

BEFORE THE
GOVERNING BOARD OF THE
SOMIS UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:	OAH No.: 2012031104
LAURIE ALLEN, and other named Certificated Employees of the Somis Union School District,	
Respondents.	

PROPOSED DECISION

Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 1, 2012, at Somis, California.

Barbara J. Ginsberg, Attorney at Law, represented Dr. Colleen Robertson, Superintendent/Principal (Complainant) of the Somis Union School District (District).

Laurie Allen, Carol Anderson, Jane Coleman, Lorin Maygren, Francis Smith, and Alice Watson (Respondents), were present at hearing and represented themselves.

Oral and documentary evidence was received and the matter was submitted for decision on May 1, 2012. The original hearing date of April 17, 2012, was continued for good cause to the May 1, 2012, hearing date. Consequently, the statutory timelines were extended pursuant to Education Code section 44949, subdivision (e), thereby extending the statutory timelines for 14 days to May 21, 2012.

The Administrative Law Judge now finds, concludes and orders as follows:

SUMMARY

The Superintendent of the District has recommended to the Board of Education (Board) that particular kinds of services be reduced or discontinued no later than the beginning of the 2012-2013 school year due to a lack of funds. Included in the particular kinds of services are all of the employees at the Somis Academy Charter School (Somis Academy), a dependent charter governed by the Somis Union School District Board of Trustees. The District also has a traditional K-8 school, Somis School, which operates a separate home study program within the Somis School. All six Respondents are certificated employees at the Somis Academy.

The District seeks to layoff all employees at the Somis Academy due to a lack of funding and the concern that Somis Academy is projecting a \$230,000 budget deficit for the 2012-2013 fiscal year. The District emphasizes that it is not seeking to close the Somis Academy or to revoke its charter. The District is attempting to restructure the Somis Academy and address the budget shortfall before the next school year. It determined that it must take the current action to preserve its fiscal solvency.

Respondents object to the District's proposal to layoff all of the employees at the Somis Academy. Essentially, Respondents argue that the District's layoff failed to comply with the Somis Academy Charter Renewal Petition (CRP) (Exhibit A) which states that the District must notify and consult with the Charter Advisory Panel (CAP) (Exhibit B) before any action may be taken regarding the Somis Academy.¹ Respondents also seek to assert their right to bump back into the Somis School despite a Collective Bargaining Agreement (CBA) provision prohibiting bumping between the Somis Academy and the Somis School. The Somis Academy teachers also challenge the District's bumping criteria contained in the Board's resolution.

FACTUAL FINDINGS

Parties

1. Complainant Colleen Robertson, Superintendent of Somis Union School District (Superintendent) filed the Accusation in this