

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

In the Matter of the Statement of Reduction in Force of:

**JULIE AHERN; KATHRYN BACA; GABRIELLA BLANEY; JULIE
CAMPBELL (COFFIN); TRENT DUFFEY; ELI FERRIER; CARLEN
HANDLEY; KRISTINA KNOX; BROOKE LOMELI; KYLE
LUTKEMULLER; MARGARET CRISTINA MCFADDEN-SHOPP;
REBECCA NAVARRO; TIMOTHY NEWKIRK; LAUREL PHILLIPS;
MICHAEL PROFUMO; KARA SCHEITLIN; TYLER SMITH; and
ANNA THORELL, Respondents¹**

OAH No. 2022031034

¹ The District also served layoff notices to Christian Martinez Armesto, David Butterworth, and Kristina Larson. Mr. Armesto and Mr. Butterworth did not request a hearing. Ms. Larson requested a hearing but later withdrew her request because the District rescinded her layoff notice. Exhibits refer to Mr. Armesto as Christian Martinez. In this Proposed Decision, he will be referred to as Mr. Armesto.

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 28 and May 2, 2022, from Sacramento, California.

John Dietrich, Attorney at Law, represented the Nevada Joint Union High School District (District).

Matthew Chevedden, Attorney at Law, represented respondents Julie Ahern, Kathryn Baca, Gabriella Blaney, Julie Campbell, Trent Duffey, Eli Ferrier, Carlen Handley, Kristina Knox, Brooke Lomeli, Margaret Cristina McFadden-Shopp, Rebecca Navarro, Timothy Newkirk, Laurel Phillips, Kara Scheitlin, and Anna Thorell (collectively, "the represented respondents").

Respondent Kyle Lutkemuller appeared on his own behalf.

Respondents Michael Profumo and Tyler Smith did not appear, their defaults were entered pursuant to Government Code section 11520, and the matter proceeded in their absence.

Evidence was received, the record was closed, and the matter was submitted for decision on May 2, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. Brett W. McFadden is the District's Superintendent. Superintendent McFadden's actions, and those of the District's staff and Board of Trustees (Board), were taken solely in their official capacities.

2. On March 9, 2022, Superintendent McFadden recommended to the Board a reduction and/or discontinuation of particular kinds of services (PKS) and the termination of services of a corresponding number of certificated employees. The same day, the Board adopted Resolution No. 15-21/22, "Reduction of Particular Kinds of Services of Certificated Services" (Resolution), mandating the same, "in the best interests of the District and the welfare of the schools and the pupils." The Resolution mandated a reduction or discontinuation of PKS in the amount of 17.76 full-time equivalent (FTE) positions for the 2022-2023 school year, provided the method to determine which teachers to lay off, and authorized Superintendent McFadden to initiate lay off procedures. The Resolution identified the PKS to be reduced or discontinued, and their corresponding FTEs, as follows:

Nevada Union High School

English	1.50 FTE
Social Science	0.66 FTE
Physics	0.17 FTE
Mathematics	1.0 FTE

Dance	0.33 FTE
Foreign Language	0.66 FTE
Physical Education	0.66 FTE
Get Focused, Stay Focused	0.33 FTE
Study Hall	3.0 FTE
APEX	0.50 FTE
Chemistry	0.17 FTE
Biology	0.33 FTE
Special Education Mild/Moderate	0.66 FTE
Exploratory CTE	0.33 FTE
Work Based Learning Coordinator	0.33 FTE

Bear River High School

Social Science	0.40 FTE
Chemistry	0.20 FTE
Mathematics	0.20 FTE
Physical Education	0.20 FTE
Dance	0.20 FTE
Foreign Language	0.20 FTE

ELD	0.20 FTE
APEX	0.40 FTE
Music/Band	0.40 FTE
Physics	0.20 FTE
Reconnecting Youth	0.20 FTE

Silver Springs High School

Building & Construction	0.66 FTE
Mathematics	0.17 FTE
English	0.33 FTE
Silver Strong	0.33 FTE
Business Math	0.17 FTE
Physical Education	0.33 FTE
Social Science	0.17 FTE
Science	0.17 FTE

North Point Academy

Independent Study	2.0 FTE
Total	17.76 FTE

3. The Resolution specified, among other things, that “as between certificated employees with the same seniority date, the order of termination shall be determined solely by the Board-adopted criteria.” It further provided: ““competency” as described in Education Code section 44955(b), for purposes of bumping, shall necessarily include all credentials, authorizations, training and experience possessed by the employee to be bumped that are relevant to the subject matter area of the position to be filled, including BCLAD [Bilingual, Crosscultural, Language, and Academic Development] authorization.”

4. The Resolution directed Superintendent McFadden or his designee(s)² to initiate layoff procedures and give appropriate notices to all employees whose services would be terminated. On March 10, 2022, Superintendent McFadden served each respondent with a written “Notice of Recommendation That Services Will Not be Required” (Notice), which included his recommendation to the Board that the respondents’ services would not be required for the 2022-2023 school year. A copy of the Resolution was served with each Notice.

5. Respondents timely filed Requests for Hearing. On April 18, 2022, Lesa St. Germain, District Human Resources Coordinator, served respondents with a First Amended Notice of Hearing for Thursday, April 28, 2020, at 9:00 a.m., which included instructions for video or telephone appearance. Jurisdiction for the subject proceedings exists pursuant to Education Code sections 44949 and 44955.

² On March 10, 2022, Superintendent McFadden designated Dan Frisella and Lesa St. Germain to act on his behalf to implement the reduction-in-force proceedings.

Cause for Reduction or Discontinuation of Services

6. Dan Frisella, the District's assistant superintendent, testified at hearing about the reason for the District's layoffs. Mr. Frisella has worked for the District for nearly 11 years and is finishing his sixth year as the assistant superintendent. He explained the District maintains five high schools, including two comprehensive schools (Nevada Union High School and Bear River High School), an early college school (Ghidotti), a continuation school (Silver Springs High School), and an independent study school (North Point Academy). Presently, the schools collectively serve approximately 2,375 students.

7. The District's budget suffers from several "uncertainties" for the 2022-2023 school year and beyond. Those uncertainties include inflation, retirement fund obligations, decreasing enrollment, the rising cost of special education, and projected cost-of-living adjustments to payroll. Currently, the District is deficit spending and its ending fund balance reserves are diminishing.

Necessity for Layoffs

NECESSITY VS. EXCESSIVE PRECAUTION

8. School districts are authorized to lay off certificated employees at the close of the school year "whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of [this] condition[] to decrease the number of permanent employees in the district." (Ed. Code § 44955, subd. (b).) At hearing, the represented respondents argued these layoffs are not "necessary" within the meaning of section 44955. Instead, they argued the District sent the layoff notices as an "excessive precaution."

9. In support of their argument, the represented respondents noted that in March 2020, the District served layoff notices to multiple teachers, including at least three respondents in this matter (respondents Campbell, Knox, and Phillips). The represented respondents noted those individuals are still employed by the District, which they believe proves the 2020 layoff notices were excessive. By extension, they reason the current layoff notices are similarly excessive.

10. The represented respondents' argument is rejected. Although official notice was taken of the OAH's proposed decision regarding the District's 2020 layoffs, the evidence at the instant hearing did not prove those layoffs were unnecessary. Furthermore, even assuming for the sake of argument that the 2020 layoffs were unnecessary, the reasons for this year's layoff notices are separate and discrete from the reasons motivating any prior layoffs. The represented respondents' argument that the current layoff notices are unnecessary is based on conjecture and unsupported by the evidence.

NECESSITY VS. ESSENTIAL SERVICES

11. The represented respondents also argued the layoffs are not necessary because, in at least one instance, the layoffs, if consummated, could deprive students of essential services. Specifically, respondent Handley testified that, at the time she received her layoff notice, the District maintained a job posting wherein it was seeking to hire a science teacher for Silver Springs High School. She believes the District has since withdrawn that posting without filling the position. She further believes the science teacher position at Silver Springs High School that is subject to layoff is the only such position at that school. The represented respondents conclude that laying off the only science teacher at Silver Springs High School will deprive those students of essential curriculum.

12. Once again, the represented respondents' argument is rejected as based on conjecture and unsupported by evidence. Moreover, on scrutiny, their actual argument is that the District should not reduce a specific PKS (namely, science at a particular site). Arguing that a PKS should not be reduced is different from arguing that such a reduction does not necessitate a layoff. Additionally, "even though a service must continue to be performed in a school district, the particular kind of service of the employee may be eliminated." (*Rutherford v. Bd. of Trustees* (1976) 64 Cal.App.3d 167, 177 (citing *Davis v. Berkeley School Dist.* (1934) 2 Cal.2d 770).)

Seniority Dates – Respondents Baca, Duffey, and Lutkemuller

13. Ms. St. Germain helped create and maintain the District's seniority list (Seniority List), which contains 174 teachers, including all respondents. A teacher's seniority date on the Seniority List indicates the date his or her employment contract began, which is based on information from the District's personnel files.

14. The Seniority List identifies August 12, 2021, as the seniority date for respondents Baca and Lutkemuller. At hearing, they each argued their seniority date should be August 3, 2021, because on that date and the day after, they both attended a paid staff development training at the request of their principal. Their testimony was credible and unopposed. The District argued, however, that their attendance was voluntary and does not affect their seniority dates. Rather, the District contends their seniority dates are properly determined by the start dates included in their respective employment contracts.

15. The Seniority List identifies August 12, 2019, as the seniority date for respondent Duffey. At hearing, he argued his seniority date should be August 9, 2019, because on that date he attended a training on the District's new textbooks, which was

essential to performing his job. The District contends respondent Duffey's training was not paid, and that his attendance was voluntary and does not affect his seniority date.

16. "Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position." (Ed. Code, § 44845.) The evidence did not establish that respondent Duffey was paid for the training on August 9, 2019, and therefore his attendance did not change his seniority date. Respondents Baca and Lutkemuller, however, were paid for the training, and therefore first rendered paid service to the District on August 3, 2021. Consequently, the relevant question is whether they did so "in a probationary position."

17. "The Education Code establishes four possible classifications for certificated employees: permanent, probationary, substitute and temporary." (*Taylor v. Bd. of Trustees* (1984) 36 Cal.3d 500, 504.) The District must determine a new certificated employee's employment status, and notify the employee of the determination in writing, "[a]t the time of initial employment," which means "before they first render paid service to their employer." (Ed. Code, § 44916; *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 921.) Absent a written statement indicating the employment is temporary, "the certificated employee shall be deemed to be a probationary employee of the school district, unless employed with permanent status." (Ed. Code, § 44916.)

18. The District did not notify respondents Baca or Lutkemuller that their paid service on August 3, 2021, was temporary employment. In the absence of such written notification, their employment is deemed probationary under Education Code section 44916. Consequently, respondents Baca and Lutkemuller first rendered paid service in a probationary position on August 3, 2021, and that is their seniority date.

19. At hearing, the District further argued that respondents Baca and Lutkemuller would still have received layoff notices even with an August 3, 2021, seniority date. The evidence supports the District's argument. Respondent Baca is an English teacher, and the Seniority List shows no English teacher was hired between August 3 and August 11, 2021, or ranked higher than her with an August 12, 2021, seniority date. Respondent Lutkemuller is a Social Science teacher, and the other Social Science teachers ranked higher than him with an August 12, 2021, seniority date either also received a layoff notice (respondents Profumo and Thorell) or did not receive a layoff notice because their attrition was already positively assured for the 2022-2023 school year (Joshua Tygart). Respondent Lutkemuller did not contend, and the evidence did not establish, that he is certificated or competent to teach any other assignment currently held by teachers with an August 12, 2021, seniority date. As a result, although the Seniority List reflects an inaccurate seniority date for respondents Baca and Lutkemuller, the error did not cause either respondent to receive a layoff notice they should not have received.

Positively-Assured Attrition

20. Finally, certain represented respondents argued that the District did not appropriately consider positively-assured attrition (PAA) when it decided which teachers to lay off. PAA is the term the District applies when it knows a specific teacher will not be employed by the District the following school year. On the Seniority List, the District listed PAA codes in place of a teacher's seniority number for reasons such as resignation, retirement, or death.

21. Respondents Phillips, Thorell, Duffey, and Scheitlin argued that when the District chose them for lay off, it did not consider PAA. They based their argument on a version of the District's Seniority List labeled "Draft as of 4/4/22" (Draft Seniority List).

Ms. St. Germain explained the Seniority List is “a living document,” which means the District saves the list electronically and updates it when needed, rather than creating a new one each school year. She recognized the Draft Seniority List as a version of the Seniority List that was generated sometime after the layoff notices were sent in this matter. The Draft Seniority List does not include tie-breaking ranks for teachers with shared seniority dates, nor does it include PAA information. In contrast, the Seniority List the District used when generating the layoff notices includes both.

22. Respondent Phillips argued that when the District selected her for layoff, it did not consider the PAA status of Mr. Armesto. However, the evidence did not establish that Mr. Armesto’s attrition is positively assured for the 2022-2023 school year. Rather, Mr. Armesto was also selected for layoff.

23. Respondents Thorell and Duffey argued that when the District selected them for layoff, it did not consider the PAA status of a less senior employee, Mr. Tygart. However, the District’s Seniority List notes an “R” in place of Mr. Tygart’s seniority ranking, which Ms. St. Germain testified is a PAA code that means he either resigned or retired for next year. Consequently, the evidence proved the District did consider Mr. Tygart’s PAA status when it chose respondents Thorell and Duffey for layoff.

24. Respondent Scheitlin argued that when the District selected her for layoff, it did not consider the PAA status of a less senior employee, Joel Stroeve.³ However, the District’s Seniority List notes an “NR” in place of Mr. Stroeve’s seniority ranking, which Ms. St. Germain testified is a PAA code that means he is not returning

³ Mr. Stroeve did not receive a layoff notice.

for next year. Consequently, the evidence proved the District did consider Mr. Stroeve's PAA status when it chose respondent Scheitlin for layoff.

25. To the extent respondents argued the District did not consider any change to teachers' PAA status between the time the layoff notices were sent and the final decision rendered in this case, that argument is also rejected. "A school district need not consider positively assured attrition occurring between the date of the preliminary notice and the final notice in determining the number of certificated employees to be terminated by reason of a reduction or discontinuation of a particular kind of service." (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 630.)

Represented Respondent's Individual Arguments

REDUCTION OF PARTIAL ASSIGNMENT – RESPONDENT MCFADDEN-SHOPP

26. Respondent McFadden-Shopp is assigned 0.67 FTE at Ghidotti and 0.33 FTE at North Point Academy, where she is an independent study teacher. The Resolution seeks to discontinue her 0.33 FTE independent study PKS, but not her 0.67 FTE assignment at Ghidotti. To the extent she argues she should not be subject to a layoff notice because only a portion of her assignment is being discontinued, that argument is rejected. Under Education Code section 44955, subdivision (b), "whenever a particular kind of service is to be reduced or discontinued," the District is authorized to "terminate the services of not more than a corresponding percentage of the certificated employees of the district." In other words, once a district decides to discontinue or reduce a PKS, "it is simply within the discretion of the board to determine the amount by which it will reduce a particular service." (*Krausen v. Solano County Junior College Dist.* (1974) 42 Cal.App.3d 394, 406.)

APPROPRIATE BUMPING – RESPONDENT KNOX

27. Ms. St. Germain helped prepare a spreadsheet titled “Bump Analysis,” which contains information about teachers who “bumped” other teachers. For purposes of a school district’s reduction in force, “bumping” occurs when a teacher whose assignment is slated for reduction or discontinuation instead moves into a different assignment (for which they are certificated and competent to teach) held by a less senior teacher, which in turn “bumps” the less senior teacher. School districts provide for bumping to comply with Education Code section 44955, subdivision (b), which provides, in relevant part: “[e]xcept as otherwise provided by statute, 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.”

28. Respondent Knox is assigned 1.0 English FTE at Nevada Union High School. The Resolution calls for reducing or discontinuing 1.5 English FTE at Nevada Union High School and .33 English FTE at Silver Springs High School, for a District-wide total of 1.83 English FTE. Respondent Knox is number 137 on the Seniority List. She argued her layoff is unnecessary because the District already seeks to lay off 2.6 English FTE from teachers less senior to her: respondents Baca (number 153, 1.0 FTE), Navarro (number 157, 1.0 FTE), and Lomeli (number 163, 0.6 FTE).

29. To evaluate respondent Knox’s argument, it is appropriate to start with the least senior teacher, respondent Lomeli. According to the District’s Bump Analysis, a more senior English teacher (Debi Fairchild, number 45) had her 0.17 Study Hall FTE discontinued, so Ms. Fairchild bumped respondent Lomeli’s English assignment by 0.17 FTE. Another more senior teacher (Kelsey Langel, number 91) had both her 0.33

Exploratory CTE FTE and her 0.33 Work Based Learning Coordinator FTE discontinued, so Ms. Langel, who is also credentialed and competent to teach English, bumped respondent Lomeli's remaining 0.4 FTE⁴ English assignment.

30. The District is discontinuing respondent Navarro's full 1.0 English FTE position. Finally, it is also reducing respondent Baca's assignment by 0.33 FTE, plus another 0.50 FTE due to bumping. Specifically, a more senior English teacher (Alexis Olsen, number 112) had her 0.17 Study Hall FTE discontinued, so Ms. Olsen bumped respondent Baca's English assignment by 0.17 FTE. Additionally, Ms. Langel had her 0.33 Get Focused, Stay Focused FTE discontinued, so she bumped 0.33 FTE of Ms. Baca's remaining English assignment.

31. Based on the above, the District appropriately used bumping to ensure the least senior teachers were laid off as a result of the PKS reduction or discontinuation identified in the Resolution. The final result, which partially reduces respondent Knox's assignment by 0.50 English FTE, justifies her layoff notice.

Summary of Findings

32. The District's financial uncertainties for the 2022-2023 school year provide cause for it to reduce or discontinue PKS. The layoff notices issued to respondents were necessary based on the District's determination to reduce or

⁴ Respondent Lomeli's 0.6 FTE assignment was fully bumped by 0.57 FTE because her assignment at Bear River High School was in increments of 0.2 FTE, while assignments at all other District schools are in increments of 0.17 FTE.

discontinue PKS. Both the reduction and discontinuation of PKS as well as the resulting layoff notices are related to the welfare of the District's schools and pupils.

33. The District's Seniority List includes incorrect seniority dates for respondents Baca and Lutkemuller. However, the error did not cause either respondent to receive a layoff notice they should not have received.

34. The District appropriately accounted for PAA when it determined which teachers to lay off. The Seniority List includes PAA designations, and the District properly considered those designations when it made its layoff decisions.

35. The District appropriately issued layoff notices to respondents McFadden-Shopp and Knox, as discussed in Findings 26 through 31, above. Any other assertions put forth by any of the respondents at hearing and not addressed above are found to be without merit and rejected.

36. No employee that is not a party to this matter with less seniority than any of the respondents is being retained to perform a service that any of the respondents are certificated and competent to render. Additionally, there was no evidence that the District proposes to discontinue any services that are mandated by state or federal laws or regulations.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. Under Government Code section 11520, if a respondent fails to appear after timely filing a notice of participation, the agency involved may proceed with a default and take action.

3. "A school district may consider its financial circumstances in deciding whether to reduce or discontinue a particular kind of service." (*San Jose Teachers Assn. v. Allen, supra*, 144 Cal.App.3d at p. 631.) "A board's decision as to reduction or discontinuation of a particular kind of service is not tied in with any statistical computation, such as reduction in the number of students. The number of terminations made necessary by PKS reductions depends totally upon the district's decision as to how many services to reduce." (*Id.* at p. 635.) A school district's decision to reduce a PKS must not be fraudulent, arbitrary, or capricious. (*Id.* at p. 637.) The services identified in the Resolution are PKS that can be reduced or discontinued under Education Code section 44955, and there was no evidence that the District's decision was fraudulent, arbitrary, or capricious.

4. The District is authorized to reduce services within the meaning of Education Code 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. Bd. of Trustees, supra*, 64 Cal.App.3d at pp. 178-179.)

5. Certificated employees subject to layoff "shall be terminated in the inverse of the order in which they were employed." (Ed. Code, § 44955, subd. (c).) To accomplish this, "[t]he 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." (*Ibid.*)

6. The District appropriately accounted for positively-assured attrition when it determined which teachers to lay off. The District also appropriately applied bumping rules such that no employee with less seniority than respondents is being retained to perform a service that any of the respondents are certificated and competent to render.

7. Cause exists for the reduction and/or discontinuation of the PKS and for the reduction and or discontinuation of 17.76 FTE certificated positions for the 2022-2023 school year pursuant to Education Code sections 44949 and 44955. Cause for the reduction and/or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. Respondents' arguments have been considered and rejected. As a result, cause exists to give respondents notice that their services will not be required, or their hours reduced, for the 2022-2023 school year.

RECOMMENDATION

The Statement of Reduction in Force is affirmed. The District may notify respondents that their services will not be needed or will be reduced during the 2022-2023 school year due to reduction or discontinuation of particular kinds of services.

DATE: May 4, 2022


Sean Gavin (May 4, 2022 11:51 PDT)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings