



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 10.3

Meeting Date: May 6, 2021

Subject: **Adopt Resolution No. 3203: Resolution Regarding Proposed Decision of Administrative Law Judge and Implementing Certificated Layoffs**

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Division: Human Resource Services

Recommendation: Adopt Resolution No. 3203: Resolution Regarding Proposed Decision of Administrative Law Judge and Implementing Certificated Layoffs.

Background/Rationale: On February 18, 2021 the Board of Education adopted its Resolution to Eliminate Positions Due to a Reduction of Particular Kinds of Services (Resolution No. 3182). Pursuant to Resolution No. 3182, Human Resource Services sent notices to affected certificated employees on or before March 15, 2021 informing them they are subject to layoff for the 2021-2022 school year. Pursuant to Education Code § 44949, a hearing was held before an Administrative Law Judge, the Honorable Heather Rowan, on April 22, 2021. The District was able to resolve certain issues with the represented teachers in advance of hearing, which limited the number of outstanding issues for hearing.

The Administrative Law Judge's proposed decision to the Board, dated April 28, 2021, was received by the District on April 30, 2021. The Board, at this meeting, will consider the proposed decision by its Resolution No. 3203. Once the resolution is adopted, final layoff notices shall be served on the affected employees before May 15, 2021 as provided by law.

Financial Considerations: N/A

LCAP Goal 2: Safe, Clean, and Healthy Schools

Documents Attached:

1. Resolution No. 3203
2. Executive Summary

Estimated Time of Presentation: 5 minutes
Submitted by: Cancy McArn, Chief Human Resources Officer
Approved by: Jorge A. Aguilar, Superintendent

Board of Education Executive Summary

Human Resource Services

Adopt Resolution No. 3203: Resolution Regarding Proposed Decision of Administrative Law Judge and Implementing Certificated Layoffs
May 6, 2021



I. Overview/History of Reduction to Particular Kinds of Services for 2021-2022:

Due to concerns associated with District program needs, reduced funding, and declining enrollment it was recommended that the Board approve a reduction of particular kinds of services ("PKS"), which it did on February 18, 2021, in Board Resolution No. 3182. The approved certificated reductions totaled 132.05 full time equivalency ("FTE"). The Board also approved certain skipping and competency criteria as well as tie-breaking criteria for the PKS resolution.

Before and after the Board approved these resolutions, staff considered attrition in order to reduce the number of current employees who would be subject to reduction. As a result, a total of 64 layoff notices were sent to impacted employees in inverse seniority order. Employees who were served a preliminary layoff notice had seven days to request a hearing. Of the 64 employees who received a layoff notice, 25 did not timely request a hearing. Employees who timely requested a hearing were served with a Statement of Reduction in Force per Education Code section 44949, for which they were required to submit a Notice of Participation within five days. Of the 39 employees who timely requested a hearing, 39 submitted a Notice of Participation. A hearing was scheduled for the 39 Respondents who timely submitted a Request for Hearing and Notice of Participation.

The PKS Layoff hearing took place on April 22, 2021, and was presided over by Administrative Law Judge, Heather M. Rowan, of the Office of Administrative Hearings. The District was able to resolve certain issues with the represented teachers in advance of hearing, which limited the number of outstanding issues for hearing. At hearing, the District was able to rescind 17.9 FTE of layoff notices.

On April 30, 2021, the District received Judge Rowan's proposed decision dated April 28, 2021.

II. Driving Governance:

Education Code section 44949 requires the administrative law judge who presides over the layoff hearing to "prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils of the schools. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained

Board of Education Executive Summary

Human Resource Services

Adopt Resolution No. 3203: Resolution Regarding Proposed Decision of Administrative Law Judge and Implementing Certificated Layoffs
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in the proposed decision prepared by the administrative law judge shall be binding on the governing board.”

Education Code section 44955 requires that final layoff notices be served on affected employees before May 15.

III. Budget:

Position reductions are needed to assist in addressing the District’s declining enrollment, the elimination of certain funds, and staffing needs.

IV. Goals, Objective and Measures:

Judge Rowan was tasked with determining whether the District satisfied the requirements of Education Code sections 44949 and 44955 when it reduced 132.05 FTE of particular kinds of services. Because the District was able to resolve certain issues with the represented teachers in advance of hearing, this limited the number of outstanding issues for Judge Rowan’s determination.

V. Major Initiatives:

It is recommended that the Board adopt the proposed decision and authorize staff to send final layoff notices to affected employees according to same, per the attached resolution.

VI. Results:

With the adoption of Resolution No. 3203, the Chief Human Resources Officer and staff will be directed to send final layoff notices to affected employees.

These final layoff notices must be sent to employees before May 15, 2021 as required by law.

**SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION**

RESOLUTION NO. 3203

**RESOLUTION REGARDING PROPOSED DECISION OF ADMINISTRATIVE
LAW JUDGE AND IMPLEMENTING CERTIFICATED LAYOFFS**

WHEREAS, the Board of Education of the Sacramento City Unified School District adopted Resolution 3182 on February 18, 2021, authorizing and directing the Superintendent, or Superintendent's designee, to initiate and pursue procedures necessary to discontinue services of certificated staff totaling 132.05 full time equivalent certificated employees of this District pursuant to Education Code sections 44949 and 44955 due to a reduction and discontinuance of particular kinds of services; and

WHEREAS, the Superintendent, or Superintendent's designee, duly and properly served notice on the certificated employees listed on Attachment "A" on or before March 15, 2021, indicating that the Board did not intend to retain them to the extent indicated in the Resolution and Notice for the 2021-2022 school year; and

WHEREAS, the certificated employees listed on Attachment "A" were informed of their right to request a hearing and that failure to do so in writing would constitute a waiver of the right to a hearing; and

WHEREAS, a layoff hearing was convened on April 22, 2021, by the Office of Administrative Hearings, State of California, for those certificated employees who desired a hearing; and

WHEREAS, a Proposed Decision, dated April 28, 2021 and received by the District on April 30, 2021, has been submitted by Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings, In the Matter of the Reduction in Force pertaining to those employees who appeared for the hearing, a true and correct copy of which is marked "Attachment B", attached hereto and by this reference made a part hereof; and

WHEREAS, the employees authorized to receive final layoff notices, including those listed in the final decision as well as those who did not timely submit a request for hearing, are listed at attachment "C"; and

WHEREAS, the Board has duly considered said Proposed Decision; and

WHEREAS, the Proposed Decision erroneously names Karen Scinto as a teacher who both agreed to withdraw her request for hearing, and whose preliminary layoff notice will be rescinded; and

WHEREAS, the District did in fact agree to rescind Ms. Scinto's preliminary layoff notice.

THEREFORE BE IT RESOLVED that the Board adopts the Proposed Decision as the decision of the Board, along with the aforementioned clarification regarding Ms. Scinto;

THE BOARD HEREBY FINDS sufficient cause for not retaining the certificated employees listed on Attachment "C" and consistent with the Proposed Decision, and finds that the decision to not retain these employees relates to the welfare of the schools of the Sacramento City Unified School District and the pupils thereof; and

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent or Superintendent's designee, is authorized and directed to notify those certificated employees listed on Attachment "C", pursuant to Education Code section 44949, that their services will not be required by this District for the ensuing 2021-22 school year. Said notice shall be given by serving upon the certificated employees listed on Attachment "C" a true copy of this Resolution and notification that their services will be terminated at the end of the current 2020-21 school year.

PASSED AND ADOPTED by the Sacramento City Unified School District Board of Education on this 6th day of May, 2021, by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

Christina Pritchett
President of the Board of Education

ATTESTED TO:

Jorge A. Aguilar
Secretary of the Board of Education

ATTACHMENT A

	Last Name	First Name
1	Von Lahr	Paula
2	Toby	Tamara
3	Hume	Howard
4	Hughes	Kristen
5	Barton	Arianna
6	Rozakis	Antonia
7	Doan	Hong-An
8	Robinson	Dawn
9	Brinkley	Shannon
10	Casteel	Amanda
11	Scinto	Karen
12	Mattson	Alyssa
13	Wells	Michael
14	Alvarado	Lissa
15	Blankenship	Lori
16	Cruz	Jorje
17	Douglas	Lisa
18	Ferguson	Jane
19	Franco	Linda
20	Garland	Ashley
21	Huynh	Tracy
22	Isaguirre-Bersola	Gabriella
23	Lim	Judy
24	Magoulias	Danae
25	McClain	Colleen
26	Nuno	Yvonne
27	Schaan	Alyssa
28	Ramirez	Anaissa
29	Merar	Lauren
30	Pittman	Lina
31	Vang	Bao
32	Thompson	Britney
33	Carrillo	Patricia
34	Sawusch	Kimberly
35	Hutton	Amy
36	Wakabayashi	Kyle
37	Hallford	Mallory
38	Johnson	Lynell
39	Schwartz	Jamie
40	Hill	Zachary
41	Huerta Espinoza	Tania
42	Calvin	Roderick
43	Ballenger	James
44	Cacho	Daniel
45	Billings	Mary
46	Barrera Cisneros	Nancy
47	Mondragon	Alexandra

48	Sevilla	Maria
49	Fleming	Tracy
50	Araujo	Spenser
51	Peruzzi	Nicola
52	Tite	Wesley
53	Wolf	Jaime
54	Aguilera	Francisco
55	Cuda	Zachary
56	Peltz Planchon	Tiffany
57	Hasseltine	Sally
58	Barnett	Teresa
59	Centeno	Jorlinis
60	Chufar	Bonnie
61	Doll	Lorraine
62	Ruth	Rosa
63	Townson	Katherine
64	Schmitt	Francoise

ATTACHMENT B

**BEFORE THE
GOVERNING BOARD OF THE
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

**In the Matter of the Teacher Reduction in Force for:
CERTAIN CERTIFICATED EMPLOYEES, Respondents.**

OAH No. 2021040008

PROPOSED DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via video conference on April 22, 2021, from Sacramento, California.

Erin Hamer and Katherine Holding, Attorneys at Law, of Lozano Smith, represented the Sacramento City Unified School District (District).

Lesley Beth Curtis and Eric Lindstrom, Attorneys at Law, of Langenkamp Curtis & Price, represented Lissa Alvarado, James Ballenger, Lori Blankenship, Daniel Cacho, Roderick Calvin, Patricia Carrillo, Bonnie Chufar, Zachary Cuda, Jorje Cruz, Hong-An Doan, Lorraine Doll, Linda Franco, Mallory Hallford, Zachary Hill, Tania Huerta-Espinoza, Kristen Hughes, Howard Hume, Amy Hutton, Lynell Johnson, Judy Lim, Alyssa Mattson, Colleen McClain, Alexandra Mondragon, Tiffany Pletz-Planchon, Nicola Peruzzi, Lina Pittman, Ruth Rosa, Francoise Schmitt, Jamie Schwartz, Karen Scinto, Maria Sevilla, Britney Thompson, Wesley Tite, Tamara Toby, Bao Vang, Paul Von Lahr, and Jaime Wolf (represented respondents).

Respondents Amanda Casteel and Antonia Rozakis represented themselves.

Oral and documentary evidence was received on April 22, 2021. The record was left open to allow the represented respondents an opportunity to review the updated seniority list and lodge objections, if any. The record was closed and the matter submitted for decision on April 23, 2021.

ISSUES

The only issues presented at hearing are whether there is jurisdiction over respondent Roderick Calvin and what respondent Wesley Tite's seniority date is. Once those two issues are determined, the represented respondents and the District agreed to stipulations that precluded the need for a hearing.

FACTUAL FINDINGS

1. In total, the District identified 132.05 fulltime equivalent (FTE) positions to be eliminated for the 2021/2022 school year. After accounting for attrition and vacant positions, the District identified 39 certificated employees whose positions were being eliminated, or were otherwise subject to layoff. This matter was called for hearing on April 22, 2021. At the start of hearing, the represented respondents and the District stated they had reached an agreement, but there were outstanding jurisdictional and seniority matters to address that bore on the agreement. Evidence was received only to the extent they bore on these preliminary matters. This Proposed Decision is limited to those legal issues.

2. Respondents Rozakis and Casteel were given the opportunity to participate in the hearing and to meet individually with District counsel to discuss any possibilities for settlement. Each stated she understood her options and that each had a right to proceed with hearing. Following a brief settlement discussion with District counsel, these respondents knowingly and voluntarily withdrew their requests for hearing. The District indicated these respondents will receive final layoff notices.

Jurisdiction: Roderick Calvin

3. The District presented evidence its human resources department mailed respondent Roderick Calvin a preliminary layoff notice (notice) to his address of record on March 11, 2021, via certified mail. On March 23, 2021, the notice was returned to the District. No one had signed for the certified mail and someone wrote on the front of the envelope "Not Here."

4. Respondent Calvin did not dispute the envelope was sent to his address of record. He testified he receives other mail from the District at that address. He stated his mother is home at that address "100 percent of the time." He warned his family a letter may be coming from the District, and he does not know why he did not receive the certified mail.

5. Because respondent Calvin did not receive the layoff notice, he did not return a timely request for a hearing. He stated that he would have done so had he

received the notice. At hearing, the District rescinded respondent Calvin's layoff notice, unrelated to this jurisdictional matter.¹

6. The District argued that mailing the preliminary notice by certified mail to respondent Calvin's address of record satisfied the service requirement. The District's assertion is supported by the Education Code. Education Code section 44949, subdivision (d), states:

Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

7. Additionally, Education Code section 44955 states that if an employee "is not given the notices . . ." he "shall be deemed reemployed" for the following school year. The language here is important as it refers to an employee being given the notices, rather than an employee receiving the notices. The District "gave" respondent Calvin his preliminary notice.

8. The District met its statutory requirement to send respondent Calvin his preliminary notice by registered mail to his address of record. Respondent Calvin did not dispute his address of record. The mail was sent to the correct address, no one

¹ The District acknowledged the rescission makes this issue moot, but requested these written findings.

signed for it, and someone wrote "not here" on the envelope. For these reasons, there is no jurisdiction over respondent Calvin.

Seniority: Wesley Tite

9. The District's recorded seniority date for respondent Wesley Tite is March 1, 2021. Respondent Tite presented evidence that he started with the District as a substitute teacher at Rosemont High School on October 19, 2020. Respondent Tite worked in the same classroom from October 19, 2020, through the time of his hire as a fulltime probationary employee on March 1, 2021. Respondent Tite argued his actual seniority date should reflect his initial start date of October 19, 2020.

10. Mr. Tite taught for two districts in the 2020/2021 school year. He worked on a part-time basis for the District. From October 19, 2020, through October 30, 2020, he worked five days per week for the District. From November 2, 2020, through February 26, 2021, he worked three days per week for the District: Monday through Wednesday. He then prepared a plan for a substitute to implement on Thursdays and Fridays. During this time, he worked Thursdays and Fridays for another school district. In January 2021, he interviewed for and was offered a full-time position for the classes he was currently teaching on a part-time basis for the District. On February 26, 2021, his contract ended with the second district, which allowed him to transition from his part-time position to full-time.

11. Respondent Tite believed he was the teacher of record for the classroom. He assigned grades, created the lesson plan, and had control of the "Google classroom" website for the classes he taught. After the first two weeks when he began his three-day per week schedule, he drafted plans for the substitute teachers who taught on Thursdays and Fridays.

12. Respondent Tite testified he was teaching "under a substitute contract," that he believed had been renewed from the prior school year. He was paid a per-diem rate from October through February. On March 1, 2021, after he signed the full-time contract, he was paid on the "normal pay scale for full-time teachers."

13. Respondent Tite argued he was working in the same classroom for the majority of the school year and was not a "substitute" under the Education Code. Education Code section 44017 states, in relevant part: "governing boards of school districts shall classify as substitute employees those persons employed in positions requiring certification qualifications, to fill positions of regularly employed persons absent from service." The District needed a full-time teacher in respondent Tite's position. There was no "regularly employed person" for whom he was filling a position.

14. A probationary employee is an employee in a position requiring certification qualifications "who [has] not been classified as permanent employees or as a substitute." There is an exception for temporary or substitute employees in Education Code section 44918, subdivision (a):

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

15. No evidence was presented at hearing that respondent Tite worked "at least 75 percent of the number of days" of the school year. The evidence showed respondent Tite was hired as a substitute, worked under a substitute contract, and was paid per diem as a substitute. On March 1, 2021, he began his permanent, full-time position with the District, which is his appropriate seniority date.

STIPULATIONS BETWEEN REPRESENTED RESPONDENTS AND THE DISTRICT

16. Once the above matters were determined, the parties entered into agreements regarding the remaining issues on the record. The following are a recitation of the parties' agreement placed on the record on April 22, 2021.

17. The parties withdrew all motions in limine, supporting documentation, and requests for official notice. Represented respondents will send a letter to the District Superintendent withdrawing its April 19, 2021 Cease and Desist letter.

18. The District recorded respondent Jaime Wolf's seniority date as September 21, 2020. At hearing, respondent Wolf presented evidence she was in the same classroom on a fulltime basis as a long-term substitute teacher since the beginning of the 2020/2021 school year. The District stipulated it will amend respondent Wolf's seniority date to reflect this service. Her new seniority date is September 1, 2020.

19. About 30 thirty minutes prior to the start of hearing, the District provided an updated teacher seniority list. The updated list contained names that were not on the previous list and impacted some of the represented respondents' positions. The parties stipulated that the District is not currently aware if any other change was made

that would impact the represented respondents, but believed there were none. The parties agreed the represented respondents would compare the outdated seniority list with the updated list and inform OAH by close of business Friday, April 23, 2021 of any issues that may need to be heard. OAH received no update in the given time.

20. The parties stipulated that the following teachers will teach in the 2021/2022 school year under the stated credentials:

- Ashley Hankins will use her Special Education credential;
- Edmund Lynch will use his science credential; and
- Jennifer Escobar will use her English credential.

21. At hearing, the District rescinded the layoff notices for the following teachers:

Daniel Cacho; Roderick Calvin; Patricia Carrillo; Karen Scinto;
Jorje Cruz; Zachary Cuda; Mallory Hallford; Zachary Hill;
Tanya Huerta-Espinoza; Tracy Fleming; Amy Hutton; Lynell
Johnson; Francoise Schmitt; Jamie Schwartz; Maria Sevilla;
Britney Thompson; Katherine Townson; and Bao Vang.

22. The District will issue final layoff notices to the following represented respondents, who agreed to withdraw their requests for a hearing:

Lissa Alvarado, James Ballenger, Lori Blankenship, Bonnie
Chufar, Hong-An Doan, Lorraine Doll, Linda Franco, Kristen
Hughes, Howard Hume, Judy Lim, Alyssa Mattson, Colleen
McClain, Alexandra Mondragon, Tiffany Pletz-Planchon,

Nicola Peruzzi, Lina Pittman, Ruth Rosa, Karen Scinto,
Wesley Tite, Tamara Toby, Paula Von Lahr, and Jaime Wolf.

RECOMMENDATIONS

1. This court has no jurisdiction over respondent Roderick Calvin.
2. Respondent Wesley Tite's seniority date of March 1, 2021 is affirmed.

DATE: April 28, 2021

Heather M. Rowan

Heather M. Rowan (Apr 28, 2021 15:13 PDT)

HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings

ATTACHMENT C

	Last Name	First Name
1	Aguilera	Francisco
2	Alvarado	Lissa
3	Araujo	Spenser
4	Ballenger	James
5	Barton	Arianna
6	Barrera Cisneros	Nancy
7	Billings	Mary
8	Blankenship	Lori
9	Brinkley	Shannon
10	Casteel	Amanda
11	Centeno	Jorlinis
12	Chufar	Bonnie
13	Doan	Hong-An
14	Doll	Lorraine
15	Douglas	Lisa
16	Ferguson	Jane
17	Franco	Linda
18	Garland	Ashley
19	Hasseltine	Sally
20	Hughes	Kristen
21	Hume	Howard
22	Lim	Judy
23	Isaguirre-Bersola	Gabriella
24	Huynh	Tracy
25	Mattson	Alyssa
26	McClain	Colleen
27	Merar	Lauren
28	Mondragon	Alexandra
29	Nuno	Yvonne
30	Peltz-Planchon	Tiffany
31	Peruzzi	Nicola
32	Pittman	Lina
33	Robinson	Dawn
34	Ramirez	Anaissa
35	Rosa	Ruth
36	Rozakis	Antonia
37	Sawusch	Kimberly
38	Schaan	Alyssa
39	Tite	Wesley
40	Toby	Tamara
41	Von Lahr	Paula
42	Wakabayashi	Kyle
43	Wells	Michael
44	Wolf	Jaime