

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

In the Matter of the Reduction in Force of
Certain Certificated Employees of San Diego
Unified School District, identified on
Exhibit "A."

OAH No. 2019040577

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California, on April 19, 2019.

Patrick D. Frost, Assistant General Counsel II, Legal Services, represented the San Diego Unified School District.

Fern M. Steiner, Attorney at Law, Smith, Steiner & Vanderpool, represented respondents identified in Exhibit "A."

The matter was submitted on April 19, 2019.

SUMMARY OF PROPOSED DECISION

The Governing Board of the San Diego Unified School District determined (it needed) to reduce or discontinue particular kinds of services provided by teachers for budgetary reasons. The decision was not related to the competency or dedication of the individuals whose services are proposed to be reduced or eliminated.

The San Diego Unified School District (District) staff carried out the Governing Board's decision by using a selection process involving review of credentials and seniority and "bumping." The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. On March 5, 2019, because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs and necessary program changes

resulting therefrom, the Governing Board of the San Diego Unified School District determined to reduce or eliminate particular kinds of services for the 2019-2020 school year. According to the Resolution, the Governing Board determined that it was “in the best interests of the District, and the welfare of the students thereof, to reduce or discontinue certain particular kinds of services hereinafter enumerated.”

In the Resolution, the Governing Board directed the Superintendent to send timely and appropriate notices to all employees affected by the reduction and elimination of particular kinds of services (PKS).

2. The Resolution identified the following PKS for reduction or elimination by Full Time Equivalent (FTE) for a total of 97 FTEs and 37 noticed employees.

PKS Area	Total FTE in PKS Layoff Group	Number of Notices
Business Education	2.00	2
Child Development	12.00	11
Computer Concepts and Applications	4.00	1
Foreign Language: French	1.00	1
Foreign Language: Japanese	1.00	0
Foreign Language: Spanish	6.00	4
General Subjects/Elementary	59.00	12
Social Science	8.00	2
Central Office Administrators	4.00	4
TOTAL	97.00	37

Because of the reduction or elimination of particular kinds of services, it was necessary to terminate certificated employees equal in number to the positions affected in the reduction or elimination of the particular kinds of services.

3. On March 6, 2019, Acacia Thede, Chief Human Resources Officer, sent preliminary layoff notices to the certificated employees identified for layoff. A copy of the Resolution, relevant sections of the Education Code and information concerning the right to request a hearing were enclosed with the preliminary layoff notices.

4. In response to the preliminary notices, four certificated employees (Michael Little, Jennifer Pickering, Ronald Runyan and Patricia Tigli) each requested a hearing.

5. All prehearing jurisdictional requirements were satisfied.

6. On April 17, 2019, the Chief Human Resources Officer notified respondent Little to disregard his layoff notice and that he would not receive a final layoff notice. In addition, on April 18, 2018, respondents Runyan and Tigli withdrew their requests for hearing. The remaining was respondent Pickering.

7. The Governing Board considered and continues to consider all known attrition, including deaths, resignations, retirements and other permanent vacancies, in determining the actual number of final layoff notices to be delivered to its certificated employees.

8. Erin Houston, the District's Director of Human Resources, was responsible for implementing the technical aspects of the layoff. She developed a seniority list for permanent certificated staff that included, among other matters, the name of the certificated employee, job title, current site/department, employee class, seniority date, FTE, pay status, and credentials.

The seniority date was based on the first date of paid service rendered.¹ A teacher hired as a probationary employee who worked as a substitute or temporary employee for at least 75 percent of the school days during the previous year and performed the duties normally required of a certificated employee of the school district, was deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year. The teacher was entitled to have that earlier year counted as a year of probationary service. The prior year was "tacked" on for seniority purposes,² but only one year could be tacked on.

Ms. Houston used the seniority list to develop a proposed order of layoff to determine the least senior employees currently assigned to provide the service being reduced. Then, she determined whether the least senior employees held credentials in another area that would entitle them to "bump" other junior employees. In determining who would be laid off for the service reduced, Ms. Houston counted the number of reductions and determined the impact on incumbent staff in inverse order of seniority. After this, she checked the credentials of each affected individual and determined whether he/she could "bump" another employee.

The Governing Board established specific criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date. In this case, it was not necessary to apply the criteria.

¹ (Education Code §44845.). Hereinafter, all reference is to the Education Code unless otherwise stated.

² Code section 44918.

9. Respondent Pickering's seniority date is August 30, 2001. She holds a Business Education credential which authorizes her to teach business education.

During the 2018-2019 school year, respondent Pickering was assigned to San Diego High School, a complex composed of the following three schools: Business and Leadership, SciTech and the School of International Studies. Respondent Pickering taught two sections of Business Law and three sections of AVID in the Business and Leadership School. During the 2018-2019 school year, it was her understanding that the classes that she was teaching would be taught during the 2019-2020 school year; in addition, during the 2018-2019 school year, two temporary teachers taught classes in the Business and Leadership School who did not hold a Business Education credential. She was concerned that a temporary teacher would be allowed to teach her classes while she was laid off. However, after hearing Ms. Houston's testimony, respondent Pickering understood that she would be recalled prior to a temporary teacher, even for a temporary position.

10. The Governing Board elected to exempt certain certificated employees from the order of certified layoff because of special training, experience or credentials that others with more seniority do not possess. According to the Resolution, relevant to this proceeding, are "certification qualifications (including appropriate authorizations such as the English Learner Authorization or Autism Authorization). In no event may a more senior employee displace a less senior employee unless the more senior employee is both competent and credentialed for the entire assignment of the less senior employee."

11. The services that the Governing Board proposed to reduce were "particular kinds of services" that can be reduced or discontinued within the meaning of Education Code section 44955. The Governing Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious but constituted a proper exercise of discretion.

12. The Governing Board's reduction or discontinuance of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuance of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Governing Board.

13. There was no evidence that the District proposes to eliminate any services mandated by state or federal statute or regulations.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections are satisfied.

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

3. Cause exists under Education Code sections 44949 and 44955 for the San Diego Unified School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

4. A senior teacher whose position is discontinued has the right to transfer to a continuing position that he/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. (*Poppers v. Tamalpais Union High School Dist.* (1986) 184 Cal.App.3d 399, 405.)

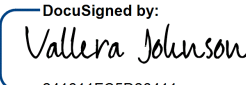
5. No employee with less seniority than respondent Pickering is being retained to perform a service that she is certificated and competent to render.

ORDER

1. The layoff notice issued to Michael Little is rescinded. The Preliminary Notice of Recommendation that Certificated Services Will Not Be Required and Statement of Reduction or Discontinuance of Particular Kinds of Services against Michael Little is dismissed.

2. Except as provided in paragraph one of this Order, the Preliminary Notice of Recommendation that Certificated Services Will Not Be Required and Statement of Reduction or Discontinuance of Particular Kinds of Services against Jennifer Pickering is sustained. The San Diego Unified School District shall give notice to Jennifer Pickering on or before May 15, 2018, that her service will not be required for the 2019-2020 school year because of the reduction or discontinuance of particular kinds of services.

DATED: April 26, 2019

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VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings