

**BEFORE THE
GOVERNING BOARD OF THE
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

**In the Matter of the Teacher Reduction in Force for:

CERTAIN CERTIFICATED EMPLOYEES, Respondents.**

OAH No. 2020040078

PROPOSED DECISION

Heather M. Rowan, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on April 28 and 29, 2020.

Gabriela D. Flowers and Katherine Holding, Attorneys at Law, of Lozano Smith, represented the Sacramento City Unified School District (District).

Lesley Beth Curtis, Attorney at Law, of Langenkamp Curtis & Price, represented Daniel Cacho, Zachary Cuda, Kevin Jacobsen, Valyncia Johnson, Rhonda Jones, Christopher Manning, Galen Moran, Tamara Toby, and Paula von Lahr, who were present.

Respondent Amanda Chapman was present and represented herself.

Oral and documentary evidence was received. The parties filed simultaneous closing briefs on May 1, 2019. The District's brief was marked as exhibit 26, and the represented respondents' brief was marked as exhibit JJ. No written closing brief was

received from respondent Chapman. The record was closed and the case was submitted for decision on May 1, 2020.

FACTUAL FINDINGS

1. The District is a large urban school district that provides services to 40,000 students in and surrounding the City of Sacramento. Respondents are certificated employees.

2. Cancy McArn is the District's Chief Human Resources Officer. She, with her staff, compiled the data that led to recommendations to the District's Governing Board (Board) regarding the reduction of particular kinds of services (PKS). The actions of Ms. McArn and the Board were taken in their official capacities.

3. Rose Ramos is the Chief Business Officer for the District. Ms. Ramos has been in a similar position in public schools for about 20 years, and began with the District in September 2019. Ms. Ramos explained the District currently has a "Negative Certification" due to its financial picture. The Negative Certification means the District cannot meet its financial obligations currently or for the coming two years. The District is now forced to find ways to achieve solvency.

4. Ms. McArn presented the reduction of PKS recommendation to the Board because budget reductions are "needed to assist in addressing the District's declining enrollment, the elimination of certain funds, and staffing needs." Ms. Ramos stated the District's budget projections reveal it must implement reductions in the amount of \$27 million no later than July 2021 to avoid a fiscal crisis.

5. Following a series of meetings with school principals, supervisors, assistant superintendents, Budget Department representatives, and Department leaders, Ms. McArn and her staff met and developed proposals for programs and services to be reduced and/or eliminated to address the anticipated budget deficit. She presented the results to the Board at its February 20, 2020 meeting in the “Resolution to Eliminate Certificated Employees Due to a Reduction of Particular Kinds of Services” (Resolution 3120). Resolution 3120 provided recommendations, reasoning, and a list of full time equivalent (FTE) positions to be eliminated.

6. Ms. McArn also presented a proposed resolution specifying criteria to be used to determine the order of termination of certificated employees with equal seniority (Resolution 3121 – tie-breaking criteria), and criteria for deviation from terminating a certificated employee in order of seniority (Resolution 3122 – skipping criteria).¹ As a result of the District’s current financial situation, the Board determined that it must reduce PKS throughout the organization.

7. The Board resolved that the District needs to reduce or eliminate PKS as recommended; it was resolved that it is necessary to terminate the employment of an equivalent number of certificated employees of the District due to the reductions. Exhibit A to Resolution 3120 authorized the Superintendent or designee to take action to reduce or discontinue the following PKS for the 2020-2021 school year:

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¹ The parties stipulated at hearing that neither the skipping nor the tie-breaking resolutions are at issue.

<u>Vacant Services</u>	<u>Number of Full-Time Equivalent (FTE) Positions</u>
School Nurse	1.0
Teacher, Adult Ed, Hourly	1.0
Teacher, Elementary	5.0
Teacher, Elem, Special Subjects	1.2
Teacher, High	8.2
Teacher, K-8	1.4
Teacher, Middle	0.6
Teacher, Resource	1.60
Teacher, Parent/Preschool Adult Ed	1.0
Teacher, Resource, Special Ed	1.0
Teacher, Special Education	1.0
Vocational Specialist	1.0
Sub Total	24

<u>Vacant Adult Education</u>	<u>Number of Full-Time Equivalent (FTE) Positions</u>
ADULT ED: Parent Education	3.0
ADULT ED: Integrated Educational Training	1.0
Sub Total	4.0

<u>Vacant K-12 Teachers</u>	<u>Number of Full-Time Equivalent (FTE) Positions</u>
*Art	1.0
Business	1.0
*Counselor	2.6
CTE: Building Trades and Construction	1.0
*CTE: Engineering and Design	1.0
*English	5.5
FL: Mandarin	.2
Home Economic	1.0
Introductory Industrial Arts	1.0
Librarian	.5
*Math	3.4

Physical Education	3.0
*School Nurse	1.0
*School Psychologist	1.0
*School Social Worker	1.0
*Science: Biological Sciences	1.2
*Science: General Science	1.5
*Science: Physical Science	1.0
Social Science	2.9
Teacher, Elem., Spec. Subj: Art	1.4
Teacher Elem., Spec. Subj: Computers	1.2
*Teacher, Elementary, Spec. Subj. Phys Ed	2.0
*Teacher, Elementary	4.0
*Teacher, K-8 (K-6)	3.0
*Teacher, Middle (CORE)	2.4
*Teacher, Special Ed. (Mild/Moderate)	1.0
Teacher, Special Ed (Orthopedically Impaired)	1.0
Teacher, Resource	4.4
Training Specialist	2.8
Sub Total	54.0

Total Elimination: 82.0

*No employee expected to be noticed due to anticipated attrition (resignation/retirement).

8. The Board directed the Superintendent or a designee to identify an equivalent number of certificated personnel and give those certificated employees notice in writing of the recommendation that their services would not be required for the ensuing school year. The recommendation of certificated personnel to be identified for layoff from employment with the District was not related to their skills or performance as teachers.

9. The services set forth in Resolution 3120 are “particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. Unless otherwise discussed below, the reduction or elimination of the PKS set forth in Resolution 3120 constituted a proper exercise of the Board’s discretion, within the meaning of Education Code section 44955. Respondents’ arguments regarding the District’s budget and whether this layoff was reasonable and not arbitrary and capricious have been considered.

Jurisdictional Matters

10. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955.

11. In total, the District identified 82 FTE positions to be eliminated. After accounting for attrition and vacant positions, the District identified 17 employees whose positions were being eliminated, or were otherwise subject to layoff. On March 12, 2020, the District served via certified mail a written preliminary notice, pursuant to Education Code sections 44949 and 44955, that advised permanent and probationary certificated employees that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board had adopted Resolution 3120, which was attached to the preliminary notice. The recommendation was not related to respondents’ performance as certificated employees.

12. The parties stipulated at hearing that the preliminary notices were timely served, and that each of the 10 respondents timely requested a hearing and returned his or her notice of participation. On March 23, 2020, Ms. McArn sent respondents the

Statement of Reduction in Force, and the accompanying packet. All jurisdictional requirements have been met.

Rescissions

13. At hearing, the District rescinded preliminary layoff notices for respondents Kevin Jacobsen, Rhonda Jones, and Christopher Manning. The District also rescinded one FTE position in Social Sciences. The parties stipulated that, provided respondent Galen Moran provides satisfactory information to the District regarding his eligibility for the intern program on or before May 15, 2020, his layoff notice will be rescinded. If respondent Moran does not provide this information, the District will rescind the layoff notice for the next least-senior teacher identified to be laid off in social sciences: respondent Zachary Cuda.

Respondent Chapman

14. Respondent Amanda Chapman began her career with the District in 2002. She worked in the kindergarten through grade 12 program (k-12) until she resigned in 2015. Her principal provided her a District form, with the heading:

Human Resources Services

Resignation/Retirement

This form is provided for all employees submitting a voluntary resignation to terminate employment.

Respondent Chapman checked the box indicating she was submitting her voluntary resignation from her position as a certificated teacher at Ethel Phillips Elementary, effective June 12, 2015. The form stated:

This resignation is unconditional, effective, and irrevocable upon receipt by the undersigned Superintendent's designee as "approved." I understand it is my responsibility to turn in my keys, phone, badge, equipment, etc., to my site administrator.

Respondent Chapman signed the form on June 12, 2015. The Superintendent or his designee accepted and approved it on July 1, 2015. Respondent Chapman testified she had accepted a position with A. Warren McClaskey Adult Center (McClaskey) as a .5 FTE teacher in the Parent Participation Preschool. She began that position in the 2015-2016 school year.

15. Respondent Chapman testified at hearing that when she signed the resignation form, she understood it was necessary so that her principal could post her position and hire behind her. She never left the District, and did not believe teaching in Adult Education for the District was any different in terms of her status as a permanent employee than teaching in the k-12 program. Respondent Chapman was not provided any information regarding the effect of resigning her position, nor did she inquire with the Human Resources Department. She did not produce at hearing, nor did she recall signing, any evidence of a new contract or agreement with the District for her position in adult education.

16. In February 2019, respondent Chapman received an email from District human resources analyst Brandon Lillard informing her that her seniority date was previously listed as February 12, 2002, but that was incorrect because it included her time on a temporary contract in 2002. Mr. Lillard had "received approval" to update her seniority date to September 3, 2002. In December 2019, the District's Human Resources Department provided respondent an "Employee Seniority Notification"

form, which it does annually. Respondent Chapman signed the form, by which she acknowledged she was a permanent teacher, her seniority date was September 3, 2002, and she was a part-time teacher at McClaskey. Respondent also submitted her employee evaluation from the 2018-2019 school year, on which her supervisor checked the box indicating respondent Chapman's status was "permanent."

17. Respondent Chapman argued she is a permanent teacher with a seniority date of September 3, 2002. The District informed her of this on multiple occasions, and provided no evidence to the contrary at hearing. In fact, the seniority list the District produced at hearing lists respondent Chapman's seniority date as September 3, 2002.

18. The District provided respondent Chapman with incorrect information – on more than one occasion. And it did not correct that information from the time she began teaching in the adult program in 2015 until the time of hearing. The District argued respondent Chapman is not subject to the layoff process because under the Education Code, she is a temporary employee, but served her a Notice of Intent "out of an abundance of caution."

19. Education Code section 44929.25 addresses the status of adult education employees. That section states, in pertinent part:

Notwithstanding any other provision to the contrary, any person who is employed to teach adults for not more than 60 percent of the hours per week considered a full-time assignment for permanent employees having comparable duties shall be classified as a temporary employee, and shall not become a probationary employee under the provisions of Section 44954.

Respondent Chapman is employed to teach adults. The Parent Participation Preschool program is designed to teach the participating parents to teach the preschool students. The parents are enrolled in the adult education program and the children are not considered for attendance purposes. Respondent Chapman is employed at 50 percent time, which is below the 60 percent threshold in Education Code section 44929.25. Thus, respondent Chapman is statutorily considered a "temporary employee," despite information she received to the contrary.

20. Temporary employees may be released with more limited notice and without a hearing, in contrast to probationary and permanent employees. (Ed. Code, § 44954, subd (b); see also *Bakersfield Elementary Teachers Assn. v. Bakersfield City Sch. Dist.* (2006) 145 Cal. App. 4th 1260, 1273.)

21. Respondent Chapman is not subject to the layoff procedures set forth in Education Code section 44949. She should not have received a layoff notice through this process. The District has no authority to re-classify an employee who is statutorily deemed temporary. Because she is not a permanent or probationary employee, the Statement of Reduction in Force against respondent Chapman must be dismissed.

Adult Education Employees

RESPONDENT JOHNSON

22. Valyncia Johnson began teaching for the District on October 3, 2016. She has a clear teaching credential with an adult education designation. Ms. Johnson was hired to teach in the Administrative Assistant program at the Charles A. Jones Career and Educational Center (Charles A. Jones),² which she did until July 2019. The District

² Charles A. Jones is one of the District's adult educational programs.

eliminated the Administrative Assistant program after the 2017-2018 school year, but retained Ms. Johnson for the 2018-2019 school year to allow the enrolled students to complete the program. For the 2019-2020 school year, Ms. Johnson co-taught in the Integrated Education Program for English as a Second Language (ESL) students.

23. Sue Gilmore, PhD., has been the District's Director of Adult Education for 10 years. She testified that after the Administrative Assistant program was phased out, Ms. Johnson was retained for one year to co-teach in a crossover program between the Career Technical Education (CTE) program and ESL, called Integrated Educational Training. Ms. Johnson taught Business English for court reporting and computer applications, and Marguerite Sterling taught the same students ESL. Ms. Sterling's seniority date is October 10, 2016.

24. The Board approved a reduction of 1.0 FTE in "Adult Education: Integrated Educational Training."³ Dr. Gilmore testified that in 2020-2021, Charles A. Jones will not have an Integrated Education Training program. Ms. Johnsons' Administrative Assistant program was previously eliminated, and there will no longer be a CTE/ESL crossover program. Ms. Johnson has more seniority than Ms. Sterling, but Ms. Sterling's 2020-2021 position will be 1.0 FTE in ESL. Ms. Johnson is not credentialed in ESL. While Ms. Sterling has less seniority than Ms. Johnson, Ms. Sterling will teach 1.0 FTE in ESL. Ms. Johnson's position was eliminated.

³ This reduction is apparently a misnomer. Dr. Gilmore testified there is no such official program. Ms. Johnson remained classified as CTE for Administrative Assistants, and Ms. Sterling as ESL.

RESPONDENTS VON LAHR AND TOBY

25. Respondents Paula von Lahr and Tamara Toby are full time teachers in the Parent Participation Preschool program at McClaskey. Each is credentialed in adult education. Respondent von Lahr's seniority date is October 5, 1998. Respondent Toby's seniority date is September 8, 2015.

26. Ms. Ramos testified that the District's funds come from various sources. Some are based on attendance, some on grants, and some are one-time funds for particular programs. There are programs the District values that it continues to subsidize, even though the program may not be solvent or have its own source of funds. The District subsidizes these programs with General Funds. The Parent Participation Preschool is one such program.

27. Dr. Gilmore testified that the Parent Participation Preschool program collects \$160,000 in fees per year. The program costs \$435,000 to operate. As another cost-saving measure, the District is eliminating the program. All teachers in the Parent Participation Preschool program will be either laid off or their services will not be requested for the 2020-2021 school year.⁴ Neither respondent Toby nor von Lahr have

⁴ The District and teachers' Collective Bargaining Agreement defines "per session" teachers as teachers who work less than 15 hours per week, and may be terminated "whenever such action is deemed to be in the best interest of the instructional program." Dr. Gilmore testified she calls the per session teachers prior to each school year to tell them whether their services are required. No per session teacher who testified recalled such a call, and have historically assumed they will be teaching each school year.

additional credentials, and neither argued a right to bump another teacher in a different position.⁵

Respondent Cacho

28. Jay Carrithers' seniority date is August 27, 2014. In the 2019-2020 school year, Mr. Carrithers was teaching CTE: Engineering and Design (Engineering and Design) at the District's Engineering and Sciences High School. During the "One-Stop Staffing" process (One-Stop) the District employs to identify school sites' needs for the upcoming school year, it was determined Mr. Carrithers does not have the proper credential to teach Engineering and Design.⁶ Mr. Carrithers is credentialed to teach CTE: Building Trades and Construction (Building Trades).

29. Respondent Daniel Cacho was hired on February 3, 2020, to teach Building Trades, in which he holds a credential. Resolution 3120 identified 1.0 FTE in Building Trades to be reduced. Mr. Carrithers has more seniority than Respondent

⁵ Respondents presented evidence that two Parent Participation Preschool teachers who are less senior to respondents Toby and von Lahr did not receive layoff notices. Those teachers, however, work in adult education for less than 60 percent of full time. Contrary to respondents' argument, the two retained teachers are temporary under Education Code section 44929.25, not subject to the layoff process, and can be terminated without a hearing. This does not change the District's assertion that the program will be eliminated.

⁶ An Adult Education: Engineering and Design position was also identified in Resolution 3120. The District noted that reduction could be accounted for by attrition, rather than a layoff.

Cacho, and is qualified to teach Building Trades. Respondent Cacho received a layoff notice.

30. Jake Hansen has been a Human Resource Analyst for the District for 10 years. He testified that he collected data during and after One-Stop to identify positions to be reduced in the PKS reduction. He and his colleagues then conducted a seniority analysis to determine which teachers should receive layoff notices based on the reduction of PKS.

31. Mr. Hansen testified that Mr. Carrithers is not credentialed to teach Engineering and Design, and the One-Stop process determined he would move to Building Trades. He concluded that Building Trades will be overstaffed in the 2020-2021 school year because "Mr. Carrithers is coming." When asked whether the Building Trades position respondent Cacho is currently teaching would "exist next year," Mr. Hansen affirmed it would. He also stated the Engineering and Design position Mr. Carrithers taught in 2019-2020 will also still exist in 2020-2021, taught by a properly-credentialed teacher.

32. In its written closing argument, the District stated:

. . . [T]he current engineering course taught by Mr. Carrithers will still exist and will be held by someone properly credentialed in that area. This is why the engineering course was not identified on the PKS Resolution. Not identifying a CTE: Building Trades and Construction position on the PKS Resolution would have resulted in the District being overstaffed next year, as explained by Mr. Hansen, due to Mr. Carrithers moving into

a CTE: Building Trades and Constriction position. (Ex. 1.) Mr. Carrithers will likely take the position currently held by [sic] Mr. Cacho once the surplus process has concluded.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955. All notices and other jurisdictional requirements of sections 44949 and 44955 were met.

2. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The burden is on the District to demonstrate the reduction or elimination of PKS is reasonable and that the District carefully considered its needs before laying off any certificated employee. (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 807-808.)

Respondent Chapman

3. Education Code section 44929.25 states, in pertinent part:

Notwithstanding any other provision to the contrary, any person who is employed to teach adults for not more than 60 percent of the hours per week considered a full-time assignment for permanent employees having comparable

duties shall be classified as a temporary employee, and shall not become a probationary employee under the provisions of Section 44954.

As set forth in Factual Finding 21, respondent Chapman is a temporary teacher under Section 44929.25. She is not subject to the layoff procedures in Education Code sections 44949 and 44955. The Statement of Reduction in Force filed against her must be dismissed.

Respondent Cacho

4. Education Code section 44955, subdivision (b) provides, in part:

. . . 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 any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district. . . .

That is, the layoff process in Education Code sections 44949 and 44955 allows the District to terminate the services of a certificated employee “whenever a particular kind of service is to be reduced.” The layoff process identifies positions to be eliminated. As Mr. Hansen testified, and the District argued in its closing brief, both the Engineering and Design position and the Building Trades position “will exist next year.” As set forth in Factual Findings 31 and 32, the District did not establish by a

preponderance of the evidence that a PKS was reduced (or even modified). Rather, the District moved Mr. Carrithers from Engineering and Design to Building Trades, and found itself with more teachers than positions. Because there was no reduction of a PKS, respondent Cacho's layoff notice must be rescinded.

Remaining Respondents

5. The services the District seeks to eliminate in this matter, as set forth in Resolution 3120, are the particular kinds of service that may be reduced or discontinued within the meaning of Education Code section 44955. Except as applied to its identifying 1.0 FTE in CTE: Building Trades and Construction, the Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of the Board's discretion. Pursuant to Education Code sections 44949 and 44955, legal cause exists for the District to reduce or discontinue the particular kinds of services set forth in Resolution 3120, except as applied to respondent Cacho because the District did not in fact eliminate a CTE: Building Trades and Construction position. The reduction or discontinuance of these identified particular kinds of services relates solely to the welfare of the district and its pupils.

6. No certificated employee with less seniority than any respondent is being retained to render a service that any respondent is certificated and competent to render. Except as specifically identified above, legal cause exists pursuant to Education Code sections 44949 and 44955 to give respondents final notice that their services will not be required for the 2020-2021 school year.

RECOMMENDATION

1. The Sacramento City Joint Unified School District's action to reduce or eliminate the particular kinds of services identified in Resolution 3120, for the 2020-2021 school year is AFFIRMED, except as applied to respondents Chapman and Cacho.

2. The Statement of Reduction in Force against respondent Amanda Chapman shall be dismissed.

3. The Statement of Reduction in Force against respondent Daniel Cacho shall be rescinded.

4. The Statement of Reduction in Force against the remaining respondents is SUSTAINED. Sacramento City Unified School District may give final notices to those respondents that their services will not be required for the 2020-2021 school year.

DATE: May 5, 2020

DocuSigned by:
Heather M. Rowan
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HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings