

**BEFORE THE
GOVERNING BOARD OF THE
MANHATTAN BEACH UNIFIED SCHOOL DISTRICT**

**In the Matter of the District's Statement of Reduction in
Force of:**

**Certificated Employees of the Manhattan Beach Unified
School District,

Respondents.**

OAH No. 2020040042

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on May 15, 2020. The hearing was originally scheduled for April 27, 2020, but was continued to May 15, 2020, pursuant to Education Code section 44949, subdivision (e).

James B. Fernow and Vanessa Lee, Fagen Friedman & Fulfrost, LLP, represented Manhattan Beach Unified School District (District).

Carlos R. Perez, Law Office of Carlos R. Perez, represented all respondents except for respondent Patricia Ackerman, who represented herself.

Oral and documentary evidence was received, and argument was heard. The ALJ held the record open to allow the District's counsel to file and serve a more legible

copy of the seniority list (Exhibit 10) by 12 noon on May 18, 2020. The District's counsel timely filed and served another copy of the seniority list, which was marked and admitted as Exhibit 10A. The record was closed and the matter was submitted for decision on May 18, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. Suzanne Webb, Ed.D., Assistant Superintendent of Human Resources for the District, made and filed the District's Statement of Reduction in Force (District Statement) in her official capacity. Dr. Webb and her staff were responsible for implementation of the technical aspects of the layoff.

2. Respondents in this proceeding are certificated employees of the District. They are: Aaron Kofahl; Amanda Cross; Bridget Sullivan; Caroline Buck; Christine Jewett; David Carr; Denise Weber; Douglas Banim; Dylan Lawroski; Elizabeth Hutchinson; Emily Brown; Emily Brunick; Erminia Devinentis-Waul; Grisel Laureiro; Jeffrey Lee; Jodie Tynan; Julietta Last; Keely Sweeney; Krista Giffin; Krista Giffin; Kristina Houtermann; Lacey Califano; Leanne Weaver; Megan Johnson; Noah Arnold; Patricia Ackerman; Ryan Newman; Stella Libbi-Auday; and Timothy Piper (collectively, Respondents). (See Exh. 12.)

3. On March 4, 2020, the Governing Board of the District (Board) adopted Resolution No. 2020-08 (Resolution) reducing or discontinuing the following particular kinds of services for the 2020-2021 school year, and determined that such action was related to the welfare of the schools and the pupils thereof:

<u>PARTICULAR KINDS OF SERVICE</u>	<u>FTE¹</u>
K-5 Elementary	5.0
Elementary Art	1.0
Support Teacher – Reading	0.8
Support Teacher – Science	1.7
Elementary Music	0.5
TOSA – Literacy ²	1.0
TOSA – Mathematics	1.0
TOSA – Technology	1.0
Humanities	2.0
English	2.6 (MS = 1.0; HS = 1.6) ³
Social Studies	1.7 (MS=0.5; HS=1.2)
Mathematics	2.5 (MS=1.5; HS=1.0)
Science	2.1 (MS=0.5; HS: biology=1.2; chemistry=0.2; physics=0.2)

¹ FTE stands for "full time equivalent."

² "TOSA" stands for teacher on special assignment.

³ "MS" stands for middle school. "HS" stands for high school.

Physical Education	3.3 (ES=1.9; MS=1.0; HS=0.4) ⁴
Certificated Librarian	1.0 (HS)
Counseling	1.5
Program Specialist	0.4
Coordinator of Special Education	1.0
Secondary Music	0.8 (HS chorus=0.4; HS orchestra=0.4)
World Language	1.8 (MS: Mandarin=0.2; Spanish=0.4) (HS: Mandarin=0.2; Spanish=0.8; French=0.2)
Total FTE Reduction	32.7

4. The Resolution provides for exempting certificated employees from layoff who teach STEM/Project Lead the Way. The Resolution states, in part: “[F]or the purposes of assignment and reassignment to be effectuated as a result of this reduction in services, it is necessary to retain certificated employees who are competent and qualified to teach STEM/Project Lead the Way. Thus, in order for a senior certificated employee to displace a less senior certificated employee, the senior certificated employee must have received District approved STEM/Project Lead the Way training.” (Exh. 1.) The District decided to exempt STEM/Project Lead the Way from layoff because of the amount of financial resources and extensive teacher training that the District has already invested to build the program at Mira Costa High

⁴ “ES” stands for elementary school.

School. Respondent Leanne Weaver is the only STEM/Project Lead the Way teacher in the District.

5. On March 4, 2020, the Board adopted Resolution No. 2020-11 (Tiebreak Resolution), which established tiebreaker criteria for determining the relative seniority of certificated employees who first rendered paid, probationary service to the District on the same date. The Tiebreak Resolution provided that the order of employee termination shall be based on the needs of the District and its students.

6. On or before March 15, 2020, pursuant to Education Code sections 44949 and 44955, the District provided written notice to certificated employees, including Respondents, that their services would not be required for the upcoming 2020-2021 school year. The notice set forth the reasons for the District's decision and noted that 32.7 FTE positions would be reduced or discontinued. Each notice also notified the employees of their right to request a hearing to determine if there is cause for not reemploying them for the ensuing school year, and that a written request for a hearing was due within five calendar days.

7. Respondents are the certificated employees who timely requested a hearing to determine if there is cause for not reemploying them for the ensuing school year. Certificated employees Pao (Pauline) Chang, Daniel Leonard, Ruth Robles, and Teby Wammack did not request a hearing and thereby waived their right to a hearing and cannot contest the recommendation of their non-reemployment by the District. (Ed. Code, § 44949, subd. (b).)

8. The District served precautionary layoff notices on respondents Leanne Weaver and Patricia Ackerman. Respondent Weaver is exempt or "skipped" from layoff because of her involvement with STEM/Project Lead the Way. Respondent Ackerman

teaches transitional kindergarten (pre-K), a certificated position, and has a seniority date of August 20, 2018. The District believes there are no senior teachers who can meet the requirements to teach pre-K and bump Ackerman. Respondent Ackerman testified at the hearing regarding her employment with the District, dating back to 2009, when she was hired in a classified position as a preschool teacher. She was required to resign from the classified position in order to move to her current pre-K position in 2018. Ackerman understands that the layoff notice she received was a precautionary notice.

9. Thereafter, the District timely served the District's Statement and related documents on Respondents. Respondents timely filed Notices of Participation in Reduction in Force Hearing, by which they notified the District of their intent to participate in the District's Reduction in Force Hearing. The District timely served Respondents with written notice of the hearing. The hearing was originally set for April 27, 2020, but was continued to May 15, 2020, pursuant to Education Code section 44949, subdivision (e). All prehearing jurisdictional requirements were met.

PKS Reduction

10. The services set forth in Factual Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.

11. The District determined the services to be reduced or discontinued based on factors including student enrollment, overstaffing in some areas, declining student interest in certain elective subjects, the need to combine small class sections to reduce the number of sections, the need to maintain reserves as mandated by the state, and the deficit spending indicated in the District's budget for the 2020-2021 school year.

12. The decision to reduce services was not related to the capabilities and dedication of the individuals whose services are proposed to be reduced or eliminated. The decision to reduce the particular kinds of services was neither arbitrary nor capricious but was rather a proper exercise of the District's discretion.

Retirements, Resignations and Attrition

13. The District properly considered all known attrition, resignations, and retirements in determining the actual number of layoff notices to be delivered to its employees. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627.)

14. On May 12, 2020, the District rescinded the layoff notices issued to respondents Natalie Dibiase, Megan Montz, Liana Kuklinski, and Lauren Walsh, who are K-5 Elementary teachers. These respondents share a seniority date of August 25, 2015, and hold clear multiple subject credentials. Their layoff notices were rescinded due to the retirement of three teachers and the resignation of one teacher, which accounted for 4.0 FTE of the 5.0 FTE reduction in K-5 Elementary services. On May 12, 2020, the District also rescinded the layoff notice to respondent Kristie Rios, who has a seniority date of August 21, 2014, because the District determined it did not need to eliminate one support science teacher. The District Statement shall be dismissed against respondents Dibiase, Montz, Kuklinski, Walsh, and Rios.

15. On March 5, 2020, the District provided a Notice of Release from Employment to its temporary certificated employees, notifying them that they would not be employed by the District for the 2020-2021 school year.

16. The District identified certificated employees who were on a leave of absence during the 2019-2020 school year. Those leaves of absence will expire at the end of the 2019-2020 school year. The District assumes that these employees will

return to employment for the 2020-2021 school year unless they submit their resignation or they are granted a further leave of absence for the 2020-2021 school year.

Seniority List

17. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), credential and certifications, and current assignment. In January 2020, certificated employees were given the opportunity to verify, correct, and update their seniority date and credential information on the seniority list, and directed to provide any corrected or updated information before the Board's March 4, 2020 meeting. School site administrators were directed to remind their staff to review their information on the seniority list.

18. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in each of the particular kinds of services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other, less senior employees. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority.

19. The District applied the tiebreaker criteria contained in the Tiebreak Resolution to determine the relative seniority among employees who first rendered

paid, probationary service to the District on the same date. For employees with the same seniority date, points were awarded based on credentials, possession of a BCLAD or CLAD, possession of a special education authorization, supplemental subject matter authorization on credentials, college degrees, and completion of a District-approved GATE certification program. If employees remained tied with the same number of points, the District would break the tie by utilizing a lottery. As between tied employees, low lottery numbers would indicate low seniority for their specific hire date.

20. (A) The District received additional information regarding the credentials and college degrees of respondents Lacey Califano and Christine Jewett. The additional information for respondent Califano did not impact her status as an employee subject to layoff.

(B) For respondent Christine Jewett, the additional credential and degree information increased her tiebreaker points from four to six points. With six points, respondent Jewett became tied with respondents Megan Johnson and Emily Brown. Jewett, Johnson and Brown share the same seniority date of August 25, 2015, and they each hold clear multiple subject credentials. These three respondents were tied with six points after application of the tiebreaker criteria.

(C) Pursuant to the Tiebreak Resolution, the District held a lottery on May 15, 2020, prior to the hearing. Jewett received the highest lottery number, Brown received the lowest lottery number, and Johnson's number was in between. Among these three respondents, Jewett was deemed to have the most seniority and Brown was deemed to have the least seniority, with Johnson in-between.

(D) The District correctly identified respondents Jewett, Johnson, and Brown as being subject to being “bumped” from their positions by more senior employees identified for layoff but who are certificated and competent to teach in these respondents’ elementary teaching positions. The senior employees are currently assigned to provide services in Support Teacher-Reading, TOSA Literacy, and TOSA Mathematics. (See Factual Findings 26, 29, 30, below.) It is within the District’s discretion to make assignment decisions consistent with the results of the May 15, 2020 tiebreaker lottery.

District’s Analysis

21. Dr. Webb testified in detail regarding the District’s analysis to identify employees subject to layoff. The District relied primarily on the seniority list, the Resolution, and the Tiebreak Resolution to identify the employees for layoff. The District’s counsel prepared a Bumping Chart, which summarizes the District’s analysis. (See Exh. 20.)

K-5 ELEMENTARY

22. The Resolution provides for a 5.0 FTE reduction of K-5 Elementary teaching services. The District accounted for 4.0 FTE of the reduction with three retirements and one resignation. (See, Factual Finding 13, above.) This left 1.0 FTE of K-5 Elementary teaching still to be reduced.

23. Respondent Jodie (Suzanne) Tynan has a seniority date of August 20, 2018. She holds a clear multiple subject credential and is currently assigned to teach third grade. Respondent Emily Brunick also has a seniority date of August 20, 2018, and holds a clear multiple subject credential. Brunick teaches fifth grade. When the District applied the tiebreaker criteria, Brunick received six points and Tynan received

five points. Brunick was deemed to have more seniority than Tynan. Therefore, respondent Tynan was correctly identified as an employee subject to layoff for the remaining 1.0 FTE reduction in K-5 Elementary teaching services.

24. Respondent Tynan testified at the hearing. She does not dispute her seniority date is August 20, 2018. Tynan believes she should receive 11 tiebreaker points, not five points. Under the tiebreaker criteria, Tynan contends she should receive three points for her clear multiple subject credential, three points for her reading specialist clear credential, two points for her CLAD, one point for a supplemental authorization in literacy, one point for her master's degree, and one point for her GATE certificate. Tynan received her reading specialist credential and supplemental authorization in literacy in 2018, as part of her master's degree program, but she did not submit the paper work to post them to her teaching credential until March 30, 2020. Tynan admitted an increase in her tiebreaker points from five to 11 points will not change her layoff status. (See Factual Finding 25, below.)

ELEMENTARY ART

25. William Ahrens has a seniority date of September 5, 2000. He holds a clear multiple subject credential, a supplementary authorization in art, and a clear single subject credential in art. Ahrens was identified for layoff because of the 1.0 FTE reduction in elementary art. However, Ahrens is certificated and competent to bump into the position of respondent Emily Brunick. As noted in the preceding paragraph, respondent Brunick has a seniority date of August 20, 2018. She holds a clear multiple subject credential and teaches fifth grade. The District correctly identified respondent Brunick as an employee subject layoff for the 1.0 FTE reduction in Elementary Art.

SUPPORT TEACHER - READING

26. Rachel Cross has a seniority date of August 21, 2014. She holds a clear multiple subject credential and a preliminary administrative services credential. Her current assignment is a 0.8 FTE position as a support teacher in reading. Cross was identified for layoff because of the 0.8 FTE reduction in Support Teacher-Reading services. However, Cross is certificated and competent to bump into one of the K-5 Elementary positions held by respondents Emily Brown, Megan Johnson, and Christine Jewett. These three respondents were correctly identified as being subject to bumping by Rachel Cross for 0.8 FTE, in accordance with the tiebreaker lottery results.

SUPPORT TEACHER - SCIENCE

27. Although the Resolution provides for a 1.7 FTE reduction in Support Teacher-Science services, the District has determined it is necessary to reduce this service only by 1.0 FTE. Gretchen Renshaw is a support science teacher expected to retire, but her retirement has not yet been confirmed by the District. If Renshaw retires, the District will use her retirement to account for the 1.0 FTE reduction in Support Teacher-Science services.

ELEMENTARY MUSIC

28. Respondent Krista Giffin is a probationary employee with a seniority date of August 20, 2018. She holds a preliminary single subject credential in music. She currently teaches elementary and secondary music. Respondent Giffin is the least senior elementary music teacher. The District correctly identified respondent Giffin as an employee subject to layoff to account for the 0.5 FTE reduction in Elementary Music.

TOSA – LITERACY

29. Michelle Syverson has a seniority date of September 1, 1995. She holds a clear multiple subject credential. Her current assignment is TOSA Literacy. Syverson is the only District employee teaching in that position. Syverson was identified for layoff because of the 1.0 FTE reduction in TOSA-Literacy services. However, Syverson is certificated and competent to teach the TOSA English Learners and Intervention position held by respondent Christine Jewett, who has a more recent seniority date than Syverson. The District correctly determined that Jewett will be laid off either 1.0 FTE or 0.8 FTE, and will apply the tiebreaker lottery results to determine seniority between Jewettt, Emily Brown and Megan Johnson, and which of them will have 0.2 FTE remaining.

TOSA - MATHEMATICS

30. Holly Compton has a seniority date of August 21, 2014. She holds a clear multiple subject credential. Her current assignment is TOSA-Mathematics. Compton was identified for layoff because of the 1.0 FTE reduction in TOSA-Mathematics services. However, Compton is certificated and competent to bump into one of the K-5 Elementary positions of respondents Emily Brown, Megan Johnson, or Christine Jewett, all of whom have more recent seniority dates than Compton. The District will apply the tiebreaker lottery results to determine which of these three employees will be bumped by Holly Compton and laid off for 1.0 FTE.

TOSA - TECHNOLOGY

31. The Resolution provides for a 1.0 reduction in TOSA-Technology services. Jason Marshall has a seniority date of August 21, 2014. He holds clear single subject credentials in social science and computer concepts/applications. Marshall's current

assignment is TOSA-Technology. The District determined that Marshall is certificated and competent to teach the current assignment of respondent Timothy Piper. Respondent Piper has a seniority date of August 25, 2016, and holds a clear single subject credential in social science. The District correctly identified Piper as an employee subject to layoff.

HUMANITIES

32. Respondent Jeffrey Lee has a seniority date of August 25, 2015. He is the humanities teacher with the least seniority. He is subject to layoff to account for 1.0 FTE of the 2.0 FTE reduction in humanities. Respondent Lee holds a clear single subject credential in English, and a supplementary authorization in psychology. Respondent Keely Sweeney has the same seniority date as Lee, and holds a clear single subject credential in English. She currently teaches English and Journalism. The District applied the tiebreaker criteria, which resulted in Lee receiving seven points and Sweeney receiving six points. Lee is deemed to have more seniority than Sweeney. Respondent Lee bumps into Sweeney's position. As discussed below, pursuant to the Resolution, Sweeney's position in English is reduced by 0.6 FTE. Therefore, respondent Jeffrey Lee is subject to layoff for 0.6 FTE but will retain 0.4 FTE.

33. (A) Respondent David Carr was noticed for layoff to account for 1.0 FTE of the 2.0 FTE reduction in humanities. Respondent Carr and Raeann Marti share the same seniority date of August 21, 2014. After applying the tiebreaker criteria, Marti received seven points and respondent Carr received six points. Carr is deemed to have less seniority than Marti. Therefore, respondent Carr is subject to layoff for 1.0 FTE.

(B) Dr. Webb testified that, for the 2019-2020 school year, respondent Carr taught a "humanities block," which consists of English, reading, and social studies.

Carr was required to have Board authorization to teach a "humanities block" because he only has a social studies credential and does not have an English credential. Carr was granted special approval, pursuant to the Education Code, to teach outside of his credential. Carr was working towards obtaining an English credential. Dr. Webb testified Carr is not authorized to teach a "humanities block" in the 2020-2021 school year. Dr. Webb explained that Carr was required to have an authorization to teach a "humanities block" in the 2019-2020 school year, because an audit had found Carr was "misassigned."

34. (A) Respondent Carr testified at the hearing. He contends that he should have seven tiebreaker points, not six, because he has a master's degree and is one credit hour away from having an English credential. Carr contends he should be allowed to bump into the position held by Aaron Kofahl. Kofahl has the same seniority date as Carr, August 21, 2014, and holds a clear single subject credential in social science. Kofahl received only five tiebreaker points, while Carr received six points. Carr understands that Kofahl teaches AP classes in Psychology and European History. Carr has never taught an AP class, but contends the AP Board has no formal requirements for who can teach an AP class. Dr. Webb's testimony, however, established that the District sends teachers to training to teach specific AP courses, and that an AP certification is required before a teacher may teach an AP course. Carr does not meet the requirements to bump into Kofahl's position teaching AP courses. Carr's status in the layoff is not changed by his testimony or contentions.

(B) Respondent Carr testified he has taught the same humanities block of classes for the past six years and has never been required to obtain Board authorization until the 2019-2020 school year. Carr testified he has never been told he was teaching outside of his credential. He feels he should be allowed to continue

teaching the same humanities block of classes. Carr also testified regarding his proficiency in teaching humanities, his training in teaching humanities curriculum, and that he has received performance evaluations rating his teaching performance as outstanding.

ENGLISH

35. The District identified respondents Keely Sweeney and Kristina Houterman as employees subject to layoff to account for the 1.6 FTE reduction in high school English. Houterman, who has a seniority date of October 13, 2015, and Sweeney, who has a seniority date of August 25, 2015, are the two high school English teachers with the least seniority. Since Houterman has less seniority than Sweeney, Houterman will be laid off to account for 1.0 FTE and Sweeney will be laid off to account for 0.6 FTE, for a total reduction of 1.6 FTE in high school English. Although Sweeney is laid off for 0.6 FTE, she also loses the remaining 0.4 FTE of her position as a result of being bumped by respondent Jeffrey Lee. (See Factual Finding 32, above.) Therefore, respondent Sweeney is laid off for 1.0 FTE.

36. The Resolution provides for a 1.0 FTE reduction in middle school English. Daniel Pestle has a seniority date of August 21, 2014. He holds a clear single subject credential in English. Pestle's current assignment of middle school English is eliminated under the Resolution. However, Pestle is certificated and competent to bump into the current high school English position held by respondent Elizabeth Hutchinson, who has less seniority than Pestle. Hutchinson's seniority date is August 25, 2015. She holds a clear single subject credential in English. Hutchinson is subject to layoff for 1.0 FTE.

37. Respondent Hutchinson testified at the hearing. She currently teaches four periods of English and one section of Link Crew at Mira Costa High School. Link

Crew is a leadership and mentorship program that is not associated with the Mira Costa English Department. Hutchinson is the Link Crew coordinator at Mira Costa and has run the program for the past three years. Hutchinson completed the extensive training program for Link Crew, which was paid for by the District. Hutchinson feels there is no one at the school with her training who can take over the program. She also feels there is a higher need for the Link Crew program due to the COVID-19 emergency, because children need more support and assistance with social skills. Hutchinson explained that a teacher must complete training through the Boomerang Project in order to become credentialed to teach Link Crew. The Boomerang credential is not the same as a CTC credential. Hutchinson hopes the District continues the Link Crew program for the 2020-2021 school year.

SOCIAL STUDIES

38. The District identified respondents Dylan Lawroski and Timothy Piper as the least senior employees subject to layoff to account for the 1.2 FTE reduction in high school social studies. Lawroski has a seniority date of August 20, 2018, and holds a preliminary single subject credential in social studies. Piper has a seniority date of August 25, 2016, and holds a clear single subject credential in social studies. Respondent Lawroski is subject to layoff for 1.0 FTE. Respondent Piper is subject to a 0.2 FTE layoff, which leaves him with 0.8 FTE of his position remaining.

39. Respondent Piper is subject to being bumped from his remaining 0.8 FTE position. The District identified Farah Kamal as the least senior employee subject to layoff to account for the 0.5 FTE reduction in middle school social studies. Kamal has a seniority date of August 27, 2013, and holds a clear multiple subject credential and a supplemental authorization in history. Kamal's credentials authorize her to teach high school social studies. Therefore, Kamal bumps into 0.5 FTE of Piper's 0.8 FTE position,

leaving Piper with only 0.3 FTE of his position. However, respondent Piper is bumped from his remaining 0.3 FTE position by Jason Marshall to account for the reduction in TOSA-Technology services (see Factual Finding 31, above). Therefore, respondent Piper is subject to a 1.0 FTE layoff, comprised of 0.2 FTE for high school social studies, 0.5 FTE bumped by Kamal, and 0.3 FTE bumped by Marshall.

MATHEMATICS

40. The Resolution provides for a 1.0 FTE reduction in high school math. Respondent Leanne Weaver has a seniority date of August 25, 2015, and holds a clear single subject credential in math. She is the least senior high school math teacher. However, Weaver's current assignment is STEM Engineering and Computer Science/Cyber Security. She is the only STEM/Project Lead the Way teacher in the District. The District has demonstrated a specific need for personnel to teach that course or course of study, and Weaver has special training and experience necessary to teach that course or course of study that no others with more seniority possess. Respondent Weaver is "skipped" over more senior employees because she teaches STEM/Project Lead the Way. Because of the skip, respondent Denise Weber is the least senior high school math teacher who is subject to layoff to account for the 1.0 FTE reduction in high school math.

41. Regarding the 1.5 FTE reduction in middle school math, the District accounted for 1.0 FTE of the reduction by the retirement of respondent Jennifer Tran, who is a probationary employee with a seniority date of September 16, 2019. Respondent Julietta Last was identified for layoff for the remaining 0.5 FTE reduction in middle school math, leaving her with a 0.5 FTE position. However, respondent Denise Weber is certificated and competent to bump into respondent Last's 0.5 FTE position. Respondent Weber has a seniority date of August 21, 2014, and holds clear single

subject credentials in mathematics and dance. Respondent Last has a seniority date of August 21, 2017, and holds a clear single subject credential in foundational-level mathematics. Therefore, respondent Julietta Last is laid off for 1.0 FTE, and respondent Denise Weber is laid off for 0.5 FTE.

SCIENCE

42. The Resolution provides for a 0.5 FTE reduction in middle school science. The District accounted for this 0.5 FTE reduction by the resignation of science teacher Megan Hersman.

43. (A) The Resolution provides for reductions in high school science as follows: biology (1.2 FTE), chemistry (0.2 FTE), and physics (0.2 FTE).

(B) Christopher (Olie) Smith has a seniority date of August 21, 2014. He holds a clear single subject credential in biological sciences. He currently teaches biology/marine science. The District identified Smith as an employee subject to layoff to account for 1.0 FTE of the 1.2 FTE reduction in biology.

(C) Ernesto Nodado has a seniority date of August 25, 2015. He holds clear single subject credentials in biological sciences and chemistry. He currently teaches chemistry/biotech. The District identified Nodado as an employee subject to layoff to account for the remaining 0.2 FTE reduction in biology and the 0.2 FTE reduction in chemistry.

(D) Ellen Collins has a seniority date of August 21, 2017. She holds clear single subject credentials in chemistry, physics, and geosciences. She currently teaches chemistry and physics. The District identified Collins as an employee subject to layoff to account for the 0.2 FTE reduction in physics.

44. Employees Smith, Nodado, and Collins are certificated and competent to bump middle school science teachers Daniel Leonard and Lacey Califano from their positions. Daniel Leonard is a probationary employee with a seniority date of August 20, 2018. Respondent Lacey Califano is a permanent employee with a seniority date of August 21, 2017. Smith bumps into 0.4 FTE of Leonard's position and 0.6 FTE of Califano's position. Nodado bumps into 0.4 FTE of Leonard's position. Collins bumps into 0.2 FTE of Leonard's position. Therefore, respondent Leonard is subject to layoff for 1.0 FTE and respondent Califano is subject to layoff for 0.6 FTE. Leonard waived his right to a hearing and cannot contest the recommendation of his non-reemployment by the District. Respondent Califano is subject to being bumped from the remaining 0.4 FTE of her position by Gretchen Renshaw (see Factual Finding 27, above), if Renshaw does not retire as expected.

PHYSICAL EDUCATION (P.E.)

45. The Resolution provides for a 1.9 FTE reduction in elementary school P.E. The three least senior elementary P.E. teachers are respondents Douglas Banim, Ryan Newman, and Noah Arnold. These respondents share the same seniority date of August 21, 2014. Under the tiebreaker criteria, Arnold received eight points, Newman received seven points, and Banim received five points. Therefore, among these three respondents, Banim is deemed to have the least seniority. Banim is laid off for 1.0 FTE. Newman's current P.E. assignment is a 0.8 FTE position. Newman is laid off for 0.8 FTE. Arnold is laid off for 0.1 FTE of his position, leaving him with 0.9 FTE remaining.

46. Respondent Arnold also teaches one period of middle school P.E., which equates to 0.2 FTE. The Resolution provides for a 1.0 FTE reduction in middle school P.E. The least senior middle school P.E. teacher is respondent Arnold. The elimination of that one period reduces Arnold's remaining 0.9 FTE to 0.7 FTE. The remaining 0.8

FTE reduction in middle school P.E. is accounted for by reducing employee Don Braunecker's position by 0.8 FTE. Braunecker has a seniority date of September 7, 1999, and holds a clear single subject credential in physical education. However, Braunecker is certificated and competent to bump respondent Arnold from his remaining 0.7 FTE position and to bump respondent Amanda Cross from 0.1 FTE of her high school P.E. position. Respondent Cross shares the same August 21, 2014 seniority date as Branim, Newman, and Arnold, and received nine points under the tiebreaker criteria. Therefore, respondent Arnold is subject to layoff for a total of 1.0 FTE.

47. Regarding the 0.4 FTE reduction of high school P.E., the District identified respondent Amanda Cross as the least senior high school P.E. teacher. Cross is subject to layoff for the 0.4 FTE reduction in high school P.E. and she is bumped from 0.1 FTE of her position by Braunecker. Therefore, respondent Cross is subject to layoff for a total of 0.5 FTE.

CERTIFICATED LIBRARIAN

48. Respondent Bridget Sullivan is the only certificated librarian in the District. She has a seniority date of August 18, 2016. Sullivan is subject to layoff for the 1.0 FTE reduction in certificated librarian services.

COUNSELING

49. Ruth Robles has a seniority date of October 23, 2017, and has an 80 percent assignment as a college and career counselor. Teby Wammack has a seniority date of August 5, 2019, and is assigned as a counselor. Wammack was identified for layoff for 1.0 FTE and Robles was identified for layoff for 0.5 FTE. Robles and Wammack each waived their right to a hearing and cannot contest the recommendation of their non-reemployment by the District.

PROGRAM SPECIALIST

50. Ermina Devicentis-Waul has a seniority date of August 25, 2016. She holds a clear Level II education specialist instruction credential: mild/moderate, and authorizations for autism spectrum and orthopedic impairment. Devicentis-Waul was properly identified for layoff because of the 0.4 FTE reduction in Program Specialist services.

COORDINATOR OF SPECIAL EDUCATION

51. The Resolution provides for a 1.0 FTE elimination of the coordinator of special education position. However, "[n]o employee was noticed for layoff due to this position being reduced. Employee was an administrator who was released and reassigned." (Exh. 20, p. 9.)

SECONDARY MUSIC

52. Michael Hayden has a seniority date of August 28, 2007. Hayden holds a clear single subject credential in music. Hayden has retired from employment with the District. The District properly considered Hayden's retirement to account for the 0.4 FTE reduction in high school chorus provided in the Resolution.

53. Peter Park has a seniority date of September 1, 2009. Park holds a clear single subject credential in music. Park was identified for layoff because of the elimination of his 0.4 FTE assignment teaching high school orchestra. However, Park is certificated and competent to bump into the position of Mark McCormick, who has a seniority date of August 31, 2010. McCormick has a 40 percent position. He teaches two classes with low enrollment, which the District can combine into one class to allow Park to bump into McCormick's 40 percent position. McCormick, in turn, has more

seniority than respondent Krista Giffin, whose seniority date is August 20, 2016. McCormick is certificated and competent to bump into 0.2 FTE of Giffin's position. Therefore, respondent Giffin is subject to layoff for the 0.5 FTE reduction in Elementary Music (discussed above) and for being bumped by McCormick for 0.2 FTE, for a total layoff of 0.7 FTE.

WORLD LANGUAGES

54. Pao (Pauline) Chang has a seniority date of August 27, 2013. Chang holds a clear single subject credential in Mandarin and a clear multiple subject credential. Change was identified for layoff because of the 0.2 FTE reduction in high school Mandarin. Chang waived her right to a hearing and cannot contest the recommendation of her non-reemployment by the District.

55. Shelly Liu has a seniority date of August 30, 2011. Liu holds clear single subject credentials in Mandarin and mathematics. Liu was identified for layoff because of the 0.2 FTE reduction in middle school Mandarin. Liu is the least senior Mandarin middle school teacher. However, Liu is certificated and competent to bump into the high school Mandarin position held by Chang, who has less seniority than Liu. As a result, Chang is subject to layoff for a total of 0.4 FTE.

56. Caroline Buck has a seniority date of August 25, 2015. Buck holds clear single subject credentials in French and introductory English. Buck was identified for layoff because of the 0.2 FTE reduction in high school French. Buck is the least senior high school French teacher. The District properly identified Buck as an employee subject to layoff for 0.2 FTE.

57. Edward Frigola has a seniority date of August 26, 2008. Frigola holds a clear single subject credential in Spanish. Frigola was identified for layoff because of

the 0.8 FTE reduction in high school Spanish. Frigola is the least senior high school Spanish teacher. However, Frigola is certificated and competent to bump into the middle school Spanish positions held by respondents Stella Libbi-Auday (0.6 FTE) and Grisel Laureiro (0.2 FTE).

58. Respondent Stella Libbi-Auday has a seniority date of September 10, 2015. She holds a clear single subject credential in Spanish and a clear multiple subject credential. Libbi-Auday was identified for layoff because of the 0.4 FTE reduction in middle school Spanish. Additionally, she is bumped from 0.6 FTE of her position by Frigola. The District properly identified respondent Libbi-Auday as an employee subject to layoff for 1.0 FTE.

59. Respondent Grisel Laureiro has a seniority date of August 27, 2013. She holds a clear single subject credential in Spanish. Laureiro was identified for layoff because she was bumped from 0.2 FTE of her position by Frigola. The District properly identified respondent Laureiro as an employee subject to layoff for 0.2 FTE.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1-9.)

2. The services identified in the Resolution are particular kinds of services which may be reduced or discontinued under Education Code section 44955. (Factual Findings 3, 10-12.) The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the

welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. A school 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.)

4. Boards of education hold significant discretion in determining the need to reduce or discontinue particular kinds of services, which is not open to second-guessing in this proceeding. (*Rutherford v. Board of Trustees, supra*, 64 Cal.App.3d at p. 167.) Such policy-making decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and action must be reasonable under the circumstances, with the understanding that "such a standard may permit a difference of opinion." (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.)

5. Cause exists, pursuant to Education Code section 44949 and 44955, to reduce the number of certificated employees of the District due to the reduction or discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. (Factual Findings 1-59.)

6. The Board's decision to skip a STEM/Project Lead the Way certificated employee over more senior employees was not an abuse of discretion and was for the good of the District and its students.

7. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

ORDER

1. The District may give notice to Respondents identified in Factual Finding 2 that their services will not be required for the 2020-2021 school year.

2. The District may give notice to certificated employees Pao (Pauline) Chang, Daniel Leonard, Ruth Robles, and Teby Wammack that their services will not be required for the 2020-2021 school year.

3. The District Statement of Reduction in Force is dismissed against respondents Natalie Dibiase, Liana Kuklinski, Megan Montz, Lauren Walsh, and Kristie Rios.

DATE: May 20, 2020

DocuSigned by:
Erlinda Shrenger
ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings