-time faculty members the District may employ are not at issue in this layoff proceeding. (*Daniels v. Shasta-Tehama-Trinity Joint Community College Dist.* (1989) 212 Cal.App.3d 909.)

3. The statutory re-hire rights of faculty members under the Education Code are also outside the scope of this layoff proceeding.

4. A district may consider its financial circumstances in deciding whether to reduce or discontinue a particular kind of service. However, the district's decision to reduce a particular kind of service must not be fraudulent, arbitrary, or capricious. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 637.) The courts have held this standard permits "a difference of opinion on the same subject." (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

5. The services listed in the Resolution and in Exhibit A to this Decision are services that the District may reduce or discontinue. (Factual Findings 1, 9-11.) The Board's identification of these services for reduction is not arbitrary or capricious, and is not an abuse of the Board's discretion.

6. The Board's decision to reduce District services in the manner described by the Resolution, in the amount of 50 full-time equivalent faculty positions, will likely cause changes to the District's course offerings and staffing. (Factual Findings 67-87.) These matters do not, however, establish that the Board's decision is fraudulent or dishonest, or that it will compel the Board to act in the future in a manner violating any other law. The Board's decision to reduce the services stated in the Resolution by the amounts stated in that Resolution is not arbitrary or capricious, and is not an abuse of the Board's discretion.

7. The matters raised by respondents regarding budget and funding (Factual Findings 50 & 60) do not establish that the Board's decision to reduce the services stated in the Resolution by the amounts stated in that Resolution is fraudulent, arbitrary or capricious, or an abuse of the Board's discretion.

8. Respondents' contention, that the District's failure to assign lottery numbers to new full-time faculty members within 30 days renders all layoff notices invalid (Factual Finding 52), is rejected. In *Compton College Federation of Teachers v. Compton Community College Dist.*(1980) 108 Cal.App.3d 437, 443, the court of appeal held that layoffs were not rendered invalid by the district's failure to comply with the 30-day deadline of Education Code section 87414, finding it to be directory and not mandatory.

9. The matters raised by respondents regarding the assignment of primary FSA's (Factual Finding 53) do not establish that the Board's layoff decisions are fraudulent, arbitrary or capricious, or an abuse of the Board's discretion.

10. Respondents' contention that Needham cannot be laid off while he is on sabbatical leave (Factual Finding 61) is rejected. A teacher employed but on a leave of

absence is still considered an employee, including for purposes of determining seniority rights. (*Fry v. Board of Education* (1941) 17 Cal.2d 753, 759.)

11. Respondents' contentions regarding the effect of proposed layoffs on the District's instructional programs (Factual Findings 66-87) are rejected. The evidence did not establish that the District's decision was arbitrary or capricious.

12. Complainant has not notified any respondent that the respondent's services will not be required for the 2022–2023 academic year, while failing to give similar notice to any more junior full-time faculty member who served within the same District department during the 2021–2022 academic year. (Factual Findings 12-14.) No full-time faculty member with less seniority is being retained to render a service for which respondents are certificated and competent.

13. The District may not terminate any full-time faculty member's services while retaining a junior full-time faculty member "to render a service in a faculty service area in which" the senior full-time faculty member qualifies to serve. (Ed. Code, § 87743.) To render a service with respect to this proceeding means to serve as a member of a District department. A respondent in this proceeding might qualify for retention and reassignment for the 2022–2023 academic year if the respondent qualifies for a secondary FSA that is a discipline occurring within a different District department from the department in which the respondent currently serves. However, the District would need to retain such a respondent only if reassignment would make that respondent senior to at least one non-respondent in the new department.

14. School districts have broad discretion to establish competency standards for purposes of exercising bumping and reassignment rights. (*Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 564-65.) This broad discretion is limited by a

reasonableness standard. The burden of proof is on the senior teacher to establish competence over a retained junior employee. (*Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648.)

15. Because of the matters stated in Factual Findings 30-32, 37, 40, 48, and 57, respondents Avrus, Gaines, Garcia, Ubungen, Alvarenga, and Tom qualify for reassignment to a different department based on their FSA's and seniority. The District must withdraw the accusations as to these six respondents.

16. Because of the matters stated in Factual Findings 33-36, 39, 41-47, 49, 58-60, 62-65, 74, 82, and 87, respondents Jones, Jung, Marquez, Needham, Admokom, Kaplan, Lin, Miller, Nermon, Newberry, Rivera, Rusali, Verbeckmoes, Galvez, and Tabarracci do not qualify for reassignment to a different department based on their FSA's and seniority, and may receive final layoff notices.

17. Because of the matters stated in Factual Findings 33 and 36, respondents O'Leary and Demiray are not bumped out of their departments, which were not targeted for reductions in service. The District must withdraw the accusations as to these two respondents.

Summary

18. The matters stated in Legal Conclusions 15 and 17 do not constitute cause under Education Code section 87743 to give notice to respondents Avrus, Gaines, Garcia, Ubungen, Alvarenga, Tom, O'Leary, and Demiray that their services will not be required for the upcoming 2022–2023 academic year.

19. The matters stated in Legal Conclusion 16 constitute cause under Education Code section 87743 to give notice to all respondents other than Avrus,

Gaines, Garcia, Ubungen, Alvarenga, Tom, O’Leary, and Demiray that their services will not be required for the upcoming 2022–2023 academic year. In accordance with Education Code section 87740, the cause relates solely to the welfare of the District and its students.

RECOMMENDATION

1. The San Francisco Community College District may not give notice to the eight respondents whose names appear on Exhibit C to this Decision that the District will not require their services for the 2022–2023 academic year. Instead, with respect to the eight respondents whose names appear on Exhibit C to this Decision, the accusation is dismissed.

2. The San Francisco Community College District may give notice to the 50 respondents whose names appear on Exhibit B to this Decision that the District will not require their services for the 2022–2023 academic year. The District may give this notice to these 50 respondents in inverse seniority order within the departments in which they served during the 2021–2022 academic year, but only to the extent necessary to achieve the departmental service reductions stated in Exhibit A to District Resolution No. 22.02.24 10.B.16.

DATE: 05/04/2022



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings

Exhibit A: Reduction or Elimination of Particular Kinds of Services

Aircraft Maintenance Technology, 2 FTEs (Full-Time Equivalent)	English, 9 FTEs
Architecture, 1 FTE	Environmental Horticulture & Floristry, 1 FTE
Automotive, 2 FTEs	ESL, 7 FTEs
Biological Sciences, 2 FTEs	Library & Learning Resources, 2 FTEs
Broadcast Electronic Media Arts, 1 FTE	Music, 1 FTE
Business, 6 FTEs	Physics, 1 FTE
Chemistry, 2 FTEs	Theatre Arts, 1 FTE
Computer Networking & Information, 1 FTE	World Languages & Cultures (French), 1 FTE
Counseling, 9 FTEs	
Engineering & Technology, 1 FTE	TOTAL: 50 FTEs

Exhibit B: Faculty Members Who May Receive Final Notices That the District Will Not Re-Employ Them for the 2022–2023 Academic Year (50)

Admokom, Lori

Frei, Kathryn

Afshar, Golnar

Fung, Allen

Arceneaux, Jacques

Galvez, Olga

Bailey Burns, Cullen

Green, Erik

Barone, Augustus

Hamilton, Shawna

Blackwell, Angela

Hill, Kyle

Branagan, Laura

Hong, Bo

Buckley, Alissa

Hurt, Mai

Bugayong, Arlene

Jones, Tamika

Chu, Emily

Jung, Paula

Cox, Natalie

Kamatani, Pamela

D'Aloisio, Michael

Kaplan, Alexandra

DiGirolamo, Lisa

Lin, Carina

Easa, Leila

Lyles, Tanya

Evans (Johnsen), Jill

Marquez, Kathleen

Frankel, Maggie

Meagher, Carole

Miller, Patricia

Rusali, Mia

Needham, Michael

Salangsang, John

Nermon, Michelle

Scheffer, Johanna

Newberry, Wynn

Sheetz, Nuala

Olmos, Christian

Smith, Elizabeth

Peterson Jr., George

Tabarracci, Jenny

Rahn, Katrina

Verbeckmoes, Kenyon

Richardson, Ronald

Viertel, Clayton

Rivera, Adriana

Yanuarua, Christina

Exhibit C: Faculty Members Whose Accusations the District Must Dismiss (8)

Alvarenga, Gabriela

Avrus, Elaine

Demiray, Deniz

Gaines, Tanaka

Garcia, Adriana

O'Leary, Daniel

Tom, Erica

Ubungen, Lorenzo