

BEFORE THE  
GOVERNING BOARD OF THE  
ACALANES UNION HIGH SCHOOL DISTRICT  
CONTRA COSTA COUNTY, STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of:

BEAR BEGELMAN, KARA BLOODGOOD,  
AMY CLARKSON, KATHLEEN COLEBOURN,  
CHRISTI COSTA, JAKE DONOHOE,  
KELLY GINOCCHIO, DESPINA GOUSIOS,  
CATHERINE GORDON GROSS,  
JAMIE GRUTZMACHER, JULEE HENDERSON,  
DONNA HENSEN, TARON HENSLEY,  
LISA HERZIG, CHARLOTTE HOWARD,  
MICHAEL IVANKOVICH, PATRICIA JOHNSON,  
JAMES KARAS, STACEY KIKKAWA,  
JILL LANGSTON, MARILYN LEWIS-HAMPTON,  
MARK LITTON, LINDA LONG, CHERYL LUA,  
SUSAN MARTIN, SUSAN McCAULEY,  
RAYMOND MEADOWS, EDWARD MEEHAN,  
ADELAIDA MELGOZA, LYNN MILLAR,  
KATHLEEN MOONEY, NATALIE MOORE,  
JAMES NOLTE, VALERIE PETERSON,  
ROBERT PORTER, MELISSA QUITER,  
EMILY REICHARDT, THOMAS RENNO,  
DANIEL REYES, ANNE SCALLON,  
ANNE SCHONAUER, BRIAN SMITH,  
COLLETTE SWEENEY, MEREDITH TATE,  
STEPHANIE VERBANSZKY,  
HANALEE WASHBURN, DEE DEE WORTHING,  
VALERIE WRIGHT-SMITH, JENNA WROBEL, and  
VICKI ZALEWSKI,

Respondents.

OAH No. 2010020966

**PROPOSED DECISION**

On April 13, 2010, in Walnut Creek, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter.

Sandra Woliver, Esq., of Dannis, Woliver, Kelley, Attorneys at Law, 71 Stevenson Street, San Francisco, California, 94105, represented the Acalanes Union High School District.

Dale L. Brodsky, Esq., Beeson, Tayer & Bodine, Attorneys at Law, 1404 Franklin Street, Fifth Floor, Oakland, California 94612, represented Respondents Bear Begelman, Kara Bloodgood, Amy Clarkson, Kathleen Colebourn, Christi Costa, Jake Donohoe, Kelly Ginocchio, Despina Gousios, Catherine Gordon Gross, Jamie Grutzmacher, Julee Henderson, Donna Hensen, Taron Hensley, Lisa Herzig, Charlotte Howard, Michael Ivankovich, Patricia Johnson, James Karas, Stacey Kikkawa, Jill Langston, Marilyn Lewis-Hampton, Mark Litton, Linda Long, Cheryl Lua, Susan Martin, Susan McCauley, Raymond Meadows, Edward Meehan, Adelaida Melgoza, Lynn Millar, Kathleen Mooney, Natalie Moore, James Nolte, Valerie Peterson, Robert Porter, Melissa Quiter, Emily Reichardt, Thomas Renno, Daniel Reyes, Anne Scallon, Anne Schonauer, Brian Smith, Collette Sweeney, Meredith Tate, Stephanie Verbanszky, Hanalee Washburn, Dee Dee Worthing, Valerie Wright-Smith, Jenna Wrobel, and Vicki Zalewski.

Mr. Samuel DeHaven, a labor union representative, of Award Consulting, 4173 El Camino Real, Suite 29, Palo Alto, California 94306, represented Respondents Jim Nolte and Valerie Peterson.

The record was held open to afford an opportunity to the parties to reduce to writing stipulations, which were verbalized at the hearing of this matter. On April 19, 2010, OAH received, via telefacsimile transmission, a single-page writing that recited the stipulations. The document, signed<sup>1</sup> by Ms. Woliver and Ms. Brodsky, was marked as Exhibit “12,” and received as a binding agreement of the parties.

On April 19, 2010, the parties were deemed to have submitted the matter and the record closed.

## FACTUAL FINDINGS

### *Jurisdictional Matter*

1. On March 31, 2010, John Stockton, Superintendent, (the Superintendent), Acalanes Union High School District (the District), made and filed the Accusation in his official capacity with regard to the respondents to this matter. Respondents are all certificated employees of the District.

2. On February 3, 2010, the District’s Governing Board unanimously adopted Resolution No. 09-10-13. The resolution recites that it has become necessary for the District to reduce and/or to discontinue, no later than the beginning of the 2010-2011 school year, particular kinds of services in the form of an array of several distinct categories in the sum of 56.9 FTE (full time equivalent) certificated positions as follows:

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<sup>1</sup> The five-paragraph stipulation was not signed by Mr. DeHaven, who was the duly appointed representative of Respondent Nolte and Respondent Peterson.

<i>Particular Kinds of Services</i>	<i>Number of Full Time Equivalent (FTE) Positions Eliminated</i>
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Alternative School Principal	1.0
Athletic Director Release Periods	0.8
Choral Music	1.0
Computer Science	0.4
Counselors	13.0
Dance	0.4
Drama	1.0
English	5.6
Industrial Arts	1.0
Instrumental Music	0.6
Journalism/Newspaper	1.4
Leadership Class	1.0
Leadership Release Periods	0.8
Librarians	3.0
Math	2.6
Nurse	1.3
Physical Education	1.0
Psychologist	0.8
Public Speaking/ Oral Interpretation	1.6
Science	2.6
Social Science	8.0
Tech Coordinator	1.2
Visual Arts/Digital Arts	4.0
World Language-French	0.8
World Language-German	0.2
World Language-Japanese	0.2
World Language-Latin	0.2
World Language-Spanish	0.6
<u>Yearbook</u>	<u>0.8</u>
Total	56.9

3. At the hearing of this matter, the parties stipulated that “each and every certificated employee, who is represented by Beeson, Tayer & Bodine and who requested a hearing pursuant to Education Code section 44949 [, subdivision] b, has met all notice requirements set forth in Education Code section 44949.” And the parties also stipulated that Respondents Valerie Peterson and James Nolte met all notice requirements set forth in Education Code section 44949.

4. All pre-hearing jurisdictional requirements were met.

### *Stipulations*

5. At the hearing of this matter, the parties stipulated to several issues. The stipulations are set out in the following Factual Findings 6 through 8.

6. Exhibit 9 represents the seniority list, which contains a column titled “LO” that identifies by FTE positions, those respondents who have been determined by the District to receive a final notice of termination of services in accordance with Education Code section 44955, subdivision (c). (During the course of the hearing, the Superintendent made five handwritten amendments or revisions to Exhibit 9, which pertained to either the first date of paid service to the District by a respondent, the seniority list’s “LO” column or the seniority list’s “points” column.)

7. Also by way of stipulation, the District withdrew the accusations regarding the following respondents:

<i>Respondent</i>	<i>First Date of Paid Service</i>
Adelaida Melgoza	August 10, 2006
Taron Hensley	August 27, 2007
Edward Meehan	August 27, 2007
James Nolte	August 21, 2006
Valerie Peterson	August 21, 2006

By its withdrawal of the Accusation, the District will retain the services of those respondents named immediately above.

8. And by way of stipulation, the District partially rescinded the layoff notices for the following respondents:

<i>Respondents</i>	<i>First Date of Paid Service</i>	<i>FTE Rescission</i>	<i>Resulting FTE Layoff</i>
Jill Langston	August 22, 2005	0.4	0.6
Charlotte Howard	August 22, 2005	0.4	0.2

Respondent Langston, who has a social studies teacher assignment, will remain a 0.4 FTE employee of the District. And Respondent Howard, who has a mathematics teacher assignment, will remain a 0.8 FTE employee.

### *The District’s Case-in-Chief*

9. The Superintendent for the District appeared at the hearing of this matter to provide credible and persuasive evidence regarding the basis for the prospective layoff action.

The Superintendent is responsible for advising the District’s Governing Board on all aspects of the District’s provision of educational services including fiscal matters. The

Superintendent manages the District's mission in serving 5,600 students, who populate four comprehensive high schools, one continuation school (which is to close at the end of this school year) and an alternative/independent study program.

The District is a high-performance high school district, which sends a large number of its students to universities. The District is a revenue-limited district so that it is greatly impacted by California's state government budgetary difficulties. The District is confronted with a potential multiple-million dollar deficit for the coming school year.

The prospective elimination of particular kinds of services for the 2010-2011 school year directly results from a prospective shortfall in money for the District's budget. In order to partially aid the District in crafting a reasonable budget for the ensuing school year, the Superintendent recommended that certain certificated positions be eliminated due to a lack of funds for the ensuing school year. Those particular kinds of services are set out above in Factual Finding 2.

10. Among the particular kinds of services to be eliminated, the Superintendent gave notice to 13 counselors that they would not be retained for the coming school year. The District is retaining five counselors to provide counseling services. The Superintendent is cognizant that with such a large loss of counselors, the "job will have to change" for counselors with the District. The Superintendent was persuasive that the District's administrators are capable to effect the process of developing a range of new counseling duties for those five certificated employees who will provide counseling services for the ensuing school year. (It is now contemplated that each school will have an assigned counselor and that the counselor, working as the "Bilingual Counselor," may travel from school-to-school.)

11. Even though the District plans to layoff 13 counselors, the Superintendent has determined that Ms. Lois Halls, who is junior to eight other counselors, should be retained. Ms. Halls now occupies the position of "Head Counselor," which is considered by the Superintendent to be a management position. The first day of paid service to the District by Ms. Halls is August 22, 2005.

12. Ms. Lois Halls, who currently serves as Head Counselor at Miramonte High School, was given a "precautionary" layoff notice<sup>2</sup> that pertains to the potential elimination of her 1.0 FTE position. Ms. Halls, however, is not a respondent in the Accusation that resulted in the hearing in this matter.

The first date of paid service to the District by Ms. Halls is August 22, 2005. She holds a "Cler PPS-School Counseling" credential. That credential enables her to perform services as a school guidance counselor.

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<sup>2</sup> The layoff notice to Ms. Halls, which was served upon her before March 15, 2010, cited Education Code sections 44949 and 44955 as the basis of the potential layoff; and, hence, the layoff notice designated Ms. Halls as a certificated employee rather than as an administrator.

The Superintendent informed Ms. Hall that the District intends to retain her service for the ensuing school year as the Superintendent maintains that he may exercise “skipping” privileges to retain her even though eight other counselors have greater seniority than her. The District categorizes the status of Ms. Halls as “ADM,” that is administration. She does not, however, hold a clear administrative services credential as do many District personnel who have been given “Adm” status on the seniority list. (None of the three counselors who are classified as “Head Counselor” holds an administrative credential.)

The District did include in Resolution No. 09-10-13 provisions that pertains to skipping criteria that would enable the District to “deviate from terminating certificated employees in order of seniority, based on a specific need for personnel who possess special training and/or experience, or competency, necessary to teach specific courses or courses of study or to provide specific services, which others with more seniority do not possess.”<sup>3</sup> But the resolution did not prescribe guidelines for the retention of a junior counselor to act as “Head Counselor” for the coming year where more senior counselors are competent to perform those services.

Neither the Superintendent nor Ms. Halls offered evidence at the hearing of this matter regarding Ms. Halls having such unique skills, experience and training that render her more capable than respondent-counselors, who are subject to layoff but who have greater seniority than her. And the Superintendent was not persuasive that Ms. Halls is competent to be retained as “Head Counselor” when arguing that Ms. Halls is a “manager” whom the District can exercise discretion to retain.

The Superintendent noted that a marked difference between the position of Head Counselor and the classification of Lead Counselor pertains to the duty of the former position holder to craft a “master schedule” and the degree of supervision by a Head Counselor of other counselors. But the evidence was legally insufficient to determine Ms. Halls to be competent so as to skip her over more senior counselors, who are competent and qualified to perform those services. First, the Superintendent failed to establish that certain respondents, and especially Respondent Millar, did not possess the experience, training and skill to perform the duties of a counselor in the District next year.

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<sup>3</sup> The resolution’s skipping criteria, as set out on page three of Resolution No. 09-10-13, pertained to retaining a junior counselor for the assignment of “Bilingual Counselor” and retaining a drama teacher for the “Drama Program.” As to the Bilingual Counselor, the special skills and needs of the District’s program were clearly defined as “Experience as a secondary level school counselor developing and providing workshops for Spanish speaking parents and students regarding academic opportunities and higher education options, developing academic enrichment programs for Spanish speaking students, conducting outreach activities for Spanish speaking parents, providing counseling services to Spanish speaking students, and competency as a fluent Spanish language speaker.”

### *Respondents' Contentions-Reductions of Counselors*

13. Respondents contend that the District's proposed layoff action will result in school programs, which are administered by school counselors, being dramatically impacted so that such programs will not be in compliance with state law or federal law on the matter of counseling service requirements. In particular, the layoff action purportedly may result in a cut in counselor personnel that is arbitrary and illegal with regard to services rendered to Special Education students. Respondents aver that with the layoff of 13 counselors, the District will not be able to meet its obligations with only five counselors next year.

Further, respondents contend the District's proposed action is procedurally defective and improper insofar as the prospective layoff of the subject credentialed employees does not fully account for seniority of those persons in light of the District's retention of a credentialed employee who is junior in time of service to certain respondents. Those senior counselors, who challenge the Superintendent's determination to retain a junior employee, namely Ms. Halls, are:

<i>Respondent Counselors</i>	<i>First Date of Paid Service</i>
Patricia Johnson	September 3, 1991
Marilyn Lewis-Hampton	August 28, 1996
Valerie Wright-Smith	August 14, 2000
Jake Donohoe	August 24, 2000
Linda Fore	August 15, 2002
Dee Dee Worthing	August 15, 2002
Lynn Millar	August 15, 2002
Hanlee Washburn	August 18, 2003

### *Evidence of Individual Teachers at Hearing*

14. Respondent Patricia Johnson appeared at the hearing to offer evidence under oath.

Respondent Johnson works for the District as a counselor during the current school year. Her first day of paid service to the District is September 3, 1991. At the hearing she noted that the current school year is her 20th year of being associated with the District and that she has been a paid for 19 years as a District employee. (She intimated that she was an unpaid intern or a volunteer for her first year with the District.)

Respondent Johnson holds a "Clr PPS-Basic Pupil Personnel Services" credential.

Respondent Johnson now holds a 0.8 FTE counselor assignment at Acalanes High School. She is one of the four counselors working at that particular high school, which has slightly less than 350 high school students this year.

15. Respondent Johnson was not persuasive that with the elimination of 13 counselors, so that only five counselors will remain employed for the coming school year, the District will be “at risk” or exposed to “legal liability” for failure to meet obligations to students with special needs in such a manner as to render defective the proposed layoff action. Respondent Johnson is troubled that the District contemplates using only one counselor to serve at each school site for the coming year. And, she does not believe that a single counselor at Acalanes High School will be able to properly aid college-bound seniors next year. But Respondent Johnson’s testimony did not refute the Superintendent’s evidence that the elimination of 13 District counselor positions will not drastically affect the manner by which counseling services will be delivered to students during the coming school year in a way as to violate regulations or statutes.

16. Respondent Johnson once held the classification of “Head Counselor,” but she voluntarily relinquished the job a few years ago and took a position as a staff guidance counselor to work with a reduced work load now consisting of a 0.8 FTE position.

Respondent Johnson has greater seniority relative to Head Counselor Halls and Head Counselor Wahlander (first date of paid service (August 31, 1992). (Ms. Wahlander<sup>4</sup> has been given a “precautionary” layoff notice that she may be reassigned to a position other than as a counselor.) But Respondent Johnson did not offer evidence that she is available to occupy a full-time (1.0 FTE) position as a Head Counselor for the ensuing school year. Hence, Respondent Johnson did not provide persuasive evidence that the District has retained a counselor junior to her for which Ms. Johnson possesses a credential and is competent to teach or to provide service to the District’s students.

17. Respondent Lynn Millar appeared at the hearing to offer evidence under oath.

Respondent Millar’s first date of paid service to the District was August 15, 2002. During the current school year, she has worked as the “Lead” counselor at Acalanes High School, which she has held for about one and one-half school years.

Respondent Millar holds a “Clr PPS-School Counseling” credential.

Respondent Millar possesses the requisite knowledge, experience and skills to enable her to perform all tasks required of a “Head Counselor.” Respondent Millar was credible that she has performed the tasks of a management-oriented counselor, which is called Lead<sup>5</sup>

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<sup>4</sup> In addition to the “Clr PPS-Basic Pupil Personnel Services” credential held by her, Ms. Wahlander holds a Life Secondary credential, a single-subject Home Economics credential and a single-subject English credential.

<sup>5</sup> In the only document, which was offered into evidence, regarding a chart for the District’s counseling services staff among the District’s school sites, there were three “Head Counselors” for three high schools; but, the chart shows that at Acalanes High School there was no assigned head counselor, but rather Ms. Millar was classified as “Lead Counselor.” At the other high schools, except for Las Lomas High School where there were four other counselors in addition to the Head Counselor, Head Counselors



Counselor, that Ms. Halls now performs during the current school year. As Lead Counselor for the current year, Respondent Millar is paid a stipend, which provides her with higher pay than other counselors. And the work is exceedingly similar to the work of Head Counselor.

18. The Superintendent established that in light of there being but five counselors for the ensuing school years, the District “has no interest in continuing the Head Counselor position in the future.” The position of Head Counselor will be eliminated as employees who are now paid as a head counselor retire. Provided there are no retirements, deaths or permanent disabilities, there will be three full-time Head Counselor positions next year with the District.

19. The District has failed to establish that Ms. Halls does not possess such competence in the way of possessing greater experience, skill and ability so that the District may “skip” her relative to a more senior certificated counselor employee, namely Respondent Millar.

20. Respondent Millar provided persuasive evidence that the District has retained a counselor junior to her for which Ms. Millar possesses a credential and is competent to teach or to provide service to the District’s students.

#### *Ultimate Findings*

21. The recommendation of the District’s superintendent and the Board’s decision to eliminate or discontinue 56.9 FTE positions, including the positions held by each respondent, were neither arbitrary nor capricious. Rather, the Superintendent’s recommendation and the Board’s decision were within the proper exercise of the District’s discretion.

22. The District’s proposed elimination or discontinuation of a number of FTE positions, including the positions held by respondents, for the ensuing school year is related to the welfare of the District and its overall student population.

23. The Board determined that it will be necessary, due to the elimination of particular kinds of services, to decrease the number of certificated employees before the beginning of the next academic year. The Board lawfully directed the notification to respondents of the elimination of the certificated positions held by each respondent.

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work with three other counselors. Similarly, Respondent Millar led or “supervised” three other counselors at Acalanes High School.

The Head Counselors in the pamphlet, titled Counseling Services, were Scott Swain (first date of paid service: September 2, 1986), who worked at Las Lomas High School; Judith Wahlander (first date of paid service August 31, 1992), who worked at Campolindo High School; and Ms. Hall who was assigned to Miramonte High School.

24. The Superintendent has considered all known attrition, including resignations and retirements, in determining the actual number of necessary layoff notices to be delivered to its employees.

25. Except as to a counselor, namely Respondent Lynn Millar, no competent and credible evidence establishes that as a result of the proposed elimination of the full time equivalent positions respectively held by respondents herein, the District will retain any certificated employee who is junior to such respondents to perform services for which respondents have been certificated or found to be competent to perform in such FTE positions for the next school year.

26. The Superintendent did not establish that Ms. Halls has such training, experience and skill and that the District's program needs as well as the needs of the students of the District so as to determine Ms. Halls to possess such competence as to be retained while Respondent Johnson and Respondent Millar, who have greater seniority are not retained for the ensuing school year.

#### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. The District provided all notices and other requirements of Education Code sections 44949 and 44955. This conclusion of law is made by reason of the matters set forth in Factual Findings 1 and 4.

3. Judgments entered by a tribunal on the stipulation of the parties have the same effect as acts tried on the merits. (*John Siebel Associates v. Keele* (1986) 188 Cal.App.3d 560, 565.) The District stipulates to withdraw the Accusation, or portions of the layoff action, against those certificated employees named in Factual Findings 8 and 9. The stipulations are binding on the parties.

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

Although services may be drastically rationed or sparingly dispensed by counselors, the evidence does not establish that the mandated services for the ensuing academic year are being reduced below the number required by law. (*California Teachers Assn. v. Board of Trustees* (1982) 132 Cal. App. 3d 32, 34-35; *Rutherford v Board of Trustees supra* 64 Cal. App. 3d 167.) The District may exercise its discretion to reduce the number of counselors from 18 to five for the coming year.

5. The primary legal question to be resolved in this matter is whether the District may, pursuant to Education Code section 44955, subdivision (d), skip a junior certificated employee, who currently serves as a Head Counselor, relative to other counselors, who possess greater seniority than the employee who is proposed for skipping. The Superintendent's assertion that the District may skip the junior counselor is based, in large measure, on the premise that the junior counselor occupies a "management" position.

6. Education Code section 44955 provides in pertinent part:

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and *services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. . . .*

*The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.* However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) *Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:*

(1) *The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess. . . .*

(Emphasis added.)

7. The District is permitted to depart from a seniority-based economic layoff in situations only where the District "demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the certificated employee (to be exempted from layoff) has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess." (Ed. Code, § 44955, subd. (d) (1).) The issues here are: (a) whether the District demonstrated a

“specific need” for personnel “to provide those services”; (b) if so, whether the junior employee possesses special qualifications necessary to teach such course or course of study; and, (c) whether senior certificated employees do not possess those special qualifications. (*Bledsoe v. Biggs Unified School Dist.* (2009) 170 Cal.App.4th 127.) The analysis of these factors by the court in *Bledsoe* makes it clear that ordinarily these are factual questions and the school district bears the burden of proving each element. (*Id.* at pp. 138-144.)

Junior certificated employees may be given retention priority over senior employees if the junior certificated employees possess superior skills or capabilities which their more senior counterparts lack. (*Poppers vs. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 vs. Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.) Here, the Superintendent failed to demonstrate that Ms. Lois Halls, who is a the junior certificated employee may be skipped because of special qualifications necessary to perform the counselor service. And the District did not adequately establish that the senior employees, who are subject to layoff, do not possess such qualifications.

8. The decision in *Hilderbrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334 stands for the proposition that in a layoff action, a part-time permanent certificated employee, who does not seek to be employed full-time, may not exercise bumping rights with respect to a less senior full-time employee if the District reasonably and in good faith does not wish to split the full-time position into part-time positions. Although in the past she possessed a full-FTE counselor position for most of her two decades with the District including a period of time as a Head Counselor, for the current school year Respondent Johnson occupies a 0.8 FTE counselor position. Respondent Johnson did not established she is eligible to occupy a full-time FTE position next year, and she did not demonstrate the District will not be compelled to split the full-time position between herself and another qualified and competent employee. Hence, the *Hilderbrandt* ruling applies to preclude Respondent Johnson being retained to hold the full-time FTE position as Head Counselor.

9. Cause exists under Education Code sections 44949 and 44955 for the Acalanes Union High School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the District and its overall student population.

10. The District’s layoff action is necessary. The District’s proposed action is consistent with the law. And, the District’s contemplated layoff action is reasonable in its execution.

11. By reason of Factual Findings 12 and 17, cause exists to dismiss the accusation regarding Respondent Millar. The District shall retain Respondent Millar in the Head Counselor position for the ensuing school year.

12. Other than the matter of Respondent Millar, no employee with less seniority than any Respondent is being retained to render a service which a respondent, who is not a counselor, is certificated and competent to render.

### ORDER

1. The accusations served on Respondents Adelaida Melgoza, Taron Hensley, Edward Meehan, James Nolte, and Valerie Peterson are dismissed, and the layoff action as to those five individuals is rescinded.

2. The accusation served on Respondents Jill Langston and Charlotte Howard are withdrawn, in part, and the layoff action is partially rescinded as to Respondents Langston and Charlotte Howard. The District will retain Respondent Langston for the 2010-2011 school year to perform as a teacher with a 0.4 FTE teaching assignment. And the District will retain Respondent Charlotte Howard for the 2010-2011 school year to perform as a teacher with a 0.8 FTE teaching assignment.

3. The accusation is dismissed as to Respondent Lynn Millar, and the proposed layoff against her will be rescinded.

4. The accusations served on all other respondents, not named above in this order, are sustained. Notice may be given before May 15, 2010, to the affected respondents that their services will not be required for the 2010-11 school year because of the reduction or discontinuance of particular kinds of services by the Acalanes Union High School District.

5. Notice shall be given in inverse order of seniority.

DATED: May , 2010

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PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings