

SWEETWATER UNION HIGH SCHOOL DISTRICT

RESOLUTION NO. 4681

**RESOLUTION IN THE MATTER OF)
IMPLEMENTING REDUCTION OR)
DISCONTINUATION OF PARTICULAR)
KINDS OF SERVICES AS TO)
EMPLOYEES WHO RECEIVED A)
NOTICE OF LAYOFF)**

ON THE MOTION OF Member _____, seconded by _____, the following resolution is adopted:

WHEREAS, on February 24, 2020, this board adopted Resolution No. 4658, to reduce or discontinue specified certificated positions not later than the beginning of the 2020-2021 school year, and directing that certificated employees impacted by the action receive notice that their services will not be required for the ensuing 2020-2021 school year, pursuant to Education Code Sections 44949 and 44955; and

WHEREAS, the particular kind of services to be reduced or discontinued as set forth in Resolution No. 4658 are determined to be particular kinds of services within the meaning of Education Code Section 44955; and

WHEREAS, some of the particular kinds of services referenced in Resolution No. 4658 will be reduced or discontinued within the meaning of Education Code Section 44955 not later than the beginning of the 2020-2021 school year; and

WHEREAS, on or before March 15, 2020, the superintendent's designee served notice to 241 certificated employees that it has been recommended that their services will not be required for the ensuing 2020-2021 school year, pursuant to Education Code Sections 44949 and 44955; and

WHEREAS, the notices served upon 241 certificated employees pursuant to Education Code Sections 44949 and 44955 advised them that they may request a hearing to determine if there was cause for not re-employing them for the ensuing 2020-2021 school year, and that if they failed to timely request a hearing, that failure shall constitute a waiver of their right to a hearing; and

WHEREAS, 42 of the certificated employees receiving a notice pursuant to Education Code Sections 44949 and 44955 did not request a hearing, and, pursuant to Education Code Section 44949, they have therefore waived their right to a hearing; and

WHEREAS, Education Code Section 44949, subdivision (c)(3), provides that this board shall make the final determination as to the sufficiency of the cause and disposition of the layoff; and

WHEREAS, Education Code Section 44955, subdivision (c), requires final board action and notifications to employees before May 15, 2020, unless that date is extended pursuant to Education Code Section 44949, subdivision (e) based on a continuance of the hearing being granted as to those employees who requested a hearing; and

WHEREAS, consistent with these code provisions, the board, pursuant to Resolution No. 4674, made such final determination at its May 11, 2020, board meeting for the 42 employees who did not request a hearing; and

WHEREAS, for the employees who requested a hearing, the Office of Administrative Hearings ("OAH") scheduled a hearing to occur on April 14-16, 2020; and

WHEREAS, the district and the employees who requested a hearing filed a Joint Motion to Continue the start of the hearing from April 14 to May 27, 2020, based on a General Order issued by the OAH and public health concerns related to the COVID-19 pandemic, and the OAH granted the request which, under Education Code Section 44949, subdivision (e), extended the deadline for the district's consideration of the OAH hearing officer's decision by the length of the continuance; and

WHEREAS, based on the continuance of the hearing, the deadline for final determination and required receipt of a final notice of layoff for those who requested a hearing was extended by the length of the postponement, i.e. by 43 days, changing the deadline for receipt of final notices from before May 15, 2020, to before June 27, 2020; and

WHEREAS, the district received from the Office of Administrative Hearings a proposed decision on or about June 19, 2020, assessing the district's proposed reduction in particular kinds of services, and district staff and the board have reviewed and analyzed the proposed decision of the administrative law judge; and

WHEREAS, pursuant to Education Code Section 44949(c)(3), "the governing board shall make the final determination as to the sufficiency of the cause and disposition," and "[n]one of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board"; and

WHEREAS, the particular kinds of services to be discontinued and reduced as referenced in Resolution No. 4658 are determined to be particular kinds of services within the meaning of Education Code Section 44955; and

WHEREAS, the particular kinds of services referenced in Resolution No. 4658 will be discontinued and reduced within the meaning of Education Code Section 44955 not later than the beginning of the 2020-2021 school year; and

WHEREAS, except as permitted by law, the services of no permanent or other employee are being terminated while any probationary employee or any other employee with less seniority is being retained to render a service which the permanent or other employee is certificated and competent to render, within the meaning of, and except as permitted by, Education Code Section 44955; and

WHEREAS, the jurisdictional and statutory prerequisites for termination or reassignment due to a reduction of particular kinds of service have been satisfied as to the employees potentially impacted by this board's action, and sufficient cause exists for such employees' termination of employment after consideration of facts including, but not limited to, the employees' seniority and scope of credentials, and that cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code Section 44949, subdivision (c)(3), to the extent that provision applies; and

WHEREAS, rights to re-employment pursuant to Education Code Section 44956 and/or 44957 shall be provided to the certificated employee whose services are terminated as a result of this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Sweetwater Union High School District:

1. That all of the foregoing recitals are true and correct;
2. That each of the assertions contained in Resolution No. 4658 are true and correct;
3. That the proposed decision of the administrative law judge is attached as **Exhibit A** and incorporated into this Resolution as though fully set forth herein;
4. That the district adopts the OAH administrative law judge's proposed decision;
5. That sufficient cause exists for the termination of the services of the probationary and permanent respondents listed in **Exhibit A, Appendix A**;
6. That the employment of the respondents listed in **Exhibit A, Appendix A** is terminated effective upon the close of this school year;
7. That this decision is effective immediately and that the superintendent or her designee(s) may take such actions as are necessary and appropriate to

implement this board's decision, including at least giving appropriate notice to those respondents listed in **Exhibit A, Appendix A** of the termination of their services because of discontinuances and reductions of particular kinds of services to take effect upon the close of this school year, with these notices being given before June 27, 2020, in the manner prescribed in Education Code Section 44949;

8. That except as otherwise authorized by statute, in implementing the reduction in services at the commencement of the 2020-2021 school year, the services of no permanent employee (or other employee) are being terminated, in whole or in part, while any probationary employee, or any other employee with less seniority, is being retained to render a service which said permanent (or other) employee is certificated and competent to render, within the meaning of Education Code Section 44955(b); or, alternatively, the individuals whose employment is being terminated, in whole or in part, are not certificated and competent (within the meaning of Education Code Section 44955) to render a service being performed by any employee with less seniority who is being retained;
9. That re-employment rights be afforded in accordance with the Education Code, if and when re-employment is offered and to the extent any re-employment rights are applicable to any of the above referenced employees; and
8. That nothing in this Resolution shall either require or preclude continuation of affected employees in employment associated with their current programs should the board determine to reinstate or continue services previously identified for reduction or elimination.

PASSED AND ADOPTED by the Board of Trustees of the Sweetwater Union High School District, County of San Diego, State of California, this 24th day of June, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

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STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

I, Frank A. Tarantino, President of the Board of Trustees of the Sweetwater Union High School District, County of San Diego, State of California, do hereby certify that the foregoing is a true copy of a resolution adopted by said board at a regular meeting thereof, at the time and by the vote therein stated, which original resolution is on file in the office of said board.

Frank A. Tarantino, President

June 24, 2020
Date

Nicholas Segura, Vice President

Paula Hall, Member

Kevin J. Pike, Member

Arturo Solis, Member