

BEFORE THE
GOVERNING BOARD OF
OROVILLE UNION HIGH SCHOOL DISTRICT
COUNTY OF BUTTE, CALIFORNIA

In the Matter of the Accusations Against:

RYAN ALDRICH
CHRISTEN CARR
COURTNY CONNELLY
SCOTT GIANNINI
LESLIE GRANKA
STEPHANIE GRECO
LINDSAY HIMMELSPACH
EVA HORVATH
SHANE JOHNSTON
LIBRADO LASCANO
WONG LEE
BRAD LUND
SHANNON SHARP
RYAN SPEAS
ALISHA WELIVER
ROBIN ZANON

OAH No. 2012020578

Respondents.

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 12, 2012, in Oroville, California.

Diana D. Halpenny, Attorney at Law, Kronick, Moskovitz, Tiedemann & Girard, represented the Oroville Union High School District.

Andrea Price, Attorney at Law, Langenkamp, Curtis & Price, represented all respondents, except for Scott Giannini.

Scott Giannini (respondent) appeared and represented himself.

Evidence was received and the parties offered oral closing arguments. The record was then closed, and the matter was submitted for decision on April 12, 2012.

PRELIMINARY MATTERS

District's Motion Seeking a Ruling That Certain Respondents Waived Their Right to a Hearing

1. At hearing, the district filed a Motion Seeking a Ruling That Certain Respondents Waived Their Right to a Hearing. The following respondents were identified for failing to timely submit a Notice of Defense pursuant to Government Code section 11506, subdivision (c): Ryan Aldrich, Christen Carr, Scott Giannini, Lindsay Himmelspace, and Librado Lascano.

2. Pursuant to stipulation, respondents Ryan Aldrich and Christen Carr agreed to withdraw their Requests for Hearing; the district agreed to rescind respondent Scott Giannini's layoff notice; and the district agreed to accept the late filing of the Notice of Defense from respondents Lindsay Himmelspace and Librado Lascano, in order to allow them to participate in the layoff proceedings.

Withdrawals and Rescissions

3. Pursuant to stipulation, several other respondents were dismissed from the proceeding due to: (1) withdrawal of their Notice of Defense; and (2) the district's rescission of their Notice of Non-Reemployment. The following respondents withdrew their Notices of Defense: Eva Horvath, Shane Johnston, and Alisha Weliver. The district rescinded the Notice of Non-Reemployment issued to respondent Courtney Connelly.

4. The hearing proceeded against the remaining respondents: Leslie Granka, Stephanie Greco, Lindsay Himmelspace, Librado Lascano, Wong Lee, Brad Lund, Shannon Sharp, Ryan Speas, and Robin Zanon.

Compliance with No Child Left Behind (NCLB)

5. Pursuant to stipulation, the parties agreed that NCLB compliance requires compliance only in the following core subject areas: Mathematics; Biological Sciences; Chemistry, Geosciences, and Physics; Social Science, including History, Government, Economics and Geography; Foreign Languages; Drama; Theatre; Visual Arts, including Dance and Music; English; Language Arts; Reading, including Reading Intervention; and the California High School Exit Exam (CAHSEE).

Oroville Union High School District Reduction in Force (RIF) List of Names

6. Pursuant to stipulation, the parties agreed to amend the district's RIF List of Names¹ as follows:

- a. Patricia Bauer's first name (seniority number 103 and date of hire 2/1/07), will be amended to read "Debbie" Bauer.
- b. Shannon Sharp's date of hire (seniority number 88) will be amended to read 8/15/2005, instead of 8/15/2004.

FACTUAL FINDINGS

1. Corey Willenberg, Ed.D is the Superintendent of Oroville Union High School District (district). The district serves two comprehensive high schools² with approximately 1,100 students in each school in grades 9 through 12; one continuation high school³ with approximately 157 students; and a community day school⁴ with approximately 47 students. Superintendent Willenberg described Prospect High School as a targeted-assisted Title I school,⁵ which serves students in grades 10 through 12 who are behind in credits, did not perform well in a comprehensive high school, or are pregnant teens or teen parents. Oroville Union High Community Day School is also a targeted-assisted Title I school, and serves students who have been expelled into the program, or placed there by juvenile court probation, or the School Attendance Review Board (SARB). According to Superintendent Willenberg, students attending the community day school are challenging because of their discipline issues and credit deficiencies. They have "behavior problems on a daily basis and it's not just mere defiance. It could be in-your-face defiant. They could be threatening."

¹ The district's RIF List of Names was identified and admitted into evidence as Exhibit 4.

² The district's comprehensive high schools are Las Plumas High School and Oroville High School.

³ The district's continuation high school is Prospect High School.

⁴ The district's community day school is Oroville Union High Community Day School.

⁵ Superintendent Willenberg explained that a targeted-assisted Title I school "means that the Title I dollars can only be used for at-risk groups like special education or English language learners or students that are low socioeconomic."

2. The actions of Superintendent Willenberg, and those of the district's staff and governing body, the Governing Board (board), were taken solely in their official capacities.

3. The district is facing a budget shortfall for the 2012-2013 school year of approximately \$2 million, and a projected declining enrollment of approximately 33 students.

4. On March 7, 2012, the board adopted Resolution No. 12-11/12, reducing or eliminating particular kinds of services (PKS) of the district, affecting 15.1 Full Time Equivalent (FTE) certificated positions.

5. The Resolution states that it will be necessary to reduce the following PKS of the district, and to decrease a corresponding number of certificated employees in the district not later than the beginning of the 2012-2013 school year:

SERVICE	F.T.E.
English Teachers (5 sections)	1.0
Social Science Teachers (5 sections)	1.0
Math Teachers (5 sections)	1.0
Earth Science Teachers (5 sections)	1.0
Biology Teachers (5 sections)	1.0
Physical Education Teachers (3 sections)	0.6
Spanish Teacher (1 section)	0.2
Business/Computers Teachers (3 sections)	0.6
EIA Credit Recovery Teacher (1 section)	0.2
EIA Study Skills Teachers (2 sections)	0.4
EIA LEP Teachers (3 sections)	0.6
EIA Math Teachers (2 sections)	0.4
EIA English/Reading Teachers (6 sections)	1.2

Title 1 Study Skills Teacher (1 section)	0.2
Title 1 Math Teachers (4 sections)	0.8
Title 1 Credit Recovery Teachers (2 sections)	0.4
Title 1 English/Reading Teachers (13 sections)	2.6
Alternative Education Assistant Principal	1.0
Special Education Coordinator/School Psychologist	.90
Total	15.1

6. As a result of the above PKS reductions and/or eliminations, the board determined that it was necessary to decrease 15.1 FTE positions for certificated employees in the district at the close of the 2011-2012 school year, in accordance with Education Code section 44955.⁶

7. On March 7, 2012, Superintendent Willenberg gave the board written notice of his recommendation that notice be given to respondents that their services would not be required for the ensuing school year, and the reasons therefor.

8. On March 12, 2012, Superintendent Willenberg timely served a letter entitled "Preliminary Notice of Layoff" (Preliminary Notice) on each of the permanent and probationary certificated employees affected by the PKS reductions and/or eliminations set forth in the Resolution. The Preliminary Notice advised that it had been recommended to the board that the recipient be given preliminary written notice that his/her services might not be required for the 2012-2013 school year, due to reductions in PKS.

9. All the respondents in this action timely filed a Request for Hearing to determine whether there was cause for not reemploying them for the 2012-2013 school year.

⁶ All further statutory references are to the California Education Code unless otherwise indicated.

10. On March 28, 2012, Superintendent Willenberg made and filed the Accusation, and caused it to be served on respondents. With the exception of respondents Ryan Aldrich, Christen Carr, Scott Giannini, Lindsay Himmelspach, and Librado Lascano (Preliminary Matters 1), all respondents timely filed a Notice of Defense requesting a hearing in this matter.

Implementation of Layoff Procedure

11. In anticipation of the PKS reduction, Superintendent Willenberg and his staff began updating the district's seniority list. On December 14, 2011, Deana Fallen, Senior Personnel Technician, sent the seniority list to the teachers to allow them to report inaccurate information and request corrections to their first date of paid service and credentials on or before January 3, 2012.

12. Ms. Fallen identified the individuals serving in the positions affected by the PKS reductions. District staff used the updated seniority list to identify vacant positions and to identify the least senior persons occupying the positions affected by the PKS reductions. District staff took into account known attrition and existing vacancies.

13. When the least senior persons occupying the positions affected by the PKS reductions were identified, Ms. Fallen looked at each individual's credentials to determine whether he or she could displace any less senior certificated employees. On March 12, 2012, district staff served the Preliminary Notices identified in Factual Finding 8, on the most junior employees affected by the PKS reduction.

Date of Hire – Brad Lund

14. Leslie Granka has a seniority date of 8/14/06. She maintains that the district's seniority list does not reflect Brad Lund's correct seniority date. The district's seniority list indicates that Brad Lund's seniority date is 8/1/06. Ms. Granka asserted that while Mr. Lund was paid an hourly wage to prepare to teach the Ready to Succeed (RTS) class prior to the start of the first day of school, his seniority date should be reflected as 8/14/06, the first date of paid service under their employments contract with the district. Ms. Granka contends that if the district takes this position, then it could set a precedent that teachers who are paid on an hourly basis prior to their actual start date are given a favorable seniority date, and that may include teachers who teach in summer and adult schools.

15. Mr. Lund contends that he was hired by the district on August 1, 2006 to work with a drug and alcohol counselor to develop the curriculum for the RTS class.

16. As part of her duties as a Senior Personnel Technician, Ms. Fallen maintains the personnel records of all the teachers in the district. At hearing, she confirmed that Mr. Lund was contracted with and paid by the district as of August 1, 2006.

17. Education Code section 44845 provides, in pertinent part, that a permanent employee is “deemed to have been employed on the date upon which he first rendered paid service” The evidence established that Mr. Lund was paid to begin his service with the district on August 1, 2006, and worked continuously before the start of the school year. Therefore, Mr. Lund’s seniority date is correctly reflected in the district’s seniority list as August 1, 2006.

Competency Criteria

18. In Resolution No. 12-11/12, the board defined “competency” for the purposes of Education Code sections 44955, 44956 and 44957 as:

The more senior employee must possess the appropriate subject area credential or authorization to render the service provided by the junior employee and ...

1. The employee must be “highly qualified” where required by No Child Left Behind; and

2. If the employee is bumping within or into the continuation high school or community day school program, the employee must possess the subject authorization for the particular assignment, be NCLB qualified and consent to be assigned to the program.

Alternative Assignments

19. Pursuant to section 44865, the district requested that on or before February 1, 2012, each respondent express their consent or refusal to teach in an alternative assignment at either Prospect High School or Oroville Union High Community Day School, or in Independent Study, commencing in the 2012-2013 school year. The following respondents consented to teach in an alternative assignment commencing in the 2012-2013 school year: Ryan Aldrich, Courtney Connelly, Leslie Granka, Lindsay Himmelspace, Eva Horvath, Librado Lascano, Wong Lee, Brad Lund, Ryan Speas, Alisha Weliver, and Robin Zanon. The following respondents failed to submit their consent/declination forms to the district: Christen Carr, Scott Giannini, Stephanie Greco, Shane Johnston and Shannon Sharp.

Individual Challenges to the Application of the Competency Criteria

20. The respondents adversely affected by the competency criteria have been teaching a subject identified for reduction, and, because of the resolution reducing their services, wish to exercise their rights to displace junior employees. The junior employees are either teaching the same subject, or teaching a different subject that the senior teachers believe they are certificated and competent to teach. When the competency criteria were applied to the senior teachers, Leslie Granka and Ryan Speas were deemed not credentialed or competent to bump junior teachers Keeley Frazier-White⁷ and Kurt Osterlund. However, senior teacher Brad Lund was deemed credentialed and competent to bump Lindsay Himmelspach.

Leslie Granka

21. Leslie Granka has a seniority date of 8/14/06. She holds a Professional Clear Single Subject Credential in English, and English Learner (EL) Authorization. She teaches .60 FTE English and .40 FTE Art at Prospect High School. She was laid off .60 FTE in English pursuant to the bumping analysis applied by the district. She is being retained to teach .40 FTE Art in the 2012-2013 school year. Ms. Granka maintains that she can bump Keeley Frazier and Kurt Osterlund “and anyone else that is less senior,” who are being retained to teach social science. Keeley Frazier has a seniority date of 8/14/06, holds a Professional Clear Single Subject Credential in Social Science, and teaches 1.0 FTE in Social Science/EIA Study Skills at Oroville High School. Kurt Osterlund has a seniority date of 8/14/06, holds a Clear Single Subject Credential in Social Science, and teaches 1.0 FTE in Social Science at Las Plumas High School. Ms. Granka also maintains that because she holds an Associate of Arts (AA) degree in Social Science, and has taught History at Prospect High School, she is highly qualified pursuant to NCLB, to teach social science. In addition, the district’s Tie-Breaking Criteria Application lists Ms. Granka as being NCLB compliant in Social Science.⁸ The district did not permit Ms. Granka to bump into any of these positions because she is not credentialed, authorized or highly qualified pursuant to NCLB to teach social science.

⁷ According to Ms. Fallen, Keeley Frazier-White has since changed her name to Keeley Frazier. It should be noted, however, that throughout the district’s exhibits, Ms. Frazier’s first name is identified intermittently as “Keeley” and “Keely.”

⁸ The district’s Tie-Breaking Criteria Application (Exhibit 14) indicates that Leslie Granka, Stephanie Greco and Courtney Connelly are NCLB compliant in Social Science. At hearing, Ms. Fallen clarified that this was a typographical error carried over when the page was merged from the Tie-Breaking Criteria applied to Keeley Frazier and Kurt Osterlund who are NCLB compliant in Social Science. According to Ms. Fallen, Ms. Granka, Ms. Greco and Ms. Connelly are NCLB compliant in English, and not Social Science.

