

BEFORE THE
GOVERNING BOARD OF THE
SAN MARCOS UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving:

22 CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2018040075

PROPOSED DECISION

Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 19, 2018, in San Marcos, California.

Dean T. Adams, Esq., of Adams, Silva & McNally, LLP, represented complainant, Henry H. Voros, Assistant Superintendent, Human Resources and Development, San Marcos Unified School District (SMUSD).

Fern M. Steiner, Esq. of Smith, Steiner, Vanderpool & Wax, APC represented all affected certificated employees (respondents).

The matter was submitted on April 19, 2018.

FACTUAL FINDINGS

1. On March 6, 2018, the San Marcos Unified School District Governing Board found and resolved that for the 2018-2019 school-year, a reduction in particular kinds of services (PKS) was necessary. The resolution called for a reduction in services equaling 86.9 Full-Time Equivalent (FTE) positions. The resolution called for the following reductions in PKS:

<u>Services</u>	<u>FTE</u>
K-5 th Grade Teacher	20.0
K-5 th Grade Physical Education Teacher	6.0
K-5 th Music Teacher	12.0

K-12 th Grade Social Worker	5.0
K-12 th Grade Mild/Moderate Special Ed. Teacher	4.5
6 th Grade Teacher (Core)	5.0
7 th -12 th Grade English/Language Arts Teacher	7.0
7 th -12 th Grade Math Teacher	6.0
7 th -12 th Grade Social Science Teacher	6.0
7 th -12 th Grade Life Science Teacher	2.0
7 th -12 th Grade Physical Science Teacher	2.0
7 th -12 th Grade Biology Science Teacher	2.0
7 th -12 th Grade Spanish Teacher	1.0
7 th -12 th Grade French Teacher	1.0
7 th -12 th Grade Physical Education Teacher	3.0
7 th -12 th Grade Mandarin Teacher	0.4
9 th -12 th Grade Career Technical Education Teacher	2.0
9 th -12 th Grade Independent Study Teacher	1.0
School Psychologist	<u>1.0</u>
<u>Total</u>	<u>86.9</u>

The parties agree the services listed above are PKS, which may be reduced or discontinued within the meaning of Education Code section 44955.

2. Complainant's decision to reduce or discontinue the services listed in Finding 1, above, is neither arbitrary nor capricious; rather, it is due to a projected budget deficit; and it is, therefore, a proper exercise of complainant's discretion.

3. The reduction and discontinuation of services is related to the welfare of the SMUSD and its pupils, and it has become necessary due to current and projected budget deficits, as determined by SMUSD.

4. All respondents affected by the layoffs received timely written notice that complainant recommended they not be re-employed in the upcoming, 2018-2019 school year.

5. Respondents timely submitted their "Notice(s) of Participation in Reduction in Force" forms to request a hearing to determine whether cause exists for not re-employing them.

6. On March 14, 2018, complainant timely notified respondents, pursuant to California Education Code sections 44949 and 44955, of the district's intent not to re-employ them for the upcoming school year. On the same day, respondents were served with copies of SMUSD resolution number 44-17/18, blank Notices of Participation in Reduction Force forms, and other related materials.

7. On March 27, 2018, the Statement of Reduction in Force and related materials were served on each respondent.
8. Each respondent timely filed a Notice of Defense and/or a Notice of Participation in Reduction in Force Hearing.
9. Each respondent was properly noticed of the date, time and place of the instant hearing.
10. Prior to the instant hearing, the SMUSD rescinded all but 22 of the Reduction in Force notices due to resignations, retirements and other factors.
11. All prehearing jurisdictional requirements were met.
12. Respondents were selected for receiving notice of layoff based on the first day of paid service of each respondent. Respondents were ranked for layoff in the inverse order of their date of employment and the tie-breaking criteria, set forth in SMUSD resolution number 44-17/18, were used to rank employees having the same dates of employment.
13. None of the 22 respondents contested the fact that they were properly included on the Reduction in Force list.

LEGAL CONCLUSIONS

1. Jurisdiction for the instant proceedings exists pursuant to Education Code sections 44949 and 44955. All notices and other requirements arising out of those statutes were provided as required.
2. The services listed in Factual Finding 1 are a PKS within the meaning of Education Code section 44955.
3. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certified employees of the district by 22.0 FTE¹ positions, for budgetary reasons. The SMUSD's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

¹ The resolution sought to reduce 86.9 FTEs, but due to retirements and resignations, SMUSD ultimately sought to reduce only 22.0 FTEs in this hearing.

4. Cause exists to reduce or discontinue services relates solely to the welfare of SMUSD and its pupils within the meaning of Education Code section 44949.

5. Cause exists to reduce the number of certificated employees of SMUSD due to the reduction and discontinuation of the PKS. SMUSD identified the certificated employees providing the PKS that SMUSD directed be reduced or discontinued.

6. No junior certificated employee will be retained to perform services which a more senior employee is certificated and competent to perform.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Accusation is sustained as to the following respondents, and complainant shall notify them that their services will not be needed during the 2018-2019 school-year due to reduction or discontinuation of particular kinds of services:

1. Burns, John.
2. Clark, Brittany
3. Dalmacio, Kristina
4. Drewniak, Dayna
5. Furr, Amanda
6. Gutierrez, Samantha
7. Haap, Catherine
8. Henry, Ashley
9. Hershkowitz, Sonja
10. Hunt, Diane
11. Keefe, Taylor
12. McCredie, Shelby
13. McLeod, Mara
14. McNichols, Rebecca
15. Rodriguez, Veronica
16. Rybarczyk, Bradley
17. Schweikart, Chloe
18. Sharp, Lauren
19. Smith, Kevin
20. Stone, Sasha
21. Thompson, Jennifer
22. Zimolzak, Melissa

Dated: May 3, 2018

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings