

**BEFORE THE GOVERNING BOARD OF
ROCKLIN UNIFIED SCHOOL DISTRICT
COUNTY OF PLACER, CALIFORNIA**

**In the Matter of the Reduction in Force of Certificated
Employees:**

**Briana Edgerton, Desiree English, Wendy Ghyselinck, Jeffrey
Harter, Vincent Perez, Sarah Schreiber, and Gerald
VanWagner, Respondents¹**

OAH No. 2021030775

¹ The District also served layoff notices to: Graciela Artiaga; Alexandria Cameron; Kristen Campbell; Natasha Cattolico; Caitlin Damiano; Melissa Dorenzo; Jonathan Evans; Alicia Gregory; Jana Kingery; Angela Lutkus; Alexandra May; Donna McDaniel; Anastasia O'Hara; Krista Pabalate; Nicole Palmer; Scott Seffens; Sierra Tonn; Katherine Tweltridge; Joan Valdez, and Torey Walter. The District has since rescinded these layoff notices, except for the notice to Ms. Walter. However, Ms. Walter did not timely file a request for hearing and therefore there is no jurisdiction to hear her appeal.

PROPOSED DECISION

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 14, 2021, from Sacramento, California.

Michelle L. Cannon, Attorney at Law, Lozano Smith, represented the Rocklin Unified School District.

Andrea Price, Attorney at Law, Langenkamp, Curtis and Price, LLP, represented Briana Edgerton, Desiree English, Wendy Ghyselinck, Jeffrey Harter, Vincent Perez, Sarah Schreiber, and Gerald VanWagner (collectively, respondents).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 14, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. Toni Limoges is the Associate Superintendent of Human Resources for the District. The actions of Superintendent Limoges, and those of the District's staff and Board of Trustees (Board), were taken solely in their official capacities.
2. Each of the respondents is a certificated employee of the District.
3. On March 3, 2021, the Board adopted Resolution No. 20-21-19 (Layoff Resolution). The Layoff Resolution was based on a recommendation from Superintendent Limoges to reduce or eliminate particular kinds of services (PKS) of the

District, affecting 27.17 full-time equivalent (FTE) certificated positions for the 2021-2022 school year as follows:

Administrative Positions

Health Services Supervisor	1.0 FTE
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High School Positions

Project Lead the Way	0.5 FTE
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Sports Medicine	0.5 FTE
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Middle School Positions

Science	2.0 FTE
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Physical Education	1.0 FTE
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English	2.0 FTE
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Social Studies	1.67 FTE
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Mathematics	1.0 FTE
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Computer Science	1.0 FTE
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Elementary School Positions

Self-Contained Classroom Teachers	16.0 FTE
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Physical Education	0.5 FTE
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Total FTE	27.17 FTE
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4. The services set forth in the Layoff Resolution are PKS that may be reduced or discontinued within the meaning of Education Code² section 44955. There was no evidence that the Board's decision to reduce or discontinue the identified services was arbitrary or capricious. The reduction or elimination of these PKS constituted a proper exercise of the Board's discretion, within the meaning of section 44955.

5. Between March 5 and 10, 2021, respondents were given notice of the recommendation pursuant to sections 44949 and 44955, that their services will not be required for the 2021-2022 school year and stating the reasons therefor.

6. Respondents submitted a timely written request for a hearing to determine if there is cause for not reemploying them for the ensuing school year.

7. On March 24, 2021, Superintendent Limoges made and filed the District's Statement of Reduction in Force (Statement),³ and caused it to be served on each respondent. Respondents timely filed Notices of Participation.

8. Jurisdiction for the subject proceedings exists pursuant to sections 44949 and 44955.

² Unless otherwise noted, all further statutory references are to the Education Code.

³ Of the 27.17 FTE positions to be eliminated or reduced, 20.67 FTE positions were restored, mostly due to resignations and retirements. The 6.0 FTE positions held by respondents, plus the 0.5 FTE position held by Torey Walter, are the only positions the Board seeks to reduce.

Seniority

9. Seniority is established by the date upon which an employee first rendered paid services in a probationary position. (Ed. Code, § 44845.) Lori Almas is a certificated personnel analyst in the District's Human Resources unit. She created and maintains the seniority list for the District, collecting relevant information from teacher personnel files and the California Teaching Commission. The District's seniority list contains 648 teachers.

10. Respondent Gerald VanWagner holds a multiple subject credential and is currently a 6th grade teacher at Parker Whitney Elementary. Using personnel and pay records, Ms. Almas calculated his seniority date as August 10, 2018, as this was the first date for which he received pay. Based on this date, he is in rank 129 on the seniority list. Elementary teachers with a seniority date of August 9, 2018, are in rank 128, and are not subject to layoff. Mr. VanWagner challenged the August 10, 2018 seniority date. He argued his seniority date should be August 9, 2018, as he had attended a voluntary orientation for new teachers and employees hosted by the District on that date.

11. It is undisputed that the District hosted a new employee orientation on August 9, 2018, and that Mr. VanWagner attended. Attendees were eligible to be compensated for attending the orientation if they filled out and submitted a timesheet. The District made blank timesheets available at the orientation. Mr. VanWagner never completed or submitted a timesheet for August 9, 2018; he was never paid for that day. There is no evidence that Mr. VanWagner requested pay for that date after-the-fact.

12. Mr. VanWagner's argument that his seniority date should be August 9, 2018 is unpersuasive. By law, an employee's seniority date is the date upon which he or she first rendered paid services in a probationary period. It is undisputed Mr. VanWagner was not paid for attending the orientation on August 9, 2018. Attendance at the orientation was voluntary. Mr. VanWagner never submitted a timesheet as required, or otherwise sought to be compensated for that date. Given the above, the District properly calculated Mr. VanWagner's seniority date as August 10, 2018.

TIE-BREAKING

13. In Resolution 20-21-21, the Board adopted tie-breaking criteria to determine the relative seniority of affected certificated employees with the same date of first paid probationary service. These criteria included: (1) Credentialing – three points for each credential or additional subject matter authorization, and two points for each additional supplemental authorization, special education credential, or career technical education (CTE) credential; (2) FTE Teaching Experience – one point for one to three years, two points for four to six years, and three points for seven or more years; and, (3) Education – one point for each master's degree, and two points for each doctorate. If further tie-breaking is required, "the ranking of such employees shall be determined by a lottery conducted by the Superintendent or designee, in the presence of the Rocklin Teachers Professional Association."

14. Ms. Almas created and maintains the tie-breaker data. The District implemented tie-breaking criteria to internally rank teachers with the same seniority date. Respondent Vincent Perez teaches high school physical education (0.5 FTE). His

seniority date is July 30, 2018; he is in rank 125 on the seniority list.⁴ Two other physical education teachers have the same seniority date and rank. Ms. Almas applied the tie-breaking criteria. Mr. Perez holds a single subject credential in physical education and a supplementary authorization for introduction to health science; he scored a 6 on the tie-breaking criteria. The other two teachers scored 7 and 9, respectively. Accordingly, Mr. Perez was correctly identified for layoff on the basis of PKS reduction in Physical Education (0.5 FTE).

BUMPING

15. Education Code section 44955, subdivision (b), provides that no senior employee may be terminated while any less senior employee is retained to render a service that the more senior permanent employee is "certificated and competent" to render. "It [is] the district's obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possess[es] the seniority and qualifications which would entitle him/her to be assigned to another position." (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 137.)

16. Resolution 20-21-19 states that, for purposes of potential displacement or "bumping" rights:

⁴ The seniority list entered into evidence as Exhibit 8 ranks respondent Perez at 128 based on a seniority date of August 9, 2018. At hearing, Ms. Almas explained she corrected his rank to 125 after records showed his seniority date is actually July 30, 2018.

. . . an individual shall be deemed credentialed and “competent” to bump (or displace a less senior employee) only if (1) he or she has the appropriate preliminary or full credential; (2) he or she performed the service which he/she claims to be entitled to render instruction or services under the appropriate preliminary or full credential for at least one complete school year within the last seven (7) years in a comprehensive school setting; and (3) he or she possesses an appropriate full (not emergency) BCLAD, CLAD, or other certificate authorizing him/her to instruct English Learner students. . . .

Respondent Vincent Perez

17. Mr. Perez (#125, July 30, 2018 seniority date) teaches physical education (0.5 FTE) and health (0.5 FTE) at Whitney High School. He was identified for layoff on the basis of PKS reduction in Physical Education (0.5 FTE). Mr. Vincent was bumped by Kristen Berlant (#110, August 12, 2016 seniority date) for 0.5 FTE in physical education. Ms. Berlant is a tenured employee and currently teaches physical education at Valley View Elementary School (1.0 FTE). Ms. Berlant is senior to Mr. Perez, and is certificated and competent to teach high school physical education. Given the above, Ms. Berlant properly bumped Mr. Perez for 0.5 FTE.

18. Mr. Perez concedes that Ms. Berlant is senior to him and is certificated and competent to teach high school physical education. However, he challenged his layoff notice, arguing that it will be impossible for Ms. Berlant to teach physical education at both the elementary and high school level next school year, based on

conflicting schedules at the two sites.⁵ Mr. Perez's argument is without merit. By law, the District may only consider a teacher's credentials and seniority when determining whom to identify for layoff. Scheduling and other logistics are not permissible considerations.

19. Mr. Perez also challenged his layoff notice for 0.5 FTE physical education, contending he should have bumped Rachel Jaeger (nee Holm), a teacher with less seniority (#131, September 24, 2018 seniority date) who is being retained for next year.

20. Ms. Jaeger holds a single subject credential in physical education and CTE credential in Health Science and Medical Technology. She currently teaches physical education (0.67 FTE) and sports medicine (0.33 FTE) at Whitney High School. For the 2021-2022 school year, she is slated to teach sports medicine (1.0 FTE), for which a CTE credential is required. Michael Gimenez⁶ (#63, August 17, 2005 seniority date) is scheduled to teach physical education (1.0 FTE) at the high school for the ensuing school year, thereby assuming Ms. Jaeger's 0.67 FTE physical education position.

⁵ Whitney High School is on a block schedule. Students attend odd-numbered periods on Monday/Wednesday/Friday, and even-numbered periods on Tuesday/Thursday. Every other week, the schedule rotates to even-numbered periods on Monday/Wednesday/Friday, and odd-numbered periods on Tuesday/Thursday. At the elementary level, physical education is taught twice a week, on the same days of the week.

⁶ It is undisputed that Mr. Gimenez is senior to Mr. Perez and is certificated and competent to teach high school physical education.

21. Mr. Perez asserted the District is retaining Ms. Jaeger over him because she is also the school's athletic trainer and the District "does not want to let her go." His belief as to the District's intent is speculative as he offered no credible evidence the District acted improperly or with an illegal motive. Mr. Perez does not possess the CTE credential required to teach sports medicine. Therefore, he is not competent to bump Ms. Jaeger from 0.5 FTE sports medicine for the 2021-2022 school year.

22. Ms. Berlant properly bumped Mr. Perez from his 0.5 FTE physical education position. Mr. Perez does not possess the seniority or qualifications to bump into another teaching assignment. Given all of the above, Mr. Perez was properly served with a layoff notice.

Other Bumped Respondents

23. Respondent Jeffrey Harter is a probationary employee with a seniority date of August 10, 2018; he is in rank 129 on the seniority list. He holds a single subject credential in physical education and teaches the same at Rocklin High School. He was identified for layoff on the basis of PKS reduction in Physical Education (1.0 FTE). Mr. Harter was bumped by Jeffrey Barnette (#122, September 25, 2017 seniority date) for 1.0 FTE in physical education. Mr. Barnette is senior to Mr. Harter, and is certificated and competent to teach the relevant subject matter. Given the above, Mr. Harter properly received a layoff notice.

24. Respondent Desiree English is a probationary employee with a seniority date of July 30, 2019; she is in rank 136 on the seniority list. She holds a single subject credential in biological science with a supplementary authorization in introductory physical education, and teaches biology at Whitney High School. She was identified for layoff on the basis of PKS reduction in Science (0.5 FTE). Ms. English was bumped by

Sara Mikkelsen (#118, August 11, 2017 seniority date) for 0.5 FTE in biology. Ms. Mikkelsen is senior to Ms. English, and is certificated and competent to teach the relevant subject matter.⁷ Given the above, Ms. English properly received a layoff notice.

Remaining Respondents

25. Respondent Sarah Schreiber is a probationary employee with a seniority date of August 7, 2019; she is in rank 141 on the seniority list. She holds a multi-subject credential with supplemental authorization in introductory science, and a single subject credential in geosciences. She currently teaches physical science at Spring View Middle School. She was identified for layoff on the basis of PKS reduction in Science (1.0 FTE) in Middle School. Ms. Schreiber does not possess the seniority or qualifications to bump into another classroom assignment. Thus, she properly received a layoff notice.

26. Respondent Wendy Ghyselinck is a probationary employee with a seniority date of August 7, 2019; she is in rank 141 on the seniority list. She holds a single subject credential in business and teaches computer science at Spring View Middle School. She was identified for layoff on the basis of PKS reduction in Computer Science (1.0 FTE). Ms. Ghyselinck does not possess the seniority or qualifications to bump into another classroom assignment. Thus, she properly received a layoff notice.

27. Respondent Briana Edgerton is a probationary employee with a seniority date of August 10, 2018; she is in rank 129 on the seniority list. She holds a multiple

⁷ In turn, Ms. English bumped Jana Kingery for 0.5 FTE in science. Thus, her layoff notice was for 0.5 FTE in science only.

subject credential and is a teacher at Valley View Elementary. She was identified for layoff on the basis of PKS reduction in Self-Contained Classroom Teachers (1.0 FTE). Ms. Edgerton does not possess the seniority or qualifications to bump into another classroom assignment. Thus, she properly received a layoff notice.

28. Respondent Gerald VanWagner is a probationary employee with a seniority date of August 10, 2018; he is in rank 129 on the seniority list. He holds a multiple subject credential and is a 6th grade teacher at Parker Whitney Elementary. He was identified for layoff on the basis of PKS reduction in Self-Contained Classroom Teachers (1.0 FTE). Mr. VanWagner does not possess the seniority or qualifications to bump into another classroom assignment. Thus, he properly received a layoff notice.

Analysis

29. When all the evidence is considered, the District considered seniority, competency, and attrition, as well as properly applied criteria for tie-breaking and bumping, to implement the 6.5 FTE PKS reduction for school year 2021-22. The tie-breaking procedures were implemented as necessary between those employees who first rendered paid service on the same date, and bumping was employed to ensure that the more senior teachers, certificated and competent to render a PKS, were retained over those with less seniority.

30. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

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

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of PKS on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Superintendent's decision to reduce PKS was a proper exercise of his discretion.

3. 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. Bd. of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

4. The layoff notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Bd.* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolutions and in the layoff notices, adequately described PKS. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838.)

5. Section 44955 provides that when certificated employees face layoffs due to reduction or elimination of PKS, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teachers have both the credentials and competence to occupy such positions. The clear intent of the statute is to prevent school districts from laying off senior teachers while retaining junior teachers. Section 44955, subdivision (c), provides in pertinent part:

Services of such employees shall be terminated in the inverse of the order in which they were employed. . . . The 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. . . .

6. The District appropriately considered all positively assured attrition that occurred during the computation period prior to submitting the PKS Resolution to the Board for its approval. In addition, the District appropriately applied tie-breaking criteria and bumping rules, and allowed bumping based upon the more senior employee's competency (e.g., credential or authorization) to teach the assignment of the less senior teacher.

7. The services identified in the Resolution are PKS that can be reduced or discontinued under section 44955. Cause exists for the reduction of the PKS and for the reduction of 6.5 FTE certificated positions for the 2021-22 school year pursuant to sections 44949 and 44955. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of

section 44949. Therefore, cause exists to give respondents notice that their services will be reduced or will not be required for the ensuing 2021-22 school year.

RECOMMENDATION

Cause exists for the reduction of 6.5 full-time equivalent certificated teaching positions for the 2021-2022 school year. Notice shall be given to respondents and Torey Walter that their services will be reduced or will not be required for the 2021-2022 school year, because of the reduction and/or discontinuance of particular kinds of services.



DATE: April 30, 2021

TIFFANY L. KING

Administrative Law Judge

Office of Administrative Hearings