

BEFORE THE  
GOVERNING BOARD OF THE  
DAVIS JOINT UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter of the Reduction In Force of:

CERTAIN CERTIFICATED PERSONNEL  
EMPLOYED BY THE DAVIS JOINT  
UNIFIED SCHOOL DISTRICT,

Respondents.

OAH No. 2008030022

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on May 2, 5 and 6, 2008, in Davis, California.

Terry Filliman, Attorney at Law, appeared on behalf of the Davis Joint Unified School District.

Ernest H. Tuttle, IV, Attorney at Law, appeared on behalf of all but four respondents. Respondents Kelly Carlson, Rebecca Hurt, Sharon McCorkell and Kaitlin Post appeared on their own behalf.

Evidence was received and submission of the matter was deferred pending receipt of additional written argument. The District and respondents filed post-hearing briefs on May 9, 2008.<sup>1</sup> The case was thereafter submitted for decision.<sup>2</sup>

<sup>1</sup> The District filed a Post-Hearing Brief, Final 2008 Certificated Layoff Bump Chart (Exhibit 10), Revised Exhibit 11(Exhibit 48 for identification), narrative of individual issues (Exhibit 49 for identification), and Additional Tie Breakers After Hearing (Exhibit 50 for identification). Respondents filed a May 9, 2008 letter argument.

<sup>2</sup> This matter was originally set for hearing on April 16 and 17, 2008. On March 20, 2008, an Order Granting Continuance was issued. Under Education Code section 44949, subdivision (e), if a continuance is granted "the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance." In this case, a continuance of sixteen (16) days was granted, thereby extending the date that a copy of the proposed decision is to be submitted to the governing board from May 7, to May 23, 2008; and the time that notice of termination of services shall be given from before May 15, to before May 31, 2008.

## FACTUAL FINDINGS AND DISCUSSION

1. James Q. Hammond is the Superintendent of the Davis Joint Unified School District (District). Kevin French is the Assistant Superintendent, Human Resources of the District. The actions of Mr. Hammond and Mr. French, and the actions of the District Governing Board, were taken in their official capacities.

2. Respondents are permanent or probationary certificated employees of the District. On March 11, 2008, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would be reduced or would not be required for the 2008-2009 school year. Each written notice set forth the reasons for the recommendation and noted that the District Governing Board had passed a Resolution reducing the certificated staff by 90.95 full-time equivalent (FTE) positions. Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year. One employee, Kaitlin Post, later informed the District that she mailed in a hearing request, but it was never received. The District has no objection to her participation as a party to these proceedings.

3. The Superintendent made and filed Accusations against respondents. The Accusations with required accompanying documents and blank Notices of Defense were timely served on respondents. Respondents timely filed Notices of Defense to the Accusation. Each respondent identified in ATTACHMENT A to this Decision timely filed a Notice of Defense to the Accusation, either in person or through counsel.

4. On March 6, 2008, at a regular meeting, the District Governing Board was given notice of the Superintendent's recommendations that certificated employees holding 90.95 FTE positions be given notice that their services would be reduced or not required for the next school year and stating the reasons for that recommendation.

5. On March 6, 2008, the District Governing Board determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching and other certificated services affecting employment of 90.95 FTE positions. The District Governing Board adopted Resolution No. 42-08 providing for the reduction or elimination of the following particular kinds of services (PKS):

(A)	<u>Elementary (Grades K-6) Classroom Instructional Services:</u>	<u>FTE</u>
1.	Elementary Classroom Teaching Services	20.0
2.	Elementary Science Prep Teaching Services	10.5
3.	Elementary Music Teaching Services	4.0
4.	Reading Specialist Services	1.0
5.	Elementary Librarian Services	4.05

**(B) Secondary (Grades 7-12) Departmentalized Instructional Services:**

6.	English	14.0
7.	Mathematics	6.0
8.	Social Science	2.0
9.	Science	3.0
10.	Health	3.0
11.	Physical Education	4.5
12.	Foreign Language (Spanish)	2.0
13.	Foreign Language (German)	.2
14.	Foreign Language (French)	.6
15.	Foreign Language (Japanese)	.2
16.	Art	1.0
17.	ROP Food Services	1.0
18.	Drivers Education	.4
19.	Home Economics	1.0
20.	Information Technology	1.0
21.	Junior High School Librarian	1.5

**(C) Non-Teaching Educational Services:**

22. School Psychologist Services 1.0  
23. Secondary Counseling Services 2.0

**(D) District Administrative Services:**

24.	Technology Training Specialist	1.0
25.	EL Coordinator	1.0
26.	GATE Coordinator	1.0
27.	Associate Superintendent	1.0

**(E) Site Level Administrative Services:**

28. Junior High School Principal 1.0  
29. Secondary (7-12) Vice Principal 2.0

Total                  90.95 FTE

6. The District maintains 17 school sites and has 550 certificated employees. It has an ongoing deficit of \$2.5 million, and this will increase to \$4.0 million if other proposed budget cuts are made. The Governing Board's resolution to reduce or discontinue particular kinds of services was made in order to reduce costs without reducing core subject areas. The District issued 115 layoff notices prior to the March 15, 2008 deadline, and in response to Resolution No. 42-08. The Board remains optimistic that as it explores other options,

including monies raised within the Davis community, it will be in a position to revise downward whatever level of layoff notices are approved.

7. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of paid service), status as tenured, probationary or temporary, and credentials and authorizations. Status, credential and authorization data are obtained from the District's records and employees are given the opportunity to correct errors in the seniority list. All certificated employees were provided a certificated verification form and asked in writing to correct their seniority date and any other information contained in their individual personnel information on file with the District. They were asked to do so no later than February 8, 2008.

Kevin French is the District's Assistant Superintendent, Human Resources. He and other District employees were responsible for implementation of the technical aspects of the layoff. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether these employees held credentials in another area and were entitled to be "skipped" pursuant to the Governing Board's Resolution, or could "bump" into positions held by junior District employees.

#### *Layoff Procedures Followed – General Skipping and Bumping Issues*

8. Board Resolution No. 42-08 provides that the District has the need to retain individual teachers in specific courses identified below due to their specialized training and experience related to those courses, and which more senior employees do not possess. The Superintendent was authorized to deviate from terminating certificated employees in order of seniority in instances where they are currently assigned to teach specific courses and will be assigned to teach those courses again for the next school year and more senior employees do not possess the same specialized training and experience related to the course. The skipped individuals include those who are:

- a. Teachers holding a BCLAD and teaching Elementary Spanish Immersion Classes;
- b. Instructors in the Elementary Reading Program who hold specialized reading certification;
- c. Employees in the Special Education Program

Others in specialized elementary teaching assignments believe that they should have been skipped as well, including those assigned to Montessori and Gifted and Talented Education (GATE) instruction programs.

9. Montessori Program. The District has adopted a Montessori Master Plan (2004-2009) with the intent that a high quality Montessori program be provided in a public school setting. The Master Plan describes the program as “one that allows children to learn at their own pace, according to individual needs. It is a whole child approach, focusing on the child’s cognitive, social, emotional, and physical needs.” Montessori credentialed teachers go through extensive training in the use of learning apparatus and materials used in this program.

Respondents note that historically it has been very difficult to train traditional classroom teachers to transition into the program and to replace a Montessori credentialed teacher. There was high teacher turnover after the program was started, when the District’s practice had been to allow teachers to be assigned to the program and then work toward obtaining their Montessori credential. The District recognized this problem, and has since followed a policy of hiring only those teachers who already hold Montessori credentials into the program. It can take up to three years to obtain this credential.

It was, however, within the discretion of the District Governing Board to determine whether Montessori credentialed teachers should be skipped and its refusal to do so was not an abuse of such discretion.

10. The District proposes to allow Montessori teachers to be bumped by more senior elementary school teachers who do not currently possess a special certificate documenting training in the Montessori Method. The District’s rationale is that the Montessori certification is not a credential, supplementary authorization or certificate issued by the California Teacher Credentials Commission. The District also relies upon the Montessori Master Plan which specifically provides that the District may hire a Montessori teacher who “is willing, able, and committed to be trained in the Montessori Method and to implement it faithfully with the DJUSD model.” Notwithstanding the difficulties such policy created when the program was started, it is the District’s official policy and it is within the discretion of the District to follow it at this time. The District intends to address Montessori program needs by requiring bumping teachers to sign a document that they will immediately undertake the requisite training.

11. GATE Program. District teachers who teach in self-contained GATE classrooms must have demonstrated their experience and commitment to ongoing education and training about the cognitive, social, and emotional needs of gifted students, and only teachers who have demonstrated this commitment are placed and continued in the GATE program. Respondent Luisa Guenther and others in the District’s GATE program believe that if there are skips in place for magnet positions such as Spanish Immersion, then all special programs should be skipped, especially a federal program such as GATE. The District proposes to lay off GATE teachers in seniority order as elementary teachers, and to allow bumping by more senior elementary teachers who are not in the GATE program.

As a general proposition, respondents believe that the District's layoff process should be simplified and go strictly along lines of seniority so that all its programs could be reduced equally, rather than choosing one program over another. Again, responsibility for determining which teachers should be skipped was with the District's Governing Board, and there was no evidence that it abused its discretion when it determined not to skip teachers in GATE, Montessori or other important and popular District programs.

12. Alternative Education Bumping Criteria. The district operates two Alternative Education programs: 1) Continuation High School (King High School), and 2) Davis School for Independent Study (DSIS). Both provide secondary level instruction. Many teachers in these programs teach one or more academic subjects and have been certified as "highly qualified" under No Child Left Behind (NCLB) in the academic subjects being taught. While under the Education Code a teacher with any credential may consent to teach any subject in alternative education, this does not compel the District to assign a teacher who is not competent (i.e. not NCLB certified) or otherwise not qualified to provide alternative education instruction. And the Board resolution prohibits more senior teachers from bumping into alternative education assignments unless they meet the highly qualified standard.<sup>3</sup>

13. Bumping Into Elementary Classrooms. The District has a relatively large number of part-time certificated employees. They have seniority the same as full-time teachers, and may bump a less senior full-time teacher, but only up to the part-time FTE they hold. Thus, a less senior employee may be bumped by two or more senior employees, rather than by a single employee. However, the District has not allowed a part-time employee to bump into an elementary teaching assignment that is full time. The District believes such bumping would be disruptive to self-contained classroom instruction and not in the interest of students. Mr. French explained that students would suffer when teachers differ over classroom management and have conflicting approaches to classroom instruction. However, when two teachers agree, they may voluntarily job share and teach an elementary class in tandem.

14. Bumping Spanish Immersion Teachers. There was a degree of confusion over Spanish Immersion teachers holding a BCLAD who received layoff notices. They were initially skipped per the Board Resolution. However, they could be bumped by more senior elementary school teachers in the District who also held a BCLAD. The District explained that these skipping and bumping applications were grounded in different District interests, and were not in conflict. If the skipping had not first been applied, several more Spanish

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<sup>3</sup> The Board Resolution initially stated that "due to the specific need of the District to hire and retain only highly qualified teachers in academic subject areas, 'competency' shall require (highly qualified) current confirmation of qualification of academic subject competency, or verifiable eligibility for competency if not previously reviewed by the District, in all subjects of a proposed assignment, including assignments teaching multiple academic subjects and assignments in secondary alternative schools, in accordance with NCLB." (Board Resolution 42-08, paragraph 4.) On May 5, 2008, the Governing Board amended the above language to omit any reference to the requirement for highly qualified teachers except "for purpose of bumping into assignments teaching multiple academic subjects in alternative schools." (Board Resolution No. 53-08.)

Immersion teachers would have been laid off, and more senior elementary teachers without a BCLAD would have been retained who could not teach in the Spanish Immersion Program. This application served to ensure that a sufficient number of teachers were available to be assigned to this program, while protecting more senior teachers with a BCLAD from being laid off. The District's decision to proceed in this fashion was not unreasonable.

*Individual Skipping/Bumping/Seniority Issues - Elementary*

15. *Kelly Carlson.* Respondent Kelly Carlson is an elementary classroom teacher with a seniority date of August 27, 2007. Because she is a permanent employee she has more "seniority" than probationary employees who have earlier dates of first hire. The District has revised its seniority list to accurately reflect this. This does not, however, change her layoff status.

16. *Kristine Weir.* Elementary classroom teacher Kristrine Weir has a District seniority date of August 25, 2006. She was classified as temporary during school years 2002-03, 2003-04, 2004-05 and 2005-06 while working in a .5 FTE job sharing arrangement. Her job share partner, Karen Johns, was on a .5 FTE leave of absence each of those school years. Ms. Weir was given a temporary contract each year, and released each year as a temporary employee. Ms. Weir disputed her status, and was told in August 2003 that the District was reviewing the issue.

In August 2006, Ms. Weir went to work full time, but was classified as a temporary employee for school year 2006-07. On April 6, 2007, the Governing Board reclassified her as probationary, retroactive to August 25, 2006. The District "tacked" the seniority date back one year for temporary service only for certificated employees who had worked 75 percent of the days of the prior school year. (Ed. Code, §§ 44918, 44920.) She did not receive credit for the 2005-06 school year because the District contends that she did not work 75 percent of the days of the year that she was working part time. A letter dated April 6, 2007, from Interim Assistant Superintendent David Tooker advised Ms. Weir at that time that "Unfortunately, because a full year of service is defined as working at least 75% of the number of days in a school year, your service in a 50% assignment during the previous school years cannot be considered toward probationary service." Ms. Weir did not contest this determination then and she did not dispute her seniority date when given the opportunity to do so earlier this year. (See Finding 7.) Although Ms. Weir believes she worked at least 75 percent of the school days in 2006-06, she has not made the requisite showing that this was the case. Her District seniority date should not be changed at this time.

17. *William Daugherty.* Elementary classroom teacher William Daugherty was first employed by the District on August 26, 2002, as a temporary employee, and continued four years with the District on temporary contracts. During the 2005-06 school year, the Governing Board converted his status from temporary to probationary. The change was effective the start of that school year, and an additional year was tacked on making his seniority date September 17, 2004. The District concedes that it is now unable to validate that Mr. Daugherty was appropriately authorized as a temporary employee for school year

2004-05. Because it is possible that his probationary service began in September 2004, it is willing to tack on his service during school year 2003-04, resulting in a new seniority date of August 25, 2003.

Based upon his new seniority date, and his multiple subject credential, Mr. Daugherty might have been able to bump Diana Zaragoza from her position. District tie break criteria were recently applied and Ms. Zaragoza was determined to be more senior. Accordingly, Mr. Daugherty is unable to bump a junior employee and his status of 1.0 FTE layoff is unchanged.

18. *Constance Alexich.* Elementary classroom teacher Constance Alexich was hired on November 11, 2003, on a 1.0 FTE temporary contract. She was replacing a temporary teacher who had passed away. Ms. Alexich continued to work under temporary contract for school years 2004-05, and 2005-06, replacing two .5 FTE teachers on leave. On May 18, 2006, the Governing Board reclassified her to probationary status, retroactive to August 25, 2005. The District acknowledged at hearing that because she had worked 1.0 FTE temporary for school year 2004-05, her seniority date should be changed to August 23, 2004.

Ms. Alexich received a letter from the District dated July 10, 2006, stating that her reclassification to probationary status would be "effective your first date of paid contracted service with the District, 11/21/2003." She now claims this (November 21, 2003) should be her District seniority date. On February 1, 2007, the District sent a second letter to Ms. Alexich indicating that her conversion to probationary status was effective the start of the 2005-06 school year. This would have put her on notice that the earlier letter was in error. The same can be said of the February 2008 request for verification of her District seniority date. Current District documents now reflect that her seniority date has been correctly changed to August 23, 2004.

The change in seniority date to August 23, 2004, does not impact Ms. Alexich's layoff status because elementary classroom teachers with seniority back to 2003 were also noticed.

19. *Paula Bradley.* Elementary science prep teacher Paula Bradley was noticed to be laid off the .888 FTE science prep classes she now teaches. She teaches six classes at Pioneer Elementary School. The calculation of time spent teaching science prep has been inconsistent around the District. This has resulted in similarly situated teachers being credited with 1.0 FTE for doing the same work (i.e., six classes) as Ms. Bradley. The District entered into a settlement at hearing whereby it has rescinded the layoff notice to Ms. Bradley, and she has withdrawn her request for a hearing. Ms. Bradley has been converted to 1.0 FTE for employment purposes and will be assigned to an elementary classroom.

20. *Kathleen Gill.* Elementary science prep teacher Kathleen Gill was noticed to be laid off .851 FTE. As in the case of Ms. Bradley, the District entered into a settlement whereby it has rescinded the layoff notice to Ms. Gill, and she has withdrawn her request for

a hearing. Ms. Gill has been converted to 1.0 FTE for employment purposes and guaranteed an elementary classroom teaching position.

21. *Seana Burke*. High school art teacher Seana Burke holds a single subject art credential. This bumping chain originates with elementary science prep teacher William Storm being laid off 1.0 FTE. Mr. Storm holds a single subject biological sciences credential and can bump into the .8 FTE position held by secondary science teacher Ken McKim.<sup>4</sup> Mr. McKim holds several credentials including one for Introductory Art/Drawing/Painting. The District recommends that Mr. McKim bump into .8 FTE high school art classes currently taught by Seana Burke. Ms. Burke teaches .2 FTE Painting and .8 FTE Photography, although she is currently on leave .4 FTE, and is therefore .6 FTE for this semester. Mr. McKim's credentials allow him to teach up to grade 12 in drawing and painting, art history or appreciation, and crafts. He cannot provide classroom instruction in the more technical mediums and specialized photography taught by Ms. Burke.

The District notes that other teachers in the high school Art Department are credentialed to teach Photography. These include Gerald DeCamp, Christine Rowland and Douglas Wright. They each hold single subject art credentials and may split assignments between the two high schools, allowing Mr. McKim to teach introductory art course while the other art instructors teach the specific photography classes previously assigned to Ms. Burke. Under these circumstances, Mr. McKim can bump Ms. Burke .8 FTE as proposed. Ms. Burke would also be laid off an additional .2 FTE per item B.16 of the Board Resolution relating to secondary art.

22. *Scott Bell*. This bumping chain originates with elementary science prep teacher Leslie Whiteford being laid off 1.0 FTE. Ms. Whiteford may bump into the elementary classroom (Montessori) assigned to Carole Hughes. Ms. Hughes holds supplementary authorizations for English and Social Science, which allows her to bump into .3 FTE position held by social science teacher Thomas Taylor; and into .7 FTE position held by social science teacher Scott Bell. Mr. Bell can bump into .5 FTE position held by Alternative Education teacher Rebecca Hurtt. Ms. Hurtt only taught one subject, Social Science, in that program. Mr. Bell and Ms. Hurtt have the same District seniority date (August 25, 2006) but Mr. Bell won the tie break on points.

The District also proposes that high school English teacher Spencer Elliot bump into the remaining .3 FTE held by Mr. Bell. Mr. Elliott was laid off 1.0 FTE as part of the secondary English reductions. He holds a supplementary authorization in World History. Mr. Bell's current assignments are .4 FTE World Civilization and .6 FTE Government/Economics classes. Mr. Elliott is not credentialed to teach the .6 FTE Government/Economics classes. Mr. Bell also believes that Mr. Elliott cannot teach World Civilization because he believes the course is different than World History. In fact, the framework for course content and standards for state student testing of content for both

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<sup>4</sup> Mr. Storm can also bump into the .2 FTE secondary science position held by Cliff Dimond, who in turn may bump into .2 FTE held by Caitlin Butler.

course are identical. Mr. Elliott is therefore credentialed to teach World Civilization. Because high school courses cannot be divided by .3 FTE, the District proposes that Mr. Elliott should bump .4 FTE, even though there is only .3 FTE remaining in Mr. Bell's current assignment. Mr. Bell will be moving to the Continuation High School for the earlier referenced .5 FTE alternative education position.<sup>5</sup>

As a result of the above bumping chain, Mr. Bell should be laid off .5 FTE, and may bump Ms. Hurtt .5 FTE, who is laid off. Mr. Elliott may bump .4 FTE, and is laid off .6 FTE.

23. *Sarah Fonte and Julie Webb.* Elementary science prep teachers Sarah Fonte and Sarita Cooper were both laid off 1.0 FTE. Ms. Cooper bumped into 1.0 FTE position held by elementary classroom teacher Julie Webb. There was then a bumping tie between Sarah Fonte, Julie Webb and Teresa Delgadillo based upon their District seniority, August 23, 2004.<sup>6</sup> Sarah Fonte holds a multiple subject credential with Supplementary Authorization (Spanish, Science) and a BCLAD. She may bump into the 1.0 FTE position held by Spanish Immersion teacher Elizabeth Castro. Ms. Castro was initially skipped per the Board Resolution, and then bumped by Ms. Fonte. (See Finding 14.)

Ms. Webb holds a multiple subject credential and BCLAD. She may bump into the 1.0 FTE position held by Spanish Immersion teacher Eva Dopico-Serantes.<sup>7</sup> Ms. Dopico-Serantes may bump into .6 FTE position held by Amber Foster. Ms. Foster is laid off 1.0 FTE.<sup>8</sup> Ms. Dopico-Serrantes is laid off .4 FTE, retaining .6 FTE.

#### *Individual Skipping/Bumping/Seniority Issues – Secondary*

24. *Clifford Dimond.* Secondary science teacher Clifford Dimond was laid off 1.0 FTE as a result of the reduction of 3.0 FTE secondary science teachers. He holds a Single Subject Life Science credential, with Supplementary Authorization for Introductory General Sciences. The parties agree that he will not be laid off, and that he will bump into several fractional assignments as follows: .1 FTE Pam Eimers; .2 FTE Caitlin Butler; .4 FTE Jessica Bloom; and .2 FTE Matt Sonstein. The District concedes an additional .1 FTE to allow Mr. Dimond to retain his full time status. Under the terms of the agreement, the District will rescind the layoff notice and Mr. Dimond will withdraw his request for hearing.

<sup>5</sup> Mr. Bell also contended that he should be permitted to bump into partial positions held by two less senior teachers, Caitlin Butler (.2 FTE) and Jessica Bloom (.4 FTE). Another more senior teacher, Cliff Dimond, was allowed to bump into these fractional assignments. Mr. Dimond's seniority date is August 27, 2001.

<sup>6</sup> Application of tie break criteria resulted in Sarah Fonte (8 points), Teresa Delgadillo (6 points) and Julie Webb (4 points).

<sup>7</sup> Eva Dopico-Serantes lost a May 2, 2008 tie-breaker for Spanish Immersion teachers.

<sup>8</sup> Amber Foster was laid off an additional .4 FTE based upon reading specialist Teri Lynn Murphy bumping into the balance of Ms. Foster's position.

25. *John Campbell*. Secondary physical education (PE) teacher John Campbell was laid off 1.0 FTE as a result of the reduction of 4.5 FTE secondary PE teachers. He holds a Single Subject PE credential, and a Supplementary Authorization in English Composition. The parties agree that he will be laid off .4 FTE, and retained .6 FTE.<sup>9</sup>

26. *Timothy Fahlen*. Secondary PE teacher Timothy Fahlen was laid off .9 FTE. He and Mr. Campbell have the same District seniority date, August 25, 2003. Mr. Campbell won the tie-breaker on points. Mr. Fahlen should be laid off .9 FTE.

27. *Krista Halderman-Bermudez*. Secondary Spanish teacher Krista Halderman-Bermudez was noticed to be laid off 1.0 FTE per Board Resolution reducing Secondary Spanish by 2.0 FTE. Her District seniority date was initially determined to be August 25, 2006. She was initially on a temporary assignment which ended during school year 2005-06. She was given retroactive credit for that school year, and then the previous school year was tacked on resulting in her District seniority date now being changed to August 23, 2004.

The change in seniority date moves Ms. Halderman-Bermudez up in seniority among other Secondary Spanish teachers. Another teacher who had also been noticed, Gabriella Jimenez-Tabor, will now be laid off under the Board Resolution reducing Secondary Spanish. However, Ms. Halderman-Bermudez will now be bumped 1.0 FTE by Mary Kahn, who holds a Spanish credential and a BCLAD. Ms. Khan was laid off 1.0 FTE as a result of the Board Resolution reducing EL Coordinator by 1.0 FTE, and she is senior to Ms. Halderman-Bermudez.

28. *Carlette Hartsough*. Secondary Health teacher Carlette Hartsough was laid off .9 FTE per Board Resolution reducing Secondary Health by 3.0 FTE. Her District seniority date is January 28, 2003. She was not clear why her status was changed from temporary to probationary. The District determined that Ms. Hartsough had not signed any acknowledgement of her temporary assignment until February 4, 2003.. She was then converted to probationary retroactive to her first date of service.

29. *Caroline Loomis*. Secondary Math teacher Caroline Loomis was laid off .4 FTE per Board Resolution reducing Secondary Math by 6.0 FTE. Her District seniority date is August 25, 2006. Ms. Loomis was hired on a temporary contract for school years 2004-05, and 2005-06 to replace a teacher who was reassigned to a categorically funded program. In school year 2006-07, Ms. Loomis was hired to replace a regular teacher on leave of absence. In February 2008, she was converted to probationary status, retroactive to the beginning of this school year. The District tacked on an additional year for temporary service from August 25, 2006. The calculation of her seniority date appears correct.

30. *Jennifer Wolfe*. Secondary English teacher Jennifer Wolfe was bumped .8 FTE by Secondary Health teacher Carla Levin when her position was reduced by .8 FTE. The District did not allow Ms. Wolfe to use her Multiple Subject credential to bump into an

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<sup>9</sup> John Campbell was originally bumped .6 FTE by Kathleen Gill. The .6 FTE bump by Ms. Gill was rescinded.

elementary classroom because it would entail partial bumping. However, the District has agreed to rescind the layoff notice to Ms. Wolfe and guarantee her a 1.0 FTE High School English position.

31. *Bumping Alternative Education Teachers with Multiple Academic Subjects.* As noted in Finding 11, alternative education teachers may teach one or more academic subjects and are required to be certified as "highly qualified" under NCLB in the academic subjects being taught. The Board resolution prohibits more senior teachers from bumping into alternative education assignments unless they meet the highly qualified standard. Thus, the District has not allowed bumping into Independent Study and Continuation High School classes where the teacher was assigned to teach multiple academic subjects unless the bumping teacher was credentialed and NCLB certified as highly qualified in all subjects taught.

Four teachers with a single subject Math credential wish to bump into the math portions of less senior alternative education teachers with multiple subject assignments.<sup>10</sup> The testimony of Marsha Ludwig relating to the DSIS program, of Sharon McCorkle relating to the King Continuation High School program, and of District Assistant Superintendent Mr. French on this point were considered. It does appear that these alternative education programs as presently structured do not allow for positions to be split into single subjects such as mathematics. The programs require a single teacher to be able to provide instruction across all areas and levels of a curricula such as life sciences or mathematics. Ms. McCorkle, for example, has qualifications to teach science, mathematics and music. The alternative education programs also differ in operation times, class length and location making it impractical for comprehensive school teachers to bump one class in alternative education. Finally, because the four teachers with a single subject Math credential are not "highly qualified" in all the subjects they would be required to teach, they are not certificated and competent to bump junior employees currently assigned to alternative education programs.

#### *Individual Skipping/Bumping/Seniority Issues – Other District Services*

32. *Ian Stevenson.* As a result of the Board Resolution, a 1.0 FTE Technology Training Specialist position was eliminated. Alix Peshette was in the position, and is certificated and competent to bump into the position held by Social Science teacher Ian Stevenson. Mr. Stevenson holds a single subject Social Science credential, and a supplementary authorization for Introductory English. Mr. Stevenson believes his relative seniority allows him to bump into .4 FTE held by Jessica Bloom, and .2 FTE held by Caitlin Butler. A more senior teacher, Clifford Dimond, will bump into these two positions. Mr. Stevenson may be laid off 1.0 FTE.

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<sup>10</sup> The four teachers are Nicholas Pasquale, Patricia Marlow, Tim McCormick and Caroline Loomis. They propose to bump less senior teachers Christine Easton, Laura Juanitas and Catherine Scarr.

33. *Christina Weber-Johnson.* The Governing Board reduced Elementary Librarian services by 4.05 FTE. Christina Weber-Johnson is a .5 FTE certificated librarian who is noticed to be laid off. She holds a multiple subject credential, Library Media Teacher Services and Specialist LH. As a part time employee she cannot partially bump into an elementary classroom assignment. Her credentials do allow her to be assigned to a vacant special education LH (mild to moderate) position at Cesar Chavez School if she so chooses. She would need to resign her .5 FTE classified position to do so.

34. *Nora Brazil.* Nora Brazil is a 1.0 FTE elementary librarian. Her District seniority date is August 23, 2004. The District assumed that because she was in a 50 percent assignment she would not have worked 75 percent of the days of school year 2003-04. Ms. Brazil testified that to the best of her recollection she worked four to five days per week that school year. She did not work Mondays. Accordingly, an additional year should be tacked on so that Ms. Brazil's District seniority date is August 25, 2003.

Ms. Brazil's new seniority date does not change her layoff status. Elementary librarians with seniority to 1987 are being laid off. Ms. Brazil was tied in seniority with Diana Zaragoza for bumping into an Elementary teaching position using her multiple subject credential. After applying tie-breaker criteria, Ms. Zaragoza is more senior, and Ms. Brazil is still laid off 1.0 FTE.

35. *Monica Lillya.* Monica Lillya was proposed for layoff as a .5 FTE Reading Specialist. She had a District seniority date of August 25, 2005. This was changed to August 25, 2004, by converting a year of temporary to probationary service. Initially, the District did not tack an additional year of temporary service because she was a .5 FTE employee and the District had no evidence that she worked 75 percent of the days in school year 2003-04. At hearing, Ms. Lillya testified that she worked four days per week over this school year. The District accepts this and has changed her seniority date again to August 25, 2003.

Ms. Lillya and Amy Evans-Teaford are now tied in seniority for layoff. Both are Reading Specialists. Ms. Evans-Teaford won the tie break by lottery after the two tied for points. Because Ms. Lillya is .5 FTE, and the reduction is for .6 FTE Reading Specialist, Ms. Evans-Teaford is also laid off .1 FTE.

36. With due consideration and adjustments made for the matters noted above, no permanent or probationary certificated employees junior to respondents are being retained to perform a service which respondents are certificated and competent to render. Those certificated employees junior to respondents being retained will provide services which respondents are not certificated and competent to perform.

## LEGAL CONCLUSIONS

1. The District employees receiving notices that their services would not be required next year have rendered valuable services to the District.
2. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)
3. The services identified in Board Resolution No. 42-08 are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.
4. A District may reduce services within the meaning of Education Code 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.)

5. Education Code section 44955 provides in pertinent part:

¶...¶

(b) Whenever in any school year ... whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, ...or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by

statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

¶...¶

6. Education Code section 44955 provides that when certificated employees face layoffs due to reduction or elimination of PKS, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teacher has both the credentials and competence to occupy such positions. The intent of the Legislation is clearly to prevent Districts from laying off senior teachers while retaining junior teachers. Education Code section 44955, subdivision (c) provides in pertinent part:

Services of such employees shall be terminated in the inverse of the order in which they were employed... The governing board shall make assignments and reassessments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render...

7. As set forth in Factual Findings 19, 20, 24, 25 and 30, the District has rescinded notices of layoff to Paula Bradley (.888 FTE), Kathleen Gill (.251 FTE), Clifford Dimond (.1 FTE), John Campbell (.6 FTE) and Jennifer Wolfe (.8 FTE). As a result of this settlement, the District will reduce the total number of particular kinds of certificated services to be reduced or eliminated by 2.639 FTE. The adjusted figure at the time of hearing was 88.31 FTE (90.95 minus 2.639). The District has since adjusted this figure further downward so that the total number of positions now being eliminated as a result of Board Resolution 42-08 is 85.607 FTE. (District Post-Hearing Brief, p. 8.) In the final analysis, the District is proposing the layoff off of 77.896 FTE certificated employees.

8. As set forth in the Factual Findings the District has considered, provided a reasonable explanation for, or made corrections to seniority dates for respondents Kelly Carlson (Finding 15), Kristine Weir (Finding 16), William Daugherty (Finding 17), Constance Alexich (Finding 18), Krista Halderman-Bermudez (Finding 27), Carlette Hartsough (Finding 28), Caroline Loomis (Finding 29), Norma Brazil (Finding 34) and Monica Lillya (Finding 35).

9. As set forth in Factual Findings 8, 9, 10, 11 and 14, the District has provided its rationale for initially skipping Elementary Classroom Spanish Immersion teachers who currently hold a BCLAD, Elementary Reading Specialist teachers and Special Education. There was no evidence offered to rebut the Governing Board's authority or exercise of discretion in doing so. There was also no evidence that the Governing Board abused its discretion in not skipping other popular District programs (Montessori/GATE).

10. As set forth in the Factual Findings, the District applied bumping and skipping rules with consistency and care, and generally allowed bumping based upon the more senior employee holding a credential or authorization to teach the assignment of the less senior teacher. The District articulated the rationale for its bumping rules (Findings 12 through 14) and properly applied them, along with tie break criteria, when the process so required.

11. Cause exists for the reduction of the particular kinds of services and for the reduction of 85.607 full-time equivalent certificated positions at the end of the 2007-2008 school year pursuant to Education Code sections 44949 and 44955. Therefore, and except as otherwise noted above, cause exists to give respondents notice that their services will be reduced or will not be required for the ensuing 2008-2009 school year.

12. This matter was originally set for hearing on April 16 and 17, 2008. On March 20, 2008, an Order Granting Continuance was issued. Under Education Code section 44949, subdivision (e), if a continuance is granted "the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance."

In this case, a continuance of sixteen (16) days was granted, thereby extending the date that a copy of the proposed decision is to be submitted to the governing board from May 7, to May 23, 2008; and the time that notice of termination of services shall be given to employees from before May 15, to before May 31, 2008.

#### ORDER

1. Cause exists for the reduction of 85.607 full-time equivalent certificated positions at the end of the 2007-2008 school year. After making the adjustments set forth in the Factual Findings and Legal Conclusions, notice shall be given to remaining respondents that their services will be reduced or will not be required for the ensuing school year, 2008-2009, because of the reduction and discontinuance of particular kinds of services.

2. The time that notice of termination of services shall be given to respondents is extended from before May 15, 2008, to before May 31, 2008.

DATED: May 15, 2008

  
\_\_\_\_\_  
JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings

# ATTACHMENT A

Davis Joint Unified School District

Certificated Staff Given Layoff Notice who were eligible to submit Request for Layoff Hearing		Certificated Staff submitting "Request for Layoff Hearing"	Submitted "Notice Of Defense" within 5 day period stated in Statement to Respondent (Number/s represents number/s selected in notice of defense)	Submitted "Notice Of Defense" 1 day after 5 day period stated in Statement to Respondent	Layoff Notice Rescission of Recommended Layoff Notice for 2008-09
Alexich	Constance	X	1		
Aradhya	Lakshmi	X	1		
Avila-Tuttle	Gabriela	X	1		
Ballinger	Brad				
Ballinger	Heather				
Barba	Claudia	X	1		
Bell	Scott	X	1		
Belleau	Geoff	X			
Bernadac	Christina	X			
Bernard	Marcia				
Bloom	Jessica				
Boonchouy	Rody	X	1		
Bradley	Paula	X	1		
Brazil	Nora	X	1		
Brucker	Gregory	X	1		
Bryant	Jeffrey	X			
Bundy	Jason	X	1		
Burke	Seana	X	1		
Butler	Caitlin	X	1		
Butler	Trisha	X	1		
Campbell	John	X	1		
Carlson	Kelly	X	1		
Castro	Elizabeth	X			
Cooper	Emily				X
Crawford	Julie	X	1		
Daugherty	William	X	1		
Delgadillo	Teresa	X	1		
Dennis	Lisa	X	1		
Desai	Kathleen	X	1		
Dimond	Clifford	X	1		
Dopico-Serantes	Eva	X	1		
Dufresne	Melinda	X	1		X
Easton	Christine	X	1		
Echiburu	Mele	X			
Eimers	Pamela	X	1		
Elliott	Spencer	X	1		
Fans-Teaford	Amy	X	1		
Fahlen	Timothy	X	1		
Fonte	Sarah	X	1		

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Foster	Amber				
Gill	Kathleen	X	1		
Ginn	Laureen	X	1		
Guenther	Luisa	X	1		
Halderman-Bermudez	Krista	X	1		
Hamada-Wong	Kristina	X	1		
Hancock	Shannon				
Hansen	Josh	X	1		
Hartsough	Carlette	X	1		
Heintz	Sara	X	1		
Henrickson	Dianna				
Herrera	Alicia	X	1		
Holquin	Mariluz	X	1		
Holst	Christian	X	1		
Hopper	Christine	X	1		X
Hurtt	Rebecca	X			
Jimenez-Tabor	Gabrielle	X	1		
Juanitas	Laura	X	1		
Kerrigan	Ellen	X	1		
Kraemer	Kristi				
Kukis	Kelley	X			
LaSerna	Korah				
Lear	Melissa				
Lillya	Monica	X	1		
Littell	Joanna	X	1		
Little (Pilon)	Carin				
Loomis	Caroline	X	1		
Marchand	Amanda	X			
Marlow	Patricia	X	1		
Martin	Doyal	X	1		
McCorkell	Sharon	X	1		
McCormick	Timothy	X	1		
McHale	Naoko				
Millsap	Tyler	X	1		
Mitchell	J Gail	X	1		
Moreno	Angelo	X	1, 2, 6, 7		
Morgan	Eric	X	1		
Neal	James				
Nicholson (McNaughton)	Ashley	X	1		

Certificated Staff Given Layoff Notice who were eligible to submit Request for Layoff Hearing		Certificated Staff submitting "Request for Layoff Hearing"	Submitted "Notice Of Defense" within 5 day period stated in Statement to Respondent (Number/s represents numbers selected in notice of defense)	Submitted "Notice Of Defense" 1 day after 5 day period stated in Statement to Respondent	Layoff Notice Rescission of Recommended Layoff Notice for 2008-09
Odabasi	Paula				
Palow	Sally	X	1		
Pasquale	Nicholas	X	1		
Patterson	Noreen	X	1		
Perreira	Cathy				
Post	Kaitlin				
Quick	Clyde				
Ramos	Mayra	X	1		
Ronneberg	Zach	X	1		
Rundle	Marie				
Sabot	Ashley				
Sandoval	Cristina	X	1		
Sater	Eliza	X	1		
Scarr	Catherine	X	1		
Shenk-Tiffany	Suzanne				
Silvagni	Teresa	X		X (Mailed April 3; Received April 9)	
Simi	Mark	X			
Smith	Gina	X	1		
Sonstein	Matthew	X	1		
Spangler	Helen	X			
Stevenson	Ian	X	1		
Stevenson	Mark				
Stewart	Carol	X	1		
Sundstrom	Lynne	X	1		
Swanstrom	Kristin	X	1		
Taylor	Michael	X	1		
Taylor	Thomas	X			
Van Muyden	Catherine	X			
Vavul	Stacy	X	1		
Webb	Julie	X	1		
Weber-Johnson	Christina	X	1		
Weir	Kristine	X	1		
Welsch	Joellen				
White	Donald				
Winter	Linda				
Wolfe	Jennifer	X	1		
Winn	William				
<b>Totals</b>	<b>115</b>	<b>89</b>	<b>76</b>	<b>1</b>	<b>3</b>