

**BEFORE THE
BOARD OF TRUSTEES OF THE HOLLISTER SCHOOL DISTRICT
SAN BENITO COUNTY
STATE OF CALIFORNIA**

In the Matter of the Statement of Reduction in Force of:

THIRTEEN CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2022030999

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on April 21, 2022, via telephone and videoconference.

Attorneys Georgelle C. Cuevas and Donald M. "Mike" Ambrose represented Hollister School District, County of San Benito (HSD or District).

Attorney Joseph A. Cisneros represented respondents Felipe Avendano-Vela, Eliana Delgadillo, Marco Della Maggiore, Nalleli Elizalde; Veronica Gonzalez; Brian

Haggett; Michael Hernandez; Eric Miranda; Megan Sabby; Bianca Elizabeth Soto; and Alane Warren, most of whom were present.¹

The matter was continued and the record was held open until April 26, 2022, for the parties to submit simultaneous closing briefs. On that date, the District and respondents filed closing briefs, which were marked for identification as Exhibit 29 and Exhibit A, respectively. The matter was submitted on April 26, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. Erika Sanchez made the District Statement of Reduction in Force in her official capacity as the Superintendent of the HSD.

2. On March 3, 2022, the Board of Trustees of the HSD (Board), adopted "RESOLUTION #5:21-22" entitled "ELIMINATION AND/OR REDUCTION OF CERTIFICATED EMPLOYEE SERVICES" (Resolution #5), reducing or discontinuing particular kinds of services for the 2022-2023 school year due to "lack of work or lack of funds," and directing Superintendent Sanchez to send notices to all affected employees.

3. Resolution #5 identified the services to be eliminated as:

¹ Prior to hearing, the District rescinded the layoff notices issued to respondents Kristy Burchard and Sara Blomquist and they did not participate in the hearing.

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|--|----------------------|
| RISE ² TEACHERS (Multiple-subject credentials) | 7.0 FTE ³ |
| Intervention Teacher (Multiple-subject credential) | 1.0 FTE |
| School Nurse (School Nurse Services credential) | 1.0 FTE |
| Physical Education Teachers at Tk-5 ⁴ and Tk-8 sites (multiple subject and physical education single subject credentials) | 5.0 FTE |
| School Psychologist (Pupil services credential- School Psychology) | 1.0 FTE |
| | _____ |
| | 15.0 FTE |

4. The services set forth in Resolution #5 are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

5. On March 10, 2022, the Board adopted "RESOLUTION #8:21-22" entitled "ELIMINATION AND/OR REDUCTION OF CERTIFICATED EMPLOYEE SERVICES" (Resolution #8), reducing or discontinuing particular kinds of services for the

² Rigorous Independent Study Program.

³ Full-time equivalent.

⁴ "Tk" and "TK" are abbreviations for transitional kindergarten, a bridge between preschool and kindergarten.

2022-2023 school year due to “lack of work or lack of funds,” and directing Superintendent Sanchez to send notices to all affected employees.

6. Resolution #8 identified positions in classified service to be eliminated as:

| | |
|-----------------------------|---------|
| Physical Education Teachers | 5.0 FTE |
|-----------------------------|---------|

(Multiple Subject Credentials and Physical Education Single Subject Credentials)

| | |
|-------------------|---------|
| School Counselors | 5.0 FTE |
|-------------------|---------|

(Pupil Personnel Services Credential- School Counseling)

| | |
|-----------------------|---------|
| School Social Workers | 2.0 FTE |
|-----------------------|---------|

(Pupil Personnel Services Credential- School Social Work and School Child Welfare and Attendance)

12.0 FTE

7. The services set forth in Resolution #8 are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

NOTICE

8. The District timely served all jurisdictional documents, including a preliminary layoff notice, upon all respondents by March 15, 2022. Respondents do not contend otherwise.

9. Respondent Miranda contends that there was an error in his notice because he was assigned as a physical education teacher at a school site serving sixth, seventh, and eighth grade students, but the letter he received summarizing the particular kinds of services to be laid off identified "10.0 FTE" of physical education teachers at "Tk-5 and Tk-8 sites (multiple subject and physical education single subject credentials)." However, he admits that was served with a copy of Resolution #8, which does not limit the physical education teacher positions eliminated to "Tk-5 and Tk-8 sites."

10. It is unclear from the record whether any other respondent worked as a physical education teacher at a middle school, as opposed to "Tk-5" or "Tk-8" site.

11. Respondents Felipe Avendo-Vela, Eliana Delgadillo, Marco Della Maggiore, Nalleli Elizada, Veronica Gonzalez; Michael Hernandez; Eric Miranda; Megan Sabby; Bianca Elizabeth Soto; Alane Warren, Kristy Burchard, and Sara Blomquist filed requests for hearing.

Necessity of These Reductions in Force

12. Sanchez testified at hearing. She became superintendent of the District on July 1, 2021. She reports that the District has a "structural deficit" in its budget. She reports the 2021/2022 budget issued in June 2021 was not accurate and each subsequent revised budget has shown a sharply greater deficit. The District's latest projected structural operating budget deficit is more than \$4.8 million for the 2021/2022 school year and greater for 2022/2023. Sanchez reports that the District is spending 93 percent of its budget on salaries, a much greater proportion than the state average. The District has been assigned only a qualified certification by the

California Department of Education (DOE), indicating that it may not meet its financial obligations for fiscal year 2021/2022 or 2022/2023.

13. On January 31, 2022, the San Benito County Office of Education (SBCOE) informed the District that, but for the District's plan to reduce more than \$3.3 million in spending, SBCOE would have been required to file a "negative" interim report. Sanchez reports that the District will receive a negative certification from the SBCOE if it does not implement the proposed reductions in force.

14. Sanchez reports that, to determine which services to reduce, the District considered natural attrition, student needs, program needs, and which services are considered supplemental, as opposed to core services. Sanchez reports that the District is advertising to hire a speech pathologist despite these reductions at issue in this proceeding because the District has historically had trouble filling this position, which is essential for completing individualized education plans (IEP's) for special education students. She reports that the district currently has to contract to fill that need.

15. Respondents presented the testimony of Christal Hall, who works for the California Teacher's Association (CTA). Hall is the CTA's primary contact with the District. She regularly reviews the District's financial information in the course of her official duties. Hall reports that the District has swept unrestricted reserves into restricted reserves to make its financial situation appear more dire than it actually is. She has also looked at the District's budgets going back several years and reports that she finds no support for the 93 percent salary figure quoted by Sanchez and believes that the District is spending approximately 85 percent on salary, which is an average proportion. Respondents submitted no documents in support of Hall's contentions.

16. Respondent's evidence is insufficient to rebut the District's evidence that the noticed reductions in force are for the welfare of its schools and students.

No Junior Employee is Being Retained to Render a Service Which any Respondent Is Certificated and Competent to Render

17. Linda Villalon, HSD's Director of Human Resources, testified at hearing. Both Villalon and Sanchez report that HSD is not retaining any certificated employee with less seniority in the particular types of services targeted for reduction, than those identified in the March 15, 2022, notices.

SENIORITY LIST

18. HSD submitted multiple seniority lists; one sorted by the date the employee first rendered services to the district and others sorted first by teacher assignment, and then by seniority.

19. Respondent Alane Warren testified that her seniority date should have been August 6, 2021, instead of August 10, 2021. However, she admits that, even if true, that would not make her more senior than any employee performing her particular kind of service, or any services she is qualified to provide.

20. Other than as to Warren, respondents provided no evidence that the HSD seniority list was inaccurate.

TIEBREAKING CRITERIA

21. HSD's witnesses were unable to articulate precisely what criteria the district would have used as "tiebreakers" if two certificated employees had the same seniority date, but only one had to be laid off. However, respondents concede that no

employee improperly received a notice due to a tiebreaking error. None of the employees who received a preliminary layoff notice were “tied” with an employee who did not receive a preliminary layoff notice.

BUMPING

22. HSD’s witness testified that only three certificated employees who received layoff notices were qualified to exercise any “bumping” or reassignment rights: Burchard, Blomquist, and Gustavo Silva (who did not file a request for hearing). The preliminary layoff notice for each of these certificated employees was rescinded. (See Footnote 1.)

23. Respondent Miranda holds a single subject physical education credential but reports that he is “in the process of getting” a science authorization and believes this will be completed by June 2022. He does not claim to currently hold a credential to teach any subject other than physical education. However, he contends that the District has in the past hired teachers to teach subjects for which they are not credentialed. He reports that a science vacancy is currently being filled by a “long-term sub.” Therefore, he reasons that, based on the coursework he has completed thus far, he is currently qualified to teach science. Miranda provided no documentary evidence to support the exercise of any “bumping” or reassignment rights.

Respondents’ Additional Evidence

24. Respondent Warren was hired as a school nurse. She reports that the District induced her to sell her family home and move two and one-half hours away by offering her a hiring bonus and high salary. She understood the position to be permanent. She understood that HSD had difficulty filling this position. She is

understandably upset about being laid off after making such sacrifices to take this position last August.

25. Warren reports that during a March 2022 meeting of the Board, she heard Sanchez state that some positions were hired to mitigate the COVID-19 pandemic and then stated that Warren's salary was switched from unrestricted to restricted funds in February 2022. At the following Board meeting, Sanchez stated that none of the employees were hired on a temporary basis. Warren submitted no documents and there is no other evidence suggesting that she is a categorically funded employee or not a regular certificated employee.

26. Warren also reports that she is the only one of three school nurses that has been helping to write IEP's, but she does not know of any reason that the two more senior school nurses could not fulfill that role.

27. Respondent Michael Hernandez is a physical education teacher of Tk through eighth grade students for the District. He believes that physical education is more important than ever, given the COVID-19 restrictions placed upon students. Hernandez bonds with students, some of whom only connect with him. He also volunteers to provide many supporting services to his schools, such as yard duty and removing graffiti. He believes he is best at teaching physical education and would not want to teach another subject, even if he were qualified to do so.

LEGAL CONCLUSIONS

1. The District complied with all notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955.

2. Respondents argue that the relevant resolutions failed to identify the specific middle school positions to be eliminated and therefore the notices of reduction in force should be rescinded as to respondent Miranda and unspecified other middle school physical education teachers. Respondents cite *San Jose Teacher's Association v. Elizabeth Allen (Allen)* (1983) 144 Cal.App.3d 627, 637, for the proposition that, at the elementary school level, a "reduction of classroom teaching could be a reduction in a particular kind of service." The rationale in that opinion is that elementary teachers often teach multiple subjects, and reductions in force in elementary schools therefore need not be more specific than "classroom teaching" in some circumstances. Respondents argue that the *Allen* "rationale for allowing the elimination of generic 'classroom teachers' for elementary schools does not apply to" the District's middle schools. However, Resolution #8 specified *physical education* teachers, not simply classroom teachers. Respondents do not explain why the *Allen* exception would need to be applied to this layoff of one or more middle school teachers, given the specificity of the resolution. Notice to Miranda and any other middle school physical education teachers was proper.

3. The determination of the necessity to reduce or discontinue particular kinds of services, and which services are to be affected, are matters reserved to the discretion of a governing board and not subject to re-weighing in a layoff hearing. (*Rutherford v. Bd. of Trustees of Bellflower Unified School Dist.* (1976) 64 Cal.App.3d 167.) The services identified in Resolution #5 and Resolution #8 are particular kinds of services that can be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of its discretion. (See Factual Finding 16.) Cause exists to reduce the number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services.

4. The evidence established that no certificated employee with less seniority than any respondent is being retained to render services which such respondent is certificated and competent to perform. (Factual Findings 17, 20, 22 and 23.)

5. Respondents provided no authority that respondent Miranda's anticipated certification or authorization to teach science currently provides him with any bumping rights.

6. Despite conceding that no employee improperly received a notice due to a tiebreaking error, respondents argue that the District's failure to establish specific tiebreaking criteria "affects the order of the seniority list." They argue without citation to authority that this forms a basis to void the Board's resolutions. No such basis is discernable.

7. Respondents also argue without citation to authority that the District failed to consider attrition "or gave it scant attention" and ask the undersigned to take unspecified steps to require the District to "comply with this equitable requirement." However, the District's evidence that it considered attrition was unrebutted. No basis for relief was established.

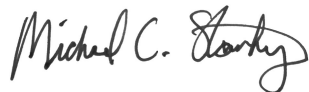
8. Respondents do not argue that the testimony of Warren or Hernandez constitutes a basis to rescind any of the noticed reductions in force and no such basis is apparent.

9. The District's reduction in force must be sustained. Cause exists pursuant to Education Code sections 44949 and 44955 to give notice to respondents that their services will not be required for the 2022-2023 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

The District's reduction in force is sustained as to each respondent. Notice may be given to respondents Felipe Avendano-Vela, Eliana Delgadillo, Marco Della Maggiore, Nalleli Elizalde; Veronica Gonzalez; Brian Haggett; Michael Hernandez; Eric Miranda; Megan Sabby; Bianca Elizabeth Soto; and Alane Warren that their services will not be required for the 2022-2023 school year.

DATE: 05/05/2022

A handwritten signature in black ink, reading "Michael C. Starkey". The signature is fluid and cursive, with the first name "Michael" and last name "Starkey" clearly legible.

MICHAEL C. STARKEY

Administrative Law Judge

Office of Administrative Hearings

