

BEFORE THE GOVERNING BOARD
SWEETWATER UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving the Respondents Identified in
Appendices A and B.

OAH No. 2012030341

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 27, 2012, in Chula Vista, California.

Mark Breese, Atkinson, Andelson, Loya, Ruud & Romo, represented Sweetwater Union High School District (District).

Fern Steiner, Tosdal, Smith, Steiner & Wax, represented the respondents identified in Exhibit 14.

Respondents Khristopher Audillo, Johnathan Chase, Julie Forrey, Keith Hammond, Rachel Lin, Amy Mundo, Angela Torres, Angelica Valverde-Paredes, and Marie Carmen Whitehead appeared and represented themselves.

There were no appearances by respondents Rodrigo Arancibia, Emma Geddes, Lizveth Huerta, Luis Lopez, Christopher Matter, Graciela Nunez, Rosa Prins-Padro, Arlton Ruiz, and Erik Swenson.

Before and during the hearing the accusations served on Derrick Almero, Richard Barr, Jennifer Bottomley, Roufieh Carmody, Jeanette Fiorica, Rosa Gilliam, Sanna Goins, Kelly Hamilton, Mercedes Hernandez, William House, Sara Huerta, Kristina Lopez, Elizabeth Murphy, Jennifer Zark-Peffley, Alejandro Picazo, Shawn Pomatto, Erin Southam, Roxana Vasquez, and Matthew Wilson were withdrawn and their layoff notices rescinded.

Oral and documentary evidence was received and the matter was submitted on April 27, 2012. Following the hearing and consistent with the presentation of the evidence, the representations by the parties and the directive from the court, the District submitted an amended layoff analysis, its final proposed layoff notice list, and its final proposed dismissal list. Those documents were marked and received, respectively, as Exhibits 21, 22, and 23.

FACTUAL FINDINGS

Jurisdiction

1. Edward Brand, Superintendent, made and filed the accusation in his official capacity as the District's Superintendent.
2. Respondents are identified on Appendices A and B, attached hereto and by this reference incorporated herein. All respondents are certificated employees of the District.
3. On March 12, 2012, the Governing Board adopted a resolution which reduced particular kinds of certificated services and directed the superintendent to give appropriate notices to certificated employees whose positions would be affected by the action. The resolution identified 203¹ FTEs to be reduced.

Bump Analysis

4. The Board implemented a bump analysis to determine which employees could bump into a position being held by a junior employee. The resolution permitted a more senior certificated employee to displace ("bump") a less senior employee if the more senior employee was competent and credentialed to "render the series performed by the less senior" employee. Qualifications must include "highly qualified" NCLB status in the subject or field, and "appropriate certification qualifications (including appropriate English language authorizations)" and the senior employee must be able to displace the junior employee's "entire assignment."

Layoff Determinations

5. Consistent with the Board's Resolution, the District identified certificated employees for layoff. The decision to reduce or discontinue a particular kind of service is matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) A school district's decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)
6. School districts have broad discretion in defining positions within the district and establishing requirements for employment. This discretion encompasses determining the training and experience necessary for particular positions. Similarly, school districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.)

¹ The accusation incorrectly alleged that the resolution identified 211 FTEs.

7. On or before March 15, 2012, the District timely served on Respondents a written notice that the Superintendent had recommended that their services would be terminated at the close of the current school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

8. An accusation was served on each respondent. No evidence was introduced demonstrating that all prehearing jurisdictional requirements were not met.

Testimony from Individual Respondents

9. Miguel Marin testified about the medical program, Hippocrates Circle, that he created which prepares students for a medical career in a mentoring program with Kaiser Permanente. This school-to-career program recently received a California Department of Education grant allowing its expansion to the middle school. Mr. Marin testified about the opportunities this program has afforded students. Mr. Marin's testimony was a perfect illustration of the type of dedicated, innovative teachers that a district loses when these layoffs occur. Unfortunately, nothing about the District's decision was arbitrary or capricious and the decision to reduce or discontinue a particular kind of service is matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

10. Andrea Arroyo testified about the importance of art classes, especially for special need students. While it may be true that her art class offers a unique benefit to students, a school board may "reduce services" by eliminating certain types of services or by reducing the number of district employees providing such services. The decision to reduce or discontinue a particular kind of service is matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

11. Louie Marrone testified about his work with the students at Alta Vista Academy, a facility that houses Level 12 and 14 students. He expressed his concern of another individual being able to handle these difficult students. Although his testimony was extremely reasonable and his concerns valid, nothing about the District's decision was arbitrary or capricious and the decision to reduce or discontinue a particular kind of service is matter reserved to the district's discretion and is not subject to second-guessing in this proceeding (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167) and school districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.)

12. Katie Kennedy a bioscience teacher at Olympia High School provided a notebook of her programs, the excellent feedback she has received and her teacher of the year nomination. While the evidence established she is an asset to the District, unless the

District's decision is arbitrary or capricious, it is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

13. Luis Lopez a geography and AVID teacher at Sweetwater High School testified about his passion for teaching and the "family" he and his colleagues have created. While his testimony demonstrated his dedication to his profession, unfortunately unless the District's decision is arbitrary or capricious, it is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

14. Johnathan Chase, an AP chemistry teacher, testified about his love of teaching, of the ability for junior teachers to connect with students and the hours he puts in for the District in order to help his students achieve. He expressed concern that teachers not subject to layoff did not display that type of passion. While his testimony raised legitimate concerns, absent skipping criteria which a district must validate, the Education Code provides for a quantitative, not qualitative, layoff process. Thus, the District cannot retain a teacher based solely upon his work ethic and dedication. Unless a decision is arbitrary or capricious, it is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

15. Richard Barr, who received a precautionary layoff notice, questioned why some teachers with the same seniority date and credentials were released by the District at the start of this hearing but his accusation was not rescinded. As indicated below, it is recommended that the District rescind all precautionary layoff notices, including that issued to Mr. Barr. However, given the issues he raised regarding his seniority date and his credentials in relation to that of Mr. Ausero and Ms. Carmody, it is recommended that the District review his concerns and make any necessary corrections to his seniority date.

16. Ausberto Cisneros, a science teacher at Palomar High School, a continuation school, testified about the positive impact he and his colleagues have had on students who have been "rejected" elsewhere and the high percentage of those students who are now college bound. Unfortunately, the Education Code layoff process is based upon seniority and the District did not skip teachers at Palomar, thereby resulting in Mr. Cisneros' layoff. Unless a decision is arbitrary or capricious, it is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

17. Juan Garcia testified that he is the only bilingual physics teacher at Eastlake High School and laying him off will harm the students. However, it was not established that the District would not re-assign teachers to different schools to fulfill ratio and staffing requirements or make other bilingual teachers available. Unless a decision is arbitrary or capricious, it is not subject to second-guessing in this proceeding (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167) and school districts have the discretion to determine particular kinds of services that will be eliminated,

even though a service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.)

Final Layoff List

18. Sondra Huezo, Assistant Superintendent Human Resources, testified about the District's financial crisis. Although she admitted the District will still have reserves for operating expenses next year, nothing requires a district to use them to preserve positions as Boards are required to be fiscally responsible. Initially Ms. Huezo's testimony made it appear that the tie-breaking criteria had scored employees' credentials incorrectly and she admitted the list would have to be re-calculated. However, during a break in the proceeding the District, its attorney and Ms. Steiner, reviewed the documents and upon further reflection, it was established that the tiebreaking criteria had been properly calculated.

When questioned about current job postings for the District which included positions being eliminated in this RIF, Ms. Huezo testified that the list was merely an "eligibility list" and that no new applicants would be hired until respondents were re-hired. She also explained that special education services were not being reduced, an employee merely "bumped into" the position currently being held by one of the respondents.

19. The District is not retaining any employee with less seniority to perform a service that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

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

3. The decision to reduce or discontinue a particular kind of service is matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

4. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2012-2013 school year. The cause relates solely to the financial welfare of the schools and the pupils thereof within the meaning of Education Code section 44949. The

District has identified the certificated employees who are providing the particular kinds of services that the Board directed be reduced or discontinued. It is recommended that the Board give respondents notice before May 15, 2012, that their services will not be required by the District for the school year 2012-13.

RECOMMENDATIONS

It is recommended that the Board give notice to the respondents whose names are set forth below on Appendix A that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2012-2013 school year.

It is recommended that the District withdraw the accusations filed against the respondents listed on Appendix B and rescind their layoff notices.

Consistent with Factual Finding No. 15, the District shall review Richard Barr's concerns and make any necessary corrections to his seniority date.

DATED: May 1, 2012

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix A

#	LAST	FIRST
1	Acosta	Jesus
2	Allen	Sheryl
3	Alvarez	Karla
4	Amezcuca	Janet
5	Anderson	Nicholas
6	Andrade	Maribel
7	Antick	Luz
8	Arancibia	Rodrigo
9	Arroyo	Andrea
10	Arroyo	Marivel
11	Astudillo	Khristopher
12	Audelo	Marissa
13	Awrey	Christina
14	Baker	Kristina
15	Barron	Erin
16	Bayley	Cheryl
17	Beauchamp	Michelle
18	Bertoson	Lisa
19	Black	Benjamin
20	Bravo	Rebecca
21	Brinkman	Vanessa
22	Brown	Melody
23	Canales	Maria
24	Chase	Johnathan
25	Cisneros-Martinez	Ausberto
26	Conde	Rosario
27	Cooper	Tamara
28	Cordova	Daniel
29	Corona	Travis
30	Corrales	Gregory
31	Crawford	Tori
32	Del Rosario	Monica
33	Delos Reyes	Sarah
34	Didio	Lauren
35	Dominguez	Jessica
36	Dominguez	Rick
37	Dumas	Don
38	Dunnagan	Amber
39	Ecoffey	Paul
40	Elam	Kristin
41	Espinoza	Deirdre
42	Fabian	Benedict
43	Florence	Aimee
44	Forrey	Julie
45	Garcia-Arriola	Juan
46	Geddes	Emma
47	Geyer	Bertha
48	Giles	Tracey

#	LAST	FIRST
49	Gomez	Yessica
50	Gonzalez	Hector
51	Gracias	Oscar
52	Grijalva	Iliana
53	Hammond	Keith
54	Hanono	Abraham
55	Heredia	Patricia
56	Hernandez	Verenice
57	Higgins	Gregorio
58	Horner	Nathan
59	Huerta	Lizveth
60	Huls	Emmalee
61	Ingram	Clarissa
62	Jackson	Brandy
63	Johnson	Taryn
64	Johnston	Zachary
65	Kennedy	Katie
66	Kranzberg	Nicole
67	Kumabe	Bryan
68	Lambert	Matthew
69	Lin	Rachel
70	Linan	Andrea
71	Lopez	Luis
72	Lopez	Gisela
73	Love Jr	Richard
74	Lucero	Lorena
75	Magill	Mary
76	Malinis-Gregorio	Claudia
77	Marin	Miguel
78	Marrone	Louis
79	Marshall	Jessica
80	Matter	Christopher
81	Meyercott (Hawkins-Gilly)	Theresa
82	Meyering	Laura
83	Meza	Lilia
84	Miller	Colleen
85	Miranda	Amy
86	Monge	Ana
87	Moss	Mary
88	Moya	Francisco
89	Mundo	Amy
90	Neeb	Nicole
91	Neumann	Michael
92	Norriss	Beverly
93	Nunez	Graciela
94	Ochoa	Marcos
95	Panzarini	Natalio
96	Pchelnikova	Irina
97	Pentz-Lopez	Alicia
98	Peterson	Richard
99	Pimentel	Jessica
100	Polanco	Julia

#	LAST	FIRST
101	Prejean Jr	Wilbert
102	Prins-Padro	Rosa
103	Quijas	Ivan
104	Recinos	Martha-Irene
105	Redmond	Maura
106	Rico	Vanessa
107	Rios-Caro	Luis
108	Rivas-Mata	Hetzel
109	Robledo	Alyssa
110	Ross	Tabatha
111	Ruiz	Artlon
112	Rumsey	Jeanne
113	Saiki	Allison
114	Salas	Teresa
115	Sanchez	Jacqueline
116	Savage	Sothina
117	Schoettler	Megan
118	Scott	Sasha
119	Seiter	Roland
120	Sevilla	Ricardo
121	Shepard	Sarah
122	Sias	Roberto
123	Sibelman	Angela
124	Silva	Liliana
125	Skinner	Jessica
126	Soco	Rebecca
127	Solis	Anita
128	Sosa	James
129	Streifer	Stephen
130	Swenson	Erik
131	Tapia	Manuel
132	Tena	Leticia
133	Teres	Samuel
134	Thomas	Abra
135	Torres	Angela
136	Tran	Tich
137	Tulao	Ronniel
138	Valverde-Paredes	Angelica
139	Vedborg	Peter
140	Villegas	Maritza
141	Wagner	Allie
142	Warlop	John
143	Warlop	Sean
144	Waters	Jennifer
145	Wayne-Schaeffer	Jennifer
146	Whitehead	Maria Carmen
147	Whittaker	Kelly
148	Widmark	Alyssa
149	Wilcheck-Wood	Casey
150	Young	Lynette
151	Zamora	Suzannah

Appendix B

#	LAST	FIRST
1	Casas	Kristy
2	Chico	Oliver
3	Collins	Pamela
4	Ferreira	Jo
5	Garrison	Steven
6	Hernandez	Monica
7	Shive	Dennis