

BEFORE THE
GOVERNING BOARD
ROCKLIN UNIFIED SCHOOL DISTRICT
COUNTY OF PLACER
STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of:

AMY ADAM, et al.,

Respondents.

OAH No. 2010020505

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings, on April 6 and 7, 2010, in Rocklin, California; and on April 14, 2010, in Sacramento, California.

Michelle L. Cannon, Attorney at Law,¹ represented complainant, Kevin Brown, Superintendent, Rocklin Unified School District.

Andrea Price, Attorney at Law,² represented respondents. (See Appendix A)

The matter was submitted on April 14, 2010.

FACTUAL FINDINGS

General Findings Concerning Statutory Requirements

1. Respondents are certificated district employees.
2. On March 3, 2010, the governing board of the district resolved to reduce or discontinue particular kinds of services. To that end, the board adopted Resolution 09-10-23 (Layoff Resolution). Within the meaning of Code section 44955, the services are “particular kinds of services” that can be reduced or discontinued. The decision to reduce or discontinue these services was not arbitrary or capricious but constituted a proper exercise of discretion.

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3. Not later than March 15, 2009, the superintendent of the school district caused the governing board of the district and respondents to be notified in writing of his recommendation that preliminary notice be given respondents, pursuant to Education Code sections 44949 and 44955,³ that the district would not require their services for the 2010-2011 school year. The notice stated the reasons for the recommendation. In recommending reductions in certificated staff, the superintendent considered the qualified condition of the district's budget. The district is expecting an approximate \$800.00 per student budget reduction for the district's 10,000 students. The recommendation was not related to respondents' performance as certificated employees.

4. A Notice of Intent to Dismiss was delivered to each respondent, either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to respondents' last known address.

5. The notice advised each respondent of the following: He or she had a right to a hearing. In order to obtain a hearing, he or she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by a specified date, which was a date that was not less than seven days after the notice of termination was served.⁴ And the failure to request a hearing would constitute a waiver of the right to a hearing.

6. Respondents timely filed written requests for a hearing to determine whether there was cause for not reemploying them for the ensuing year. An accusation was timely served on respondents. Respondents were given notice that, if they were going to request a hearing, they were required to file a notice of defense within five days after being served with the accusation.⁵ Respondents filed timely notices of defense. All prehearing jurisdictional requirements were met.

Positively Assured Attrition

7. The Board must allow for positively assured attrition such as voluntary resignations and retirements which occur during the "computation period." (*Santa Clara Federation of Teachers v. Governing Board of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831, 847.) The district must "consider evidence of positively assured attrition, involuntary retirements for the [upcoming] school year which were known to the board when it made its preliminary determination on 15 March ... and when it made its final

³ All references to the Code are to the Education Code unless otherwise specified.

⁴ Employees must be given at least seven days in which to file a request for a hearing. Education Code section 44949, subdivision (b), provides that the final date for filing a request for a hearing "shall not be less than seven days after the date on which the notice is served upon the employee."

⁵ Pursuant to Government Code section 11506, a party on whom an accusation is served must file a notice of defense in order to obtain a hearing. Education Code section 44949, subdivision (c)(1), provides that, in teacher termination cases, the notice of defense must be filed within five days after service of the accusation.

determination on 15 May.” (*Lewin v. Bd. of Trustees of Pasadena Unified School Dist.* (1976) 62 Cal.App.3d 977, 983.) “A district is *not* required to consider certificated employees who have requested leaves of absence for the next school year in determining positively assured attrition occurring during the computation period.” (Italics in original; *Id.* at p. 848.)

As set forth in the layoff resolution, the governing board considered all positively-assured attrition which has occurred to date and additional attrition which may occur before the start of the 2010-2011 school year in reducing these services and but for the attrition already assured and the attrition anticipated would have found it necessary to reduce additional particular kinds of service.

8. Charlotte Caldwell, the District’s personnel analyst, prepared and mailed notices of layoff on March 4, 2010. As of that date, she had not received any information relevant to attrition. She subsequently received one resignation and one retirement. In response, the District “back-filled” the positions of two teachers who were on leave with two teachers from the layoff/rehire list. The district served Notices of Rescission on two teachers, Michael Hannickel and Patricia Ornato. As such, they are not respondents in this matter.

9. When a teacher is on leave of absence, their position is given the status they had before they went on leave. They are entitled to return to like positions in the district, barring being identified as holding the particular kind of service named in the layoff resolution. In fact, one teacher who was on leave, Heather Marziale, did receive a layoff notice.⁶ The district is required to consider resignations or retirements that occurred during the computation period. The district properly accounted for the attrition by rescinding two layoff notices.

10. Of the 57 certificated employees who were served with valid notices of layoff and requested a hearing pursuant to Education Code section 44949, subdivision (b), nine individuals failed to return a Notice of Defense. Two of the nine teachers, Timothy Farnan and Janice Johnson, retained counsel after failing to return a timely notice of defense. Neither Mr. Farnan nor Ms. Johnson were present at hearing and no challenge was made on their behalf. As to all nine certificated employees who failed to return a Notice of Defense, the matter proceeded as a default pursuant to Government Code section 11520. (Appendix A.)

⁶ The two teachers who were on a one year leave of absence were Dillon Vaughan and Heather Marziale. Ms. Marziale received a layoff notice as her position as a self-contained K-6 teacher, was being eliminated.

Competency Criteria

11. Layoff Resolution No. 09-10-23 includes competency criteria adopted by the Board, for use in implementing layoffs. The competency criteria provision states:

Whereas, the Board of Trustees has determined that with respect to this resolution and for purposes of potential displacement rights, competency shall mean, at minimum, possession of a preliminary, clear, professional clear, lifetime, or other full credential, and at least one semester actual teaching experience in the subject area in a comparable setting (K-6 self-contained; 7-12 departmentalized; 7-12 alternative education; specialized elementary music, PE, ELD or VAPA programs) within the last five years. Additionally, competency was defined to also mean that the teacher, when required, is qualified to teach the subject area under NCLB.

12. Education Code section 44955, subdivision (b) provides that no senior employee may be terminated while any less senior employee is retained to render a service which the more senior permanent employee is “certificated and competent” to render. “Competency” under subdivision (b) of section 44955 is different than the exception, commonly referred to as “skipping,” in subdivision (d)(1) of that section. Education Code section 44955, subdivision (d), “recognizes a district may have special needs for personnel to teach a specific course of study that go beyond base qualifications.” (*Id.* at p. 138.)

13. Superintendent Kevin Brown testified that the competency language included in the Layoff Resolution, expressed the district’s desire to ensure that a teacher had at least taught the subject in a similar setting. He stated it would be detrimental or a disservice to students to solely use seniority and not take other considerations into account. The competency definition contained in the Layoff Resolution was created for layoff purposes only and is within the district’s discretion.

Services the District Intends to Reduce or Discontinue

14. The governing board of the district determined, in the Layoff Resolution, that because particular kinds of services were to be reduced or eliminated, it was necessary to decrease the number of permanent employees in the district by 77.65 full-time equivalents (FTE). The particular kinds of services the governing board of the district resolved to reduce or discontinue are:

<u>Administrative Positions</u>	<u>FTE</u>
Assistant Principal, High School	1.00
Program Specialist I, Prevention Programs	0.50
Program Specialist II, Alt. Ed.	0.50

Certificated Support Positions

Nurse	4.10
Counselor	4.00
Admin and Support Total	10.10

Elementary School Positions**FTE**

P.E. (1-6)	0.56
VAPA (1-6)	1.16
Music (1-6)	3.00
Self Contained Classroom Teachers	35.00
Elementary Total	39.72

Middle School Positions**FTE**

Language Arts	2.50
Math	2.50
Science	2.50
History	2.50
Home Economics	0.67
Middle School Total	10.67

High School Positions**FTE**

Language Arts	4.50
Math	6.00
Science	2.50
Social Studies	1.50
P.E.	0.83
Home Economics	1.00
Foreign Language: French	0.83
High School Total	17.16

Total Full Time Equivalent Reduction = 77.65 F.T.E.

Use of Tie-Breaking Criteria Based on the Current Needs of the District and Students

15. Pursuant to Education Code section 44955, subdivision (b), the governing board of the district established, in Resolution 09-10-21 (Tie-breaking Resolution), criteria for determining the order of termination as among employees who first rendered paid service on the same day. The Board authorized the following tie-breaking criteria:⁷

Tie-Breaking Criteria	Point Value
Credentialing:	
Credential(s)	3 points each
Subject authorization(s) (NCLB compliant and subject currently taught in District)	2 points each
EL Authorization	2 points
1. BCLAD	3 points
Certificate(s) held	1 point each
1. National Board Certification	
2. GATE Certification	
Experience:	
Full time equivalent of credentialed public school experience	
1. Five to ten years	2 points
2. 11 years or more	3 points
Education:	
Graduate Degrees	
1. Masters	1 point each
2. Doctorate	2 points each
Service:	
Extra Curricular Assignments as paid on the Extra Compensation Pay Schedule within the last two years.	
1. Year number one	1 point maximum
2. Year number two	1 point maximum
Lottery:	
If two or more certificated employees who first rendered paid probationary service on the same date still have the same ranking after application of points provided above, the ranking of such employees shall be determined by a lottery conducted by the Superintendent or designee, in the presence of the Rocklin Teachers' Professional Association.	

⁷ NCLB (No Child Left Behind), a mandated program; BCLAD (Bilingual, Cross-cultural, Language and Academic Development), a certificate; CLAD (Cross-cultural, Language and Academic Development); GATE (Gifted and Talented Education), an honors program for gifted students.

Bumping/Skipping/Seniority

16. Skipping describes the process by which the district may deviate from the order of seniority when there is an identified need for a particular type of service, there is a junior employee who is uniquely qualified to provide that service or teach a subject, and there is no senior employee who is certificated and competent to provide the service. The district employed skipping to achieve a proper list of employees to receive layoff notices. (Ed. Code, § 44955, subd. (d)(1).)

17. Bumping describes the process by which the district identifies those employees who are more senior and who are competent to perform a particular kind of service or teach a particular subject. The district employed bumping to achieve a proper list of employees to receive layoff notices.

18. Seniority is the relationship between the teachers within a school district. Among the teachers credentialed to provide a given service, greater seniority in the district gives a greater legal entitlement to a position. Seniority is defined as the date upon which an employee first rendered paid services in a probationary position. (Ed. Code, § 44845.)

“It [is] the districts obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possess[es] the seniority and qualifications which would entitle him/her to be assigned to another position.” (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 137.)

Issues affecting Layoffs at Elementary Level

19. The governing board originally determined it was necessary to reduce 39.72 FTE Elementary Classroom Teaching Positions. Complainant noted that no junior employee was retained when a senior employee competent to perform that particular kind of service was laid off. The district implemented the reduction by first looking at the seniority chart and identifying which employees held relevant credentials.

20. The district mailed preliminary layoff notices to one K-6 physical education teacher, two K-6 visual and performing arts (VAPA) teachers, three K-6 music teachers, and 35 K-6 self-contained classroom teachers. The district rescinded the layoff notice to Michael Hannickel (1 FTE K-6 music teacher), pursuant to positively assured attrition. (Factual Finding 8.) Mr. Hannickel’s seniority date is August 29, 1973. He holds a standard elementary/music major credential and a special CLAD authorization. The district’s total reduction at the elementary level was 38.72 FTE teaching positions.

Issues affecting Layoffs at the Middle School Level

21. The governing board determined it was necessary to reduce 10.67 FTE Middle School Classroom Teaching Positions. The two middle schools, Spring View and Granite Oaks, consist of grades seven and eight. The District implemented the reduction in middle school teachers by first looking at the seniority chart and identifying which employees held relevant credentials. Tie-breaking and lottery procedures were implemented as necessary between those employees who first rendered service on the same date.

22. The district rescinded the layoff notice to Patricia Onorato (.5 FTE, 7/8 language arts/social studies teacher). Ms. Onorato's seniority date is August 16, 2007, which she shared with three other teachers.⁸ After receiving notice, Ms. Onorato requested to review her point tally. An error was discovered in her social studies points and she was found to have 11 points. She is retained to teach social studies for the 2010-2011 school year pursuant to positively assured attrition. (Factual Finding 8.)

23. Jason Knowles and Rosemarie Groth both teach 7/8 social studies, share the same seniority date of August 16, 2007, and both obtained ten points under the tie-breaking criteria. A lottery was implemented as to them and Jason Knowles won. Hence, he was retained for the 2010-2011 school year.

24. Regina Manibusan and Kerianne Reed both teach 7/8 PE, share the same seniority date of August 14, 2008, and both obtained ten points under the tie-breaking criteria. A lottery was implemented as to them and Ms. Manibusan won.

Issues affecting Layoffs at the High School Level

25. The governing board determined it was necessary to reduce 17.16 FTE High School Classroom Teaching Positions. The district implemented the reduction by first looking at the seniority chart and identifying which employees held relevant credentials.

26. Benjamin Barnholdt and Matthew Yamamoto were skipped. Mr. Barnholdt has a seniority date of August 14, 2008. He holds a professional clear single subject credential in English and teaches Broadcasting at Whitney High School. Mr. Yamamoto has a seniority date of August 17, 2006. He holds a preliminary single subject credential in physics, a special ELA authorization, and teaches physics at Whitney High School. Both possess the special skills and experience needed by the district for the positions they hold, and are deemed reemployed for the 2010-2011 school year.

⁸ The four teachers who share a seniority date of August 16, 2007, are Paul Rettinhouse (12 tie-breaking points), Patricia Onorato (11 tie-breaking points), Jason Knowles (ten tie-breaking points), and Rosemarie Groth (ten tie-breaking points).

Issues affecting Layoffs of Administrative Positions

27. The governing board determined it was necessary to reduce 2.0 FTE Administrative Positions. The district implemented the reduction by first looking at the seniority chart and identifying which employees held relevant credentials. The district determined that two administrators were qualified to bump into K-6 classrooms.

28. Manuel Rodriguez is the assistant principal at Whitney High School. He will be retiring after the current school year. The district will eliminate this position which represents 1.0 FTE.

29. Amanda Makis and Debra Hetrick are administrators (each representing 0.5 FTE). Both positions will be eliminated. Both are also qualified to bump into K-6 classroom teaching positions.

Ms. Makis is a Program Specialist I and has a seniority date of August 15, 2002. She holds a professional clear multiple subject/social science credential and a special CLAD authorization. She is qualified to bump Mellyn Savage, who currently teaches fifth grade at Cobblestone Elementary. Ms. Savage has a seniority date of August 14, 2009. She holds a preliminary multiple subject credential and an ELA special authorization.

Ms. Hetrick is a Program Specialist II and has a seniority date of July 1, 2006. She holds professional clear administrative services and multiple subject credentials as well as a special LDS authorization. The K-6 position into which Ms. Hetrick would bump is being eliminated. Accordingly, she received a layoff notice for the 2010-2011 school year.

Issues affecting Layoffs of Certificated Support Positions

30. The governing board determined it was necessary to reduce 8.10 FTE Certificated Support Positions consisting of guidance counselors and school nurses. The district implemented the reduction of certificated support specialists by determining to layoff all four guidance counselors (4.0 FTE) and all five school nurses (4.10 FTE). One of the five school nurses resigned and is not being replaced by the district. The other four received layoff notices.

31. Superintendent Brown testified that the 4.10 FTE reduction in school nursing positions represented all school nurses employed by the district. He recognized that there are some services performed by school nurses that are mandated by law. He disagreed with respondents' contention that school nurses must be employed by the district. He stated that the district can contract out for those services mandated to be performed by a school nurse, such as hearing and vision testing, administration of certain medications, and the drafting of student health maintenance plans. The district is in the process of drafting and developing a plan in conjunction with surrounding districts. Mr. Brown could not provide plan details but stated that the district would comply with state laws and regulations.

32. Education Code section 49426 defines a school nurse to be “a registered nurse currently licensed... and who has completed the additional educational requirements for, and possesses a current credential in, school nursing pursuant to Section 44877.” Mandates relative to the provision of health care services in public education including the following:

a. EC 49400 states: “The governing board of any school district shall give diligent care to the health and physical development of students, and may employ properly certificated persons for the work.”

b. EC 49422, subd. (a) states: “No physician, psychiatrist, oculist, dentist, dental hygienist, optometrist, otologist, podiatrist, audiologist, or nurse not employed in that capacity by the State Department of Health Services, shall be, nor shall any other person be, employed or permitted to supervise the health and physical development of pupils unless he or she holds a services credential with a specialization in health or a valid credential issued prior to the operative date of Section 25 of Chapter 557 of the Statutes of 1990.”

c. EC 49427, subd. (a) states: “It is the intent of the Legislature that the governing board of each school district and each county superintendent of schools maintain fundamental school health services at a level that is adequate to accomplish all of the following:

(1) Preserve pupils’ ability to learn.

(2) Fulfill existing state requirements and policies regarding pupils’ health.

(3) Contain health care costs through preventive programs and education.”

d. EC 49423, subd. (a) states: “Notwithstanding Section 49422, any pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician or surgeon, may be assisted by the school nurse or other designated school personnel or may carry and self-administer prescription auto-injectable epinephrine if the school district receives the appropriate written statements identified in subdivision (b).”

e. EC 49452 states: “The governing board of any school district shall, subject to Section 49451, provide for the testing of the sight and hearing of each pupil enrolled in the schools of the district. The test shall be adequate in nature and shall be given only by duly qualified supervisors of health employed by the district; or by certificated employees of the district or of the county superintendent of schools who possess the qualifications prescribed by the Commission for Teacher Preparation and Licensing; *or by contract with an agency duly authorized to perform those services* by the county superintendent of schools of the county in which the district is located, under guidelines established by the State Board of Education; or accredited schools or colleges of optometry, osteopathic medicine, or medicine.” (Italics added.)

f. EC 49452.5 mandates that school districts provide for scoliosis testing only by “qualified supervisors of health... or by school nurses employed by the district or the county superintendent of schools, *or pursuant to contract with an agency authorized to perform these services* by the county superintendent of schools of the county in which the district is located....” EC 56324 provides that health assessments “shall be conducted by a credentialed school nurse or physician who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed.” (Italics added.)

33. Betty DiRegolo is the district’s director of special education/programs. She oversees school health services, including nurses. Ms. DiRegolo agreed that nurses’ duties include some mandated services. However, she stated that the district is not mandated to employ school nurses and that mandated services can be contracted out. There is not currently a plan in place for provision of mandated health services if school nurses are eliminated. Mandated services would be performed by school nurses who are not employed directly by the district. The remaining services would be performed by properly trained staff. The district is currently working with the Board, seeking direction in finalizing a plan. Ms. DiRegolo stated that the district’s nursing staff is very skilled and their elimination was driven solely by budget considerations.

34. Nancy Spradling is the executive director of the California School Nurses Association. She clarified that school nurses are registered nurses with an additional school nurse credential. She does not believe that unlicensed individuals who are trained by school nurses or physicians can administer Diastat, prepare student health plans, administer mandated screenings, or perform other mandated functions. For instance, she does not believe that even an R.N. or licensed vocational nurse would be able to prepare individual student health plans or administer Diastat.

35. The district is facing a budget imbalance and as such has identified school nurses as a particular kind of service to be reduced. Legally mandated nursing services can be provided in two different ways, by special contract or by full-time employees. “As long as the required services will be provided, the district can properly change the manner of their provision and reduce or eliminate the existing particular kind of service used to provide them.” (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 640; *Gallup v. Alta Loma School Dist.* (1996) 41 Cal.App.4th 1571, 1585-1586.) As specifically stated in the Education Code, the district may contract with an agency to perform services mandated to be performed by a qualified supervisor of health or a credentialed school nurse. Hence, the district may properly layoff 4.10 FTE credentialed nursing staff.

Issues Related to Music Instruction

36. The district reduced K-6 music instruction by 3.0 FTE. Certificated teachers Robin Richie and Amy Adam represent 2.0 FTE in K-6 music instruction. Both received layoff notices. Three music teachers at the middle and high school level were retained to provide music instruction who have less seniority than Ms. Richie and Ms. Adams. The high

school and middle school music programs were not the particular kinds of services identified in the layoff resolution.

37. The elementary music program does not have band or choir/choral programs. The district's high school program includes instrumental instruction, marching band, symphonic band, pit band, and choir/choral. Pit choir students perform at school musicals. The middle school program has band (instrumental, not marching), choir, and a "zero period" before school string program. Middle school choir is an elective and students may be involuntarily assigned based on limitations in course selection. The band and string programs are by choice. At the middle and high school levels, beginning music is not a focus as most students start knowing how to play an instrument. Performance expectations are highest at the high school level. Students are expected to exhibit greater sophistication in identifying notes and reading scores. Music instruction at the secondary level requires special skills, knowledge, and experience beyond that required at the elementary music instruction level. Hence, competency criteria adopted in the Board resolution are appropriate for purposes of layoff.

38. Ms. Richie has a seniority date of August 15, 2002, and holds a professional clear single subject music credential, and a special CLAD authorization. She teaches elementary music at four sites: Rocklin, Cobblestone, Sierra, and Ruhkala Elementary Schools. Prior to the current school year, she conducted an after school music program in the Rocklin district for grades seven through 12. The students performed on field trips to include bookstores and retirement homes. From 2002 to 2005, she taught orchestra at Granite Oaks Middle School, a "zero period" before school program. This was a "for credit" class and grades were given. Students performed at various events including the Winter Concert, Back to School Concert, and Combined (district wide) Mega Concert. Ms. Richie explained that her "zero period" instruction was in addition to her regular teaching contract. The district paid her with "intervention/special funding."

Prior to coming to the district, Ms. Richie worked as a credentialed music teacher for 18 years. Her prior experience includes band/orchestra, strings, and choral instruction at the primary and secondary levels. She taught band from 1998 through 2001 at St. Rose Junior High School. Within the last five years, Ms. Richie has taught music at the middle and high school levels within the district. Ms. Richie possesses extensive experience in music instruction including band direction, orchestra, and music theory. She meets the competency criteria established in the Layoff Resolution, necessary to bump into a music instruction position at the middle school level. She possesses the skills, training, and experience to teach in the district's middle school music program. She is certificated and competent to bump into the position held by Mr. Douglas; a less senior middle school music teacher. (Factual Finding 39.) As such, Ms. Richie was not a proper recipient of a layoff notice and the accusation as to her must be dismissed.

39. Thomas Douglas has a seniority date of August 17, 2006. He holds a clear single subject music credential, a special CLAD authorization, and teaches 7/8 music at Spring View Middle School. He works in collaboration with the high schools into which his students transfer. Though less senior to Ms. Richie who is competent and qualified to teach music at the middle school level, he did not receive a layoff notice and is retained for the 2010-2011 school year.

40. Ms. Adam has a seniority date of August 17, 2000, and holds professional clear single subject credentials in music and introduction to mathematics, and a special CLAD authorization. She has taught string orchestra in the district at the elementary level for the last ten years. Prior to coming to the district, she taught middle school band in the Penryn and Loomis School Districts (50 percent in each district) from 1992 to 2000. She was assistant marching band director in Sacramento for eight years. She has taught a college level methods class and has published several concert collection music books. The published music is for various instruments for beginning level learners up through middle school learners. Though Ms. Adam does possess extensive experience in music theory, music instruction, and band, she has not within the last five years taught at the middle or high school levels. As such, she does not meet the competency criteria established in the Layoff Resolution, necessary to bump into a music instruction position at the middle or high school levels.

41. Kristopher Harper has a seniority date of August 17, 2005. Mr. Harper holds a clear single subject music credential and is the marching band director at Whitney High School. He directs marching band (at half-time during football games), honor band (at various venues), and pep bands (at basket ball games). Mr. Harper was hired with extensive experience in directing high school music departments including classroom instruction and marching band. He must be able to multi-task within the core curriculum in order to meet the overlapping needs of students involved in different ensembles. His responsibilities include teaching, standards assessments, drum core, flag corps (assisted by a flag coach), fundraising, after school practice, uniforms, Christmas Concert, attendance at all football games, and after school and Saturday practices. The district has won 25 awards since he has been at Whitney High School. Mr. Harper meets the competency criteria established in the Layoff Resolution. He possesses the special skills, training, and experience necessary to meet the district's music instruction needs at the high school level. He is properly retained for the 2010-2011 school year.

42. Marideth Hawkins also has less seniority than Ms. Richie and Ms. Adams. Ms. Hawkins' seniority date is August 12, 2004. She holds a clear single subject music credential and a special CLAD authorization. She teaches music at Rocklin High School. Ms. Hawkins possessed choral experience upon hire. She directs and is responsible for piano lab, marching band, music instruction, and flag corps (after school). Ms. Hawkins meets the competency criteria established in the Layoff Resolution. She possesses the special skills, training, and experience necessary to meet the district's music instruction needs at the high school level. She is properly retained for the 2010-2011 school year.

Issues Related to Physical Education Instruction

43. Certificated teacher Regina Manibusan teaches physical education (PE) part-time at Granite Oaks Middle School. She has a seniority date of August 14, 2008. She holds a clear single subject credential in PE and a special CLAD authorization. Michael Pappas teaches mathematics at Rocklin High School. He also has a seniority date of August 14, 2008. He holds clear single subject PE and foundational mathematics credentials and a special ELA authorization. He is in his second year as the junior varsity baseball coach at Rocklin High School. Mr. Pappas has not taught PE within the last five school years. As such, he does not meet the competency criteria established in the Layoff Resolution and is not qualified to bump into a PE teaching position. The district properly did not apply tie-breaking criteria to his situation.⁹

Issues Related to English Language Development Instruction

44. Shari Anderson is the district's English Learner Program Specialist. The district operates a K-12 program for students learning English. Non-English languages spoken by students in the district include Spanish, Punjabi, and Russian. The district employs six itinerate ELD (English Language Development) teachers at the elementary school level (K-6). The middle schools and high schools have similar programs with qualified ELD teachers. At the start of each year, students are assessed for English deficiencies using the CELDT (California English Language Development Test). CELDT subtests assess listening, speaking, reading, and writing abilities. Results are grouped by levels ranging from one to five (beginner, early intermediate, intermediate, early advanced, advanced). ELD teachers are assigned to provide English language instruction to students who score in ranges one, two or three. Regular classroom teachers provide English instruction to students who score at levels four and five, who the district considers to be "reasonably fluent."

45. The ELD program operates as a "pull-out" program. Teachers travel and pull students out of their self-contained classrooms into a separate classroom to teach English. Level one students are pulled out three to four times per week. Level two/three students are pulled out approximately two to three times per week. Each session last 30 to 45 minutes. Students are grouped by language and grade level. Group size varies from one to six learners. Students are reassessed throughout the year and are released from the program once they have achieved a level of proficiency.

The program content must meet State of California standards including books and curriculum. Materials used in the regular language arts curriculum (Houghton/Mifflin) are appropriate for level four/five English learners, but do not meet ELD standards for level one,

⁹ It is noted that tie-breaking criteria were applied to Ms. Manibusan and Rebecca Reed, who both teach PE part-time (.50 FTE), at the middle school level, and share seniority date of August 14, 2008. Ms. Manibusan prevailed after a lottery. (Factual Finding 24.)

two or three English learners. Teachers in the ELD program attend special training including a two day customized training that covers pacing and development of lesson plans. ELD teachers are trained in SDAIE (Specially Designed Academic Instruction in English), which Ms. Anderson described as a methodology or set of strategies that teachers employ to help English learners understand core subjects (such as social studies, science or literature).

46. Ms. Anderson is involved in hiring ELD teachers. She looks for teachers who have experience teaching ELD and/or English learners, training, education (for example, a Masters in English Development), interest, and a passion to work with English learners. If training is lacking, there is a significant learning curve. Administering and scoring tests requires special training and is more demanding than what is required in a normal classroom. Professional development for ELD teachers includes ADEPT (A Developmental English Proficiency Test) training. ADEPT can be provided by a trained teacher and does not have to be provided by a CLAD certified teacher. CELDT training is required for CLAD certified teachers and was last conducted in May 2009. Further, if a school has more than 20 English Learners, the school site must have an English learner committee. ELD teachers are the facilitators at those meetings.

47. According to Ms. Anderson, the district took into account the needs of the district and the students. She stated, “the goal of the ELD program is to teach our students English rapidly and efficiently so that we close the achievement gap.” She believes that the transfer of regular classroom teachers into the ELD program would have a negative impact on the program. The ELD teachers are going into their third year of experience. Transferring a teacher who has not volunteered for the position would be detrimental to them and the students. ELD instruction is not a particular kind of service that the district has identified for reduction. ELD instruction requires special skills, knowledge, and expertise which the district determined no multiple subject credentialed teacher with greater seniority possessed.

48. Amanda Withers and Shannon Moore are ELD teachers who were retained for the 2010-2011 school year. They share a seniority date of August 16, 2007. Ms. Moore holds a professional clear multiple subject credential and a special CLAD authorization. Ms. Moore worked in a similar “pull-out” English learner program in Fairfield, prior to coming to Rocklin. She provided intervention on a full-time basis. She currently has two years, six months ELD teaching experience and three years CELDT experience. Ms. Withers holds a clear multiple subject credential and a special CLAD authorization. Ms. Withers came from a multi-linguaged school population in Rancho Cordova where she had been trained on administering the CELDT. She was required to teach English learners in their core classroom and has experience with the full range of State standards. She currently has two years, six months ELD teaching experience.

49. Marisa Williams was retained for the 2010-2011 school year. Ms. Williams transferred into the ELD program from a self-contained fourth grade classroom assignment at the start of the 2009/2010 school year. Her seniority date is August 12, 2004. She holds a professional clear multiple subject/social science credential and a special CLAD

authorization. She specifically sought to work with the district's English learners. She volunteered to audit ELD instruction and participate in the English learner Saturday and after school programs. Since she missed the May 2009 CELDT training, this was provided by a retired district teacher who had attended a "train the trainer" course last year. She has participated in other extensive customized training. According to Ms. Anderson, a replication of this customized training would be too costly to provide whole scale. Finally, competency criteria are not applicable to Ms. Williams because those criteria are for purposes of layoff, not new hires or special filled positions.

50. Eleven certificated elementary school teachers with more seniority than Ms. Withers, Ms. Moore, and Ms. Williams, challenged the district's determination that they were not competent to bump into an ELD teaching assignment. Those employees and their seniority dates are: Cathy Bardet (August 17, 2006), Kimberly Bay-Menacho (August 18, 2006), James Cook (September 6, 2005), Lori Gin (August 16, 2007), Mary Gomes (August 16, 2007), Deborahlyn Harding (November 27, 2006), Karen Janz (August 17, 2006), Lara Kikosicki (August 16, 2007), Kate Kirk (August 17, 2006), Lacey Spear (August 16, 2007), and Rebecca Vestal (August 17, 2006). The parties entered into a stipulation as to these certificated teachers as follows:

The individual respondents listed below all possess a multiple subject credential and a Cross Cultural (CLAD) or some type of certification authorizing them to teach English Language Learners.

A Multiple Subject credential and certification to teach English Language Learners are the only credentials and/or certifications required for the District's English Language Development (ELD) positions.

51. Nine of the certificated teachers named in the stipulation testified at hearing. Collectively they possess varying degrees of expertise teaching English learners within self-contained classrooms. All had level 4/5 English learners in their classrooms to whom they provided core curriculum instruction. Most had level 1 to 3 learners to whom they provided the majority of instruction collateral to "pull out" sessions. None of those who testified had experience administering the CELDT or ADEPT assessments. None had taught ELD in the district or received special training offered by the district to ELD instructors. Most had not utilized SDAIE strategies. As such, none of the employees named in the stipulation met the district's competency definition as set forth in the layoff resolution. The eleven teachers named in Factual Finding 50, were proper recipients of layoff notices.

Issues Related to Alternative Education Instruction

52. Milisav Ilic is the principal of Alternative Education Programs. He oversees the continuation high school and independent study program. Victory High School is attended by junior and senior high school students who have not shown success in a traditional school setting. These students are usually credit deficient when they enter Victory. Mr. Ilic described Victory students as "at risk kids" needing a lot of loving care.

Teachers must be sensitive to special issues and employ a medley of instructional strategies geared to meet challenging academic, social, and emotional needs. Teachers must be flexible and capable of teaching varied subject matter. They can be asked to go from language arts to science, speech and debate to journalism, history to physical education. Mr. Ilic looks for this willingness during interviews. He stated that Alternative Education experience is a must and every teacher he has hired has possessed it. No teacher with greater seniority possessed the special skills, knowledge, and teaching experience to bump into the Alternative Education Program at Victory High School.

53. Katelyn Alstot teaches Language Arts at Whitney High School. She has a seniority date of August 14, 2008. She holds a preliminary single subject credential in English and psychology, and a special ELA authorization.

Mary Abbott was retained to teach English at Victory High School where she has taught since August 2009. Her seniority date is August 13, 2009. Ms. Abbott was hired specifically as an alternative education teacher. She came from a continuation school in a nearby district. She holds a clear single subject credential in English and journalism, and a special CLAD authorization. Ms. Abbott possesses the special skills, knowledge, and experience to teach in an alternative education program.

Though Ms. Alstot has more seniority within the district, she has not previously taught in an alternative education program. There was no evidence that she possesses the skills, training, and expertise to teach this challenging student population. She does not meet the competency criteria established in the Layoff Resolution and as such, cannot bump into an English position at Victory High School.

Issues Related to Seniority Dates

54. Amanda Hargrove (aka Amanda McNamara) disputed her seniority date with the district. Ms. Hargrove holds a clear single subject credential in biological sciences/chemistry and a special ELA authorization. She teaches science at Whitney High School. Ms. Hargrove first rendered paid service to the district on August 18, 2005, for the 2005/2006 school year. On April 20, 2006, she submitted a letter of resignation indicating her intent to move out of state. On May 3, 2006, her resignation was accepted by the Board. Ms. Hargrove subsequently decided to stay in Rocklin. On July 19, 2006, the Board acted to re-hire Ms. Hargrove for the 2006/2007 school year. Her first date of paid service to the district for the 2006/2007 school year was August 17, 2006. There was no actual interruption in her teaching services to the district. There was an interruption in her employment status.

55. The district mails annual verification of seniority and credentials to certificated employees. In November 2008, respondent informed the district that there was an error in her seniority date of August 17, 2006, and that the correct date was August 18, 2005. At that time, the district notified her by e-mail on December 4, 2008, that pursuant to Education Code 44848, her resignation triggered a re-setting of her first date of paid service.

56. Education Code section 44848 states that “when any certificated employee shall have resigned or been dismissed for cause and shall thereafter have been reemployed by the board, his date of employment shall be deemed to be the date on which he first accepted reemployment... or rendered paid service... after his reemployment.” Since Ms. Hargrove resigned at the end of the 2005/2006 school year and was subsequently re-hired for the 2006/2007 school year, her new seniority date is August 17, 2006.

57. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists pursuant to Education Code sections 44949 and 44955. All notices and jurisdictional prerequisites required by those sections were satisfied.

2. The services the district seeks to eliminate in this matter, as set forth in Layoff Resolution 09-10-23, are the particular kinds of service that may be reduced or discontinued within the meaning of Education Code section 44955. The board’s decision to reduce or discontinue these particular kinds of service was not arbitrary or capricious, but constituted a proper exercise of the board’s discretion. Pursuant to Education Code sections 44949 and 44955, legal cause exists for the district to reduce or discontinue the particular kinds of services set forth in the Layoff Resolution. The reduction or discontinuance of these identified particular kinds of services relates solely to the welfare of the district and its pupils.

3. With the exception of Robin Richie, no certificated employee with less seniority than any respondent is being retained to render a service that any respondent is certificated and competent to render. Legal cause exists pursuant to Education Code sections 44949 and 44955 to give respondents final notice that their services will not be required for 2010-2011 school year.

4. Robin Richie is certificated and competent to teach music at the middle school level. She is senior to an employee being retained to teach in the middle school music program. Pursuant to Education Code section 44955, the accusation as to Ms. Richie must be dismissed. (Factual Finding 38.)

RECOMMENDATION

1. The Rocklin Unified School District’s action to reduce or eliminate the particular kinds of services identified in Layoff Resolution 09-10-23, for the 2010-2011 school year is **AFFIRMED**.

2. The accusation as to Robin Richie is DISMISSED. She is considered re-employed for the 2010-2011 school year.

3. The Accusation against the remaining respondents is SUSTAINED. The Rocklin Unified School District may give final notices to respondents, with the exception of Ms. Richie, that their services will not be required for the 2010-2011 school year. Notices shall be given in inverse order of seniority.

DATED: April 30, 2010

DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

Appendix A**2010 Rocklin Unified School District – List of Respondents**

	Name	Procedural Status
1	Amy Adam	
2	Katelyn Alstot	
3	Cathy Bardet	
4	Kimberly Bay-Menacho	
5	Nolan Bettleyon	
6	Karlene Bittler	Did not return Notice of Defense
7	Jennifer Bradley	
8	Nancy Bronte	
9	Jody Ciesco	
10	Susan Clarke	
11	Caitlin Conheim	
12	James Cook	
13	Elisabeth Davidson	
14	Cari Elcock	
15	Timothy Farnan	Did not return Notice of Defense
16	Ann Feliz	
17	Susan Firchau	
18	Patrick Gale	Did not return Notice of Defense
19	Lori Gin	
20	Mary Gomes	
21	Jennifer Hammond	
22	Michael Hannickel	Layoff notice rescinded
23	Deborahlyn Harding	
24	Amanda Hargrove	
25	Nell Hildebrand	
26	K. Skott Hutton	
27	Whitney Isetta	
28	Karen Jansz	
29	Janice Johnson	Did not return Notice of Defense
30	Natalie Jorgensen	Did not return Notice of Defense
31	Lara Kikosicki	
32	Kelly King	
33	Kate Kirk	
34	Robert Klingensmith	
35	Valerie Kramer	Did not return Notice of Defense
36	Carissa Kuehn	Did not return Notice of Defense
37	Chaunte Martin	

	Name	Procedural Status
38	Jeremy Miller	
39	Charise Montera	
40	Karen Montgomery	
41	Patricia Onorato	Layoff notice rescinded
42	Cruz Ordonez	
43	Michael Pappas	
44	Alison Parrott	
45	Alicia Perkins	
46	Mary Ann Rau	Did not return Notice of Defense
47	Kerianne Reed	
48	Robin Richie	
49	Holly Runsten	
50	Genevieve Sherman	
51	Lacey Spear	
52	Ryan Swarts	
53	April Taylor	
54	Rebecca Vestal	
55	Jeni Weeks	
56	MaryAnn Younger	
57	Catherine Zanetti	Did not return Notice of Defense