

**BEFORE THE
BOARD OF EDUCATION
NAPA VALLEY UNIFIED SCHOOL DISTRICT**

**In the Matter of the Statement of Reduction in Force of
Certificated Employees, Respondents.**

OAH No. 2020040286

PROPOSED DECISION

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter remotely on April 29, 2020.

Erika Anderson, Attorney, Garcia Hernandez Sawhney, LLP, represented the Napa Valley Unified School District (District).

Christopher Hammer, Attorney, Beeson, Tayer & Bodine, APC, represented the respondents listed on Attachment A,¹ including respondent Jennifer Veilleux, who was present throughout the hearing.

The matter was submitted for decision on April 29, 2020.

¹ Attachment A, attached hereto and incorporated herein, is an alphabetical list of respondents.

FACTUAL FINDINGS

1. Rosanna Mucetti, Ed.D., made and filed the District's Statement of Reduction in Force in her official capacity as the superintendent of the Napa Valley Unified School District.

2. On February 27, 2020, the Governing Board of the District adopted Resolution No. 20-21 (Resolution), reducing or discontinuing particular kinds of services for the 2020-2021 school year, and directing Superintendent Mucetti to send appropriate notices to all employees affected by the reduction or elimination of services.

3. The Resolution identified the services to be reduced no later than the beginning of the 2020-2021 school year as:

Multiple Subject Elementary Classroom Teachers	12.0 FTE ²
Multiple Subject Middle School Core Teachers	8.0 FTE
Single Subject Secondary Teachers on Special	3.0 FTE
Assignment-District/Site	
Multiple Subject Elementary Teachers on Special	20.0 FTE
Assignment-District/Site	

² Full-Time Equivalent.

Counselors (PPS Credential)	2.0 FTE
Single Subject – Art	6.0 FTE
Single Subject – Biology/Life Science	3.0 FTE
Single Subject – Chemistry	3.0 FTE
Single Subject – English	7.0 FTE
Single Subject – Foundational Math	3.0 FTE
Single Subject – Foundational Science	3.0 FTE
Single Subject – Mathematics	2.0 FTE
Single Subject – Music	4.0 FTE
Single Subject – Physical Education	9.0 FTE
Single Subject – Social Studies	9.0 FTE
Single Subject – Spanish	7.0 FTE

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

5. Pursuant to Education Code section 44955, subdivision (b), when a governing board reduces particular kinds of services resulting in a decrease in the number of certificated, permanent employees, the services of a permanent employee

may not be terminated if another employee with less seniority is retained to render a service that the more senior employee is "certificated and competent to render."

6. The seniority date of certificated employees is determined in accordance with Education Code section 44845, which provides: "Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which [s]he first rendered paid service in a probationary position."

7. Prior to March 15, 2020, Superintendent Mucetti provided written Notifications of Recommendation that Services May Not Be Required (Preliminary Notices) to certain certificated employees of the District, notifying them that their "services may not be required for the 2020-2021 school year," pursuant to Education Code sections 44949 and 44955.

8. The parties stipulated that all respondents: (1) were properly and timely served with a Preliminary Notice and timely requested a hearing; (2) were properly and timely served with a statement to respondent, the statement of reduction in force, copies of relevant Education and Government Code sections, a notice of participation and a notice of hearing; and (3) timely filed a First Amended Group Notice of Participation. All prehearing jurisdictional requirements have been met.

Respondent Jennifer Veilleux

9. Prior to hearing, the parties narrowed the scope of the hearing to the limited issue of employee seniority involving respondent Jennifer Veilleux.

10. Veilleux is a permanent full-time (1.0 FTE) certificated teacher at the District. She has worked as a third grade teacher at Bel Aire Park Elementary School

since August 2015, when she was hired as a temporary employee. Veilleux has a multiple subject credential.

11. For the 2015-2016 school year, Veilleux was hired in a temporary position as a third grade teacher to “backfill” for a permanent teacher who was on special assignment as a reading specialist. Veilleux also worked in the same temporary position for the 2016-2017 school year.

12. For the 2017-2018 school year, on May 30, 2017, Veilleux was offered the same temporary position as a third grade teacher. However, due to the resignation of a permanent teacher at the start of the school year, in August 2017,³ Veilleux was offered the third grade teaching position as a probationary level 2 employee.

13. The District’s seniority list reflects that Veilleux has a seniority date of August 15, 2016. Her initial date of hire, as a temporary employee with the District, was August 21, 2015. She became a probationary employee on August 14, 2017. To establish Veilleux’s seniority date of August 15, 2016, the District “tacked” on one year of seniority because she met the qualifications of Education Code section 44918, subdivision (a), which provides:

Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have

³ The specific date was not established at hearing.

served a complete school year as a probationary employee if employed as a probationary employee for the following school year.

14. Dana Page, Assistant Superintendent of Human Resources, testified at hearing. Page explained that seniority is ordinarily established when a teacher attends the paid mandatory teacher training/orientation at the beginning of the school year. The “new” teacher training/orientation is for certificated employees who are new to the District and primarily covers the District’s policies and procedures. The start of the new teacher training/orientation is counted as the first day of hire for a teacher for seniority purposes.

Veilleux’s Evidence and Contentions

15. Veilleux described herself as a competent teacher who has taught valuable skills to her students over the past five years. She has “built a home” at her school, and has “given her all” to her students and the District. She questions why the District did not ask her students’ parents about her competency as a teacher. She believes that the District did not recognize her outstanding performance.

16. Veilleux has three contentions. First, she contends that 20 other teachers were hired at the same time that she was hired in 2015 for a temporary position, and they were arbitrarily assigned and randomly scattered throughout the District. She asserts that these other 20 teachers were allowed to have their first year of service count toward seniority and that their layoff notices were rescinded, and believes that she should be treated the same.

At hearing, Page acknowledged Veilleux's concerns about the appearance of arbitrary assignments. Page explained that individual teachers, such as Veilleux, are not made aware of the reasoning behind teaching assignments made throughout the District. It is not uncommon or unlawful for employees who are hired as temporary employees to become junior in seniority to those hired as probationary employees in the same year. Here, Veilleux failed to provide evidence to establish that she is entitled to a higher seniority date than the other 20 teachers.

17. Veilleux also contends that when she was placed in a probationary 2 position in her third year of teaching in 2017-2018, the District should have considered her second year of teaching in school year 2016-2017 retroactively as a probationary 1 position, and her seniority date should be August 21, 2015.

Her second argument is not persuasive. As established above, pursuant to Education Code section 44918, Veilleux is only entitled to the maximum one year of tacking to her seniority for the year she worked prior to her probationary assignment. This places her seniority date as August 15, 2016, as correctly calculated by the District. Here, Veilleux failed to provide a legal basis for the District to consider the 2016-2017 school year, when she worked as a temporary employee, to be retroactively considered to be her first year of working as a probationary employee.

18. Veilleux further contends that she should be placed higher on the seniority list than 11 other teachers who were hired after her in 2016. These 11 other new teachers attended a mandatory teacher training/orientation before the start of the 2016-2017 school year. Veilleux was not given the opportunity to attend the mandatory training/orientation because she had already been teaching within the District. This caused her seniority to be lower than the 11 other teachers. Veilleux seeks

to have her seniority date changed to the same date as the start of the mandatory teacher training/orientation that the other 11 teachers attended in early August 2016, which was before her current seniority date of August 15, 2016.

Whether pre-service training days constitute the first date of paid probationary service is an important consideration, because seniority establishes the relationship among all certificated employees. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal. App. 4th 1260, 1293, fn. 20.)

In this case, Veilleux did not attend the paid mandatory training/orientation which establishes seniority among all certificated employees within the District. At hearing, Page explained that because respondent Veilleux was a late hire for the 2015-2016 school year, she did not attend the mandatory new teacher training/orientation in 2015. Additionally, she did not attend the mandatory teacher training/orientation prior to the start of the 2016-2017 or the 2017-2018 school years. According to Page, it was unlikely that respondent Veilleux would have been offered an opportunity to attend the mandatory "new" teacher training/orientation in August 2017, because she had already been working in the District since 2015.

Ultimately, respondent Veilleux did not submit sufficient evidence to establish that her seniority date with the District should be changed from August 15, 2016. Her request for a change to her seniority date must therefore be denied.

19. No permanent or probationary certificated employee with less seniority is being retained to render a service which respondent Veilleux is certificated and competent to render.

20. The reduction or discontinuation of the particular kinds of services set forth in Resolution No. 20-21 is related to the welfare of the District and the students thereof within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue these services is neither arbitrary nor capricious, but rather a proper exercise of discretion of the District. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees, as determined by the Governing Board.

LEGAL CONCLUSIONS

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

2. The services referenced in the Resolution set forth in Factual Finding 2 are the kind which may be reduced or discontinued in accordance with applicable statutes and case law. (See Ed. Code, § 44955; *Campbell Elem. Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796; *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167.) The Board's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

3. The evidence established that no certificated employee with less seniority than Veilleux is being retained to render services which she is certificated and competent to perform. (Factual Findings 16-19.)

4. Veilleux did not establish that her seniority date should be changed under Education Code section 44845. (Findings 13-14, 16-19.)

5. In accordance with Education Code sections 44949 and 44955, cause exists for reduction of particular kinds of services of the District, beginning no later than the commencement of the 2020-2021 school year, as established in Factual Findings 2 through 8. The cause relates solely to the welfare of the District and the pupils thereof within the meaning of Education Code section 44949. (Factual Finding 20.)

6. Notice may be given to Veilleux that her services will not be required for the 2020-2021 school year.

ORDER

Notice may be given to respondent Jennifer Veilleux that her services will not be required for the 2020-2021 school year.

DATE: May 5, 2020

DocuSigned by:
Pegina Brown
REGINA BROWN

Administrative Law Judge

Office of Administrative Hearings