22. Ms. Granka holds a Professional Clear Single Subject Credential in English. She is seeking to bump junior teachers who hold Clear Single Subject Credentials in Social Science and are authorized to teach social science in high school. Although she possesses an AA degree in social science, and has experience teaching History at Prospect High School, her degree and experience do not authorize her to teach social science, and do not establish that she is highly qualified pursuant to NCLB. The district may reasonably require that one seeking to bump a junior social science teacher hold a credential for the subject matter, and be NCLB compliant. Ms. Granka does not possess the appropriate subject area credential to teach social science, and is not NCLB compliant; therefore, she cannot bump Keeley Frazier or Kurt Osterlund.

Ryan Speas

23. Ryan Speas has a seniority date of 9/12/05. He holds a Clear Single Subject Credential in Biological Science-Geosciences, and EL Authorization. He teaches .60 FTE in Earth Science, .40 FTE in Biology Science, and .20 FTE in EIA Credit Recovery at Prospect High School. He was laid off .40 FTE in Earth Science, .40 FTE in Biology Science, and .20 FTE in EIA Credit Recovery pursuant to the board's Resolution and the bumping analysis applied by the district. He is being retained to teach .20 FTE in Earth Science in the 2012-2013 school year. Mr. Speas maintains that he can bump Kurt Osterlund if he is retained to teach government. Kurt Osterlund has a seniority date of 8/14/06, holds a Clear Single Subject Credential in Social Science, and teaches 1.0 FTE in Social Science at Las Plumas High School. Mr. Speas also maintains that he was previously granted a waiver by the board to teach government, and taught government at Prospect High School for five years. The district did not permit Mr. Speas to bump into this position because he is not credentialed, authorized or highly qualified pursuant to NCLB to teach social science.

24. Ms. Fallen confirmed that Mr. Speas received a waiver from the board to teach government when the district had no teachers that were credentialed and authorized to teach social science. However, as Mr. Osterlund is credentialed and authorized to teach social science, the board has not granted a waiver to Mr. Speas to teach government in the 2012-2013 school year.

25. Mr. Speas holds a Clear Single Subject Credential in Biological Science-Geosciences. He is seeking to bump a junior teacher who holds a Clear Single Subject Credential in Social Science and is authorized to teach social science in high school. While Mr. Speas previously received a waiver from the district to teach government, he does not have a waiver to teach government in the 2012-2013 school year. The district may reasonably require that one seeking to bump a junior social science teacher hold a credential for the subject matter, and be NCLB compliant. Mr. Speas does not possess the appropriate subject area credential to teach

social science, and is not NCLB compliant; therefore, he cannot bump Kurt Osterlund.

Brad Lund

26. Brad Lund has a seniority date of 8/1/06. He holds a Professional Clear Single Subject Credential in Physical Education (PE)/Introductory Health and EL Authorization. He teaches .20 FTE in PE, .20 FTE in Health, .40 FTE in Careers, .20 FTE in Recycled Cycles, and .20 FTE in Title I Credit Recovery at Prospect High School. He was laid off .20 FTE in Title I Credit Recovery as a result of the board's Resolution, and is being retained to teach all of his remaining classes in the 2012-2013 school year. Mr. Lund contends that if he is bumped out of his Careers and Recycled Cycles by any senior teachers, he can bump into Lindsay Himmelspace's .20 FTE in PE. Lindsay Himmelspace has a seniority date of 10/19/06, holds a Clear Single Subject Credential in PE, and teaches 1.0 FTE in PE at Las Plumas High School. She was laid off .80 FTE in PE as a result of the board's Resolution and the bumping analysis applied by the district. She is being retained to teach .20 FTE in PE in the 2012-2013 school year. The district may reasonably require that one seeking to bump a junior PE teacher hold a credential for the subject matter, and be NCLB compliant. Mr. Lund possesses the appropriate subject area credential to teach PE, is NCLB compliant, and is senior to Lindsay Himmelspace. Therefore, Mr. Lund can bump into Ms. Himmelspace's .20 FTE in PE in the 2012-2013 school year.

Skipping Certain Certificated Teachers

27. The district seeks to skip certain certificated employees pursuant to section 44955, subdivisions (b), (c) and (d)(1). These sections provide in pertinent part:

(b) ... 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....

(c) ...services of such employees shall be terminated in the inverse of the order in which they were employed...

(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 ... and that the

certificated employee has special training and experience necessary to teach that course or course of study... which others with more seniority do not possess.

[¶] ...[¶]

28. At hearing, Ms. Fallen admitted that the district does not maintain a list of qualifications necessary to teach the Careers, Recycled Cycles, RTS and Foods, non-core/elective classes currently being taught in the district's alternative education schools. Ms. Fallen also admitted that these classes are not core subjects under NCLB, that a teacher is not required to be highly qualified pursuant to NCLB to teach these classes, and with the exception of the Foods class, a specific credential is not required to teach these classes. According to Ms. Fallen, a Home Economics credential is required to teach the Foods class; however, Librado Lascano is currently teaching the Foods class and does not possess a Home Economics credential. Ms. Fallen contends that the district is moving towards 100 percent compliance with NCLB requirements, and currently has only two sections in the district's alternative education schools – Art and Guitar - that are non-compliant with NCLB requirements.

Skippping Brad Lund – Careers and Recycled Cycles

29. Brad Lund has a seniority date of 8/1/06. He holds a Professional Clear Single Subject Credential in Physical Education (PE)/Introductory Health and EL Authorization. He teaches .20 FTE in PE, .20 FTE in Health, .40 FTE in Careers, .20 FTE in Recycled Cycles, and .20 FTE in Credit Recovery at Prospect High School. He was laid off .20 FTE in Credit Recovery as a result of the board's Resolution, and is being retained to teach all of his remaining classes in the 2012-2013 school year. The district proposes to skip Mr. Lund's .40 FTE in Careers and .20 FTE in Recycled Cycles, pursuant to section 44955, subdivision (d)(1).

30. Jeff Ochs is the Director of Alternative Education and Principal of the Continuation and Community Day Schools. He has developed the schedule and course assignments for the continuation and community day schools for ten years. Mr. Ochs maintains that the district has a special need for Mr. Lund to teach the Careers and Recycled Cycles classes, and that he has special training and experience necessary to teach those classes. Principal Ochs asserted that in 2011, the district asked Mr. Lund to work with the retiring teacher on the Careers curriculum, using his experience from the Jump Start program he designed for the district. Principal Ochs described the Careers class as "preparation for the work force." It is a graduation requirement for Prospect High School. Mr. Lund is now teaching the course, and "has adjusted the curriculum to include some additional features that the prior teacher did not use or were necessarily outdated." According to Principal Ochs, Mr. Lund interacts with the students by discussing their futures and what careers they could have, and brings examples of real life situations to the students. For example, Mr. Lund has shared his summer work and outdoor adventures with the students to

demonstrate other things they can do in life. Principal Ochs believes Mr. Lund “does a great job with kids.”

31. Principal Ochs also asserted that the district created the bicycle mechanics program in response to the district’s need for an additional vocational education class for their students. The district paid for Mr. Lund to attend a week-long, 50-hour, training program in September 2007 at the United Bicycle Institute in Ashland, Oregon, to learn about bicycle mechanics and equipment. Mr. Lund has taught the Recycled Cycles class “on and off” since 2007. In addition, Mr. Lund brings his personal experience in cycling and mountain biking to the class. According to Principal Ochs, the Recycled Cycles class is “very popular” among the students, and the students earn a bicycle for taking the class.

32. Ms. Granka maintains that she can bump into an alternative assignment because her single subject teaching credential allows her to “teach anything, pretty much within reason,” and because the district made it clear to her that seniority was “paramount” to the hiring and rehiring process. In addition, Ms. Granka believes that because “experience is very, very important when you’re placing teachers to ... best serve students’ needs,” she can bump into the Careers class being taught by Mr. Lund in the 2012-2013 school year. Ms. Granka also contends that while it is honorable for the district to strive for 100 percent compliance with NCLB, the district is not required to follow the NCLB guidelines because not all the schools in the district are Title I schools, and therefore she does not have to be NCLB compliant to bump into an alternative assignment. With regard to the Careers class, Ms. Granka contends that she has 10 years experience as an office manager with her husband’s business, and four years experience running her own coffee house business, as well as contacts within the Oroville community, and therefore “could offer a lot to students in a Careers class.”

33. Ryan Speas maintains that he can bump into the Careers and Recycled Cycles classes being taught by Mr. Lund in the 2012-2013 school year. With regard to the Careers class, Mr. Speas testified that prior to his teaching career he was an assistant manager and brand representative for Abercrombie & Fitch and American Eagle. His responsibilities included hiring employees, during which time he became familiar with “resumes, careers paths and how business are run.” He has “a plethora of resources” available to bring in guest speakers. While teaching at Prospect High School, he taught a Student Advisory Period (SAP), which involved career coursework. With regard to the Recycled Cycles class, he gained experience with bicycles when he and his father ran a bicycle shop in Davis, California, and participated in Earth Days in Davis where they repaired and sold bicycles.

34. The district has identified the Careers class as a specific course or course of study that will be taught at Prospect High School in the 2012-2013 school year. However, the district has not demonstrated that Mr. Lund has special training and experience to teach that class which others with more seniority do not possess.

Ms. Fallen admitted that a credential is not necessary to teach the course (Factual Finding 28), and pursuant to stipulation by the parties, NCLB compliance is not required for non-core courses (Preliminary Matters 5). In addition, Ms. Granka and Mr. Speas consented to teach in an alternative assignment (Factual Finding 19). Therefore, the evidence established that the class can be taught by either Ms. Granka or Mr. Speas, or any other senior teachers who consented to teach in an alternative assignment. Although the district believes Ms. Lund may be the “best candidate” to teach the Careers class, the Education Code does not permit districts in a layoff proceeding to weigh the qualifications of its teaching staff and retain junior employees it believes have superior qualifications. The district must show that the skipped teacher has special training and experience necessary to teach the specific course or course of study. The district has not met that burden. Mr. Lund has a seniority date of 8/1/06. Mr. Speas has a seniority date of 9/12/05. Ms. Granka has a seniority date of 8/14/06. Although Ms. Granka and Mr. Speas are competent to teach the Careers class, only Mr. Speas is senior to Mr. Lund, and therefore Mr. Speas is eligible to teach .40 FTE in Careers in the 2012-2013 school year.

35. The district has identified the Recycled Cycles class as a specific course or course of study that will be taught at Prospect High School in the 2012-2013 school year. The district established that Mr. Lund has special training and experience to teach that class which Mr. Speas does not possess. Specifically, Mr. Lund has received 50 hours of formal training, has taught the class “on and off” for six years, and has personal experience in cycling and mountain biking. Therefore, the district may retain Mr. Lund to teach .20 FTE in Recycled Cycles in the 2012-2013 school year.

Skipping Librado Lascano – RTS and Foods

36. Librado Lascano has a seniority date of 8/13/07. He holds a Professional Clear Single Subject Credential in Social Science and EL Authorization. He teaches .20 FTE in Social Science, .20 FTE in Mathematics, .20 FTE in Spanish, .20 FTE in Foods, and .20 in RTS at Oroville Union High Community Day School. He was laid off .20 FTE in Social Science, .20 FTE Mathematics, and .20 FTE in Spanish, pursuant to the board’s Resolution and the bumping analysis applied by the district. He has been retained to teach .20 FTE in Foods and .20 FTE in RTS in the 2012-2013 school year. The district proposes to skip Ms. Lascano’s .20 FTE in RTS and .20 FTE in Foods, pursuant to section 44955, subdivision (d)(1).

37. Mr. Ochs maintains that they have a special need for Mr. Lascano to teach the RTS and Foods classes, and that he has special training and experience necessary to teach those classes. Principal Ochs asserted that prior to teaching RTS for the district, Mr. Lascano taught “for a few years” at the Academy for Change at the Chico Unified Community Day School. He has a Drug and Alcohol Counseling Certificate, which makes him “a very good instructor for our Ready to Succeed Drug and Alcohol Education Program.” In addition, prior to his teaching career, Mr.

Lascano worked in restaurants as an owner and a cook. According to Principal Ochs, Mr. Lascano “brought in a new restaurant-based approach to the Foods class which gave the kids a little bit more opportunity to learn some more career skills,” and “[i]t also opened up a menu or [introduced students] to foods they probably have never tried eating or cooking before.” Principal Ochs described the Foods program as “very successful.”

38. Mr. Lascano asserted that he was hired primarily because he is bilingual and is a drug and alcohol counselor. He has served as a counselor for 17 years, and has taught Spanish and Art. He recently celebrated his twenty-third year of recovery. Mr. Lascano contends that he brings unique qualifications to the Foods class that no other teachers have. He was in the restaurant business for 10 years as a manager, bartender, owner, and cook. He “did it all.” Throughout his teaching career in alternative education, he has also learned that you need “to wear many different hats,” and “to do your job to the best of your ability.”

39. Ms. Granka maintains that she can bump into the RTS and Foods classes being taught by Mr. Lascano in the 2012-2013 school year. With regard to the RTS class, Ms. Granka asserted that she has worked with “lower level learners and struggling students [and] at-risk students ... who were addicted to drugs and alcohol” since she began her teaching career, and has “been very successful at it.” With regard to the Foods class, Ms. Granka asserted that she worked with the Foods teacher, Marcia Miller, for five years at Prospect High School, and assisted Ms. Miller annually with the Thanksgiving meal. In addition, Ms. Miller gave her “an entire packet and binder of the procedures that she would follow to prepare that Thanksgiving meal,” which leads Ms. Granka to believe that she was going to take over the Foods class. Ms. Granka also enjoys cooking and baking, and believes that she “could really do a good job with teaching that class.”

40. Mr. Speas maintains that he can bump into the RTS and Foods classes being taught by Librado Lascano in the 2012-2013 school year. Mr. Speas testified that “RTS is very much a health class,” and serves students who have drug and alcohol problems. He has been teaching Health at the community day school for seven years. With regard to the Foods class, Mr. Speas asserted that “[i]f you look at me, you can tell I like food and like to eat, and I like to cook that food, and I like to eat it.” He believes he can bring a different perspective to the Foods class.

41. Robin Zanon has a seniority date of 8/14/06. She holds a Clear Single Subject Credential in Math and EL Authorization. She teaches 1.0 FTE Mathematics at Prospect High School. Ms. Zanon was laid off 1.0 FTE in Mathematics pursuant to the board’s Resolution and the bumping analysis applied by the district. Ms. Zanon maintains that she can bump into the RTS and Foods classes being taught by Librado Lascano in the 2012-2013 school year. With regard to the RTS class, Ms. Zanon asserted that because the class will be taught by a team, and the teacher currently teaching the class had no prior training or experience, that she too can learn the

position on the job. In addition, she has five years experience and training teaching at Prospect High School and Oroville Union High Community Day School. With regard to the Foods class, Ms. Zanon likes to “eat and cook,” and learned how to cook cheaply as a college student.

42. Mr. Lund maintains that he can bump into the RTS and Foods classes being taught by Librado Lascano in the 2012-2013 school year. Mr. Lund testified that because he developed the RTS curriculum (Factual Finding 15), and has five years experience and 300 hours of training at Youth for Change School where he taught special education and ran a therapeutic recreation program, he has the “skill set that best meets the needs of that program and the course that’s being offered.” With regard to the Foods class, Mr. Lund contends that he “used to cook for about 150 to 250 paying guests as a whitewater raft guide.”

43. The district has identified the RTS class as a specific course or course of study that will be taught at Oroville Union High Community Day School in the 2012-2013 school year. However, the district has not demonstrated that Mr. Lascano has special training and experience to teach that class which others with more seniority do not possess. While Mr. Lascano has unique qualifications as a bilingual teacher and a drug and alcohol counselor, the class being taught is RTS, not language and counseling. In addition, Ms. Granka, Mr. Speas, Ms. Zanon and Mr. Lund teach in a continuation high school or community day school program, and therefore have exposure to the at-risk student population. Ms. Fallen admitted that a credential is not necessary to teach the course (Factual Finding 28), the parties stipulated that NCLB compliance is not required for non-core courses (Preliminary Matters 5), and Ms. Granka, Mr. Speas, Ms. Zanon and Mr. Lund all consented to teach in an alternative assignment (Factual Finding 19). The evidence established that the RTS class can be taught by either Ms. Granka, Mr. Speas, Ms. Zanon, or Mr. Lund, or any other senior teachers who consented to teach in an alternative assignment. Although the district believes Ms. Lascano may be the “best candidate” to teach the RTS class, the Education Code does not permit districts in a layoff proceeding to weigh the qualifications of its teaching staff and retain junior employees it believes have superior qualifications. The district must show that the skipped teacher has special training and experience necessary to teach the specific course or course of study. The district has not met that burden. Mr. Lascano has a seniority date of 8/13/07. Ms. Granka has a seniority date of 8/14/06. Mr. Speas has a seniority date of 9/12/05. Ms. Zanon has a seniority date of 8/14/06. Mr. Lund has a seniority date of 8/1/06. Ms. Granka, Mr. Speas, Ms. Zanon and Mr. Lund are all competent to teach the RTS class, and are all senior to Mr. Lascano. As the most senior teacher, however, Mr. Speas is eligible to teach .20 FTE in RTS in the 2012-2013 school year.

44. The district has identified the Foods class as a specific course or course of study that will be taught at Oroville Union High Community Day School in the 2012-2013 school year. However, the district has not demonstrated that Mr. Lascano has special training and experience to teach that class which others with more

seniority do not possess. While Mr. Lascano has unique qualifications as a bilingual teacher and a drug and alcohol counselor, the class being taught is Foods, not language and counseling. In addition, Ms. Granka, Mr. Speas, Ms. Zanon and Mr. Lund teach in a continuation high school or community day school program, and therefore have exposure to the student population. While Ms. Fallen admitted that a Home Economics credential is necessary to teach the course (Factual Finding 28), the evidence established that the class has been taught by Mr. Lascano who does not hold a Home Economics credential. The parties stipulated that NCLB compliance is not required for non-core courses (Preliminary Matters 5), and Ms. Granka, Mr. Speas, Ms. Zanon and Mr. Lund all consented to teach in an alternative assignment (Factual Finding 19). The evidence also established that that the class can be taught by either Ms. Granka, Mr. Speas, Ms. Zanon, or Mr. Lund, or any other senior teachers who have consented to teach in an alternative assignment. Although the district believes Ms. Lascano may be the “best candidate” to teach the Foods class, the Education Code does not permit districts in a layoff proceeding to weigh the qualifications of its teaching staff and retain junior employees it believes have superior qualifications. The district must show that the skipped teacher has special training and experience necessary to teach the specific course or course of study. The district has not met that burden. Mr. Lascano has a seniority date of 8/13/07. Ms. Granka has a seniority date of 8/14/06. Mr. Speas has a seniority date of 9/12/05. Ms. Zanon has a seniority date of 8/14/06. Mr. Lund has a seniority date of 8/1/06. Ms. Granka, Mr. Speas, Ms. Zanon and Mr. Lund are all competent to teach the Foods class, and are all senior to Mr. Lascano. As the most senior teacher, however, Mr. Speas is eligible to teach .20 FTE in Foods in the 2012-2013 school year.

Additional Challenge - NCLB Compliance

45. Ms. Granka and Mr. Speas contend that because the district has a history of arbitrarily placing teachers in classroom positions for which they are not credentialed,⁹ they have set a precedent for allowing teachers to teach out of their credentialed areas and should not prohibit them from teaching a course for which they are not credentialed. This argument is not persuasive. While the district has and continues to place teachers in classroom positions for which they are not credentialed, the district has resolved to become 100 percent compliant with NCLB requirements (Factual Finding 27) and continues to work towards that goal. The decision to become 100 percent compliant with NCLB is a reasonable decision, and well within the board’s authority and discretion.

⁹ For example, Ms. Granka has taught Art at Prospect High School for three years, and is being retained to teach .40 FTE in Art in the 2012-2013 school year. However, Ms. Granka is not credentialed or authorized to teach Art.

Additional Challenge – Tie Breaking Criteria

46. Ms. Granka maintains that the board failed to include personal experience in their tie-breaking criteria. Ms. Granka believes that if two teachers are in a tie-breaking situation, then seniority should not be considered, and personal experience should. Ms. Granka explained that if she has the same date of hire as another English teacher, and a drama class is open for which she has no experience but the other teacher does, she would defer to the other teacher based on her personal experience. This argument is not persuasive. The board's decision to exclude personal experience as a tie-breaking criteria was neither arbitrary nor capricious, and was a proper exercise of the board's authority and discretion.

Other Defenses to Layoff

47. Any other assertions raised by the parties at hearing which are not addressed above are found to be without merit.

LEGAL CONCLUSIONS

1. As set forth in the Factual Findings, all notice and jurisdictional requirements set forth in sections 44944 and 44945 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's 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.)

2. The board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. The services identified in PKS Resolution No. 12-11/12 are particular kinds of services that may be reduced or discontinued pursuant to sections 44949 and 44955. The board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the district's schools and pupils within the meaning of section 44949.

4. The preliminary layoff notice issued to respondent Ryan Speas must be rescinded because the district is retaining junior employees to provide services which Mr. Speas is competent to render. Mr. Speas was laid off .40 FTE in Earth Science, .40 FTE in Biology Science, and .20 FTE in EIA Credit Recovery pursuant to the board's Resolution and the bumping analysis applied by the district. Mr. Speas is competent to bump into Mr. Lund's .40 FTE in Careers, and Mr. Lascano's .20 FTE in RTS and .20 FTE in Foods. Therefore, Mr. Speas is retained to teach .20 FTE in Earth Science, .40 FTE in Careers, .20 FTE in RTS and .20 FTE in Foods.

5. The preliminary layoff notice issued to respondent Brad Lund must be rescinded because the district is retaining junior employees to provide services which Mr. Lund is certificated and competent to render. Mr. Lund was laid off .20 FTE in Credit Recovery as a result of the board's Resolution. Mr. Lund was bumped by Mr. Speas .40 FTE in Careers, but is certificated and competent to bump into Ms. Himmelspach's .20 FTE in PE. Therefore, Mr. Lund is retained to teach .40 FTE in PE, .20 FTE in Health, and .20 FTE in Recycled Cycles.

6. Except as set forth in Legal Conclusions 4 and 5 and the Factual Findings, no employee with less seniority than any respondent is being retained to render a service which any respondent is competent to render.

7. Except as set forth in Legal Conclusions 4 and 5, the board may give respondents final notice that their services will not be required for the 2012-2013 school year.

RECOMMENDATIONS

1. Except as set forth in Legal Conclusions 4 and 5, the Accusations served on respondents are sustained.

2. As set forth in Legal Conclusion 4 and the Factual Findings, the Preliminary Notice issued to certificated employee, Ryan Speas, shall be rescinded.

3. As set forth in Legal Conclusion 5 and the Factual Findings, the Preliminary Notice issued to certificated employee, Brad Lund, shall be rescinded.

4. Final Notices shall be given to the remaining respondents that their services will not be required for the 2012-2013 school year because of the reduction or discontinuation of particular kinds of services.

5. Final Notices shall be given to respondents in inverse order of seniority.

Dated: May 2, 2012

REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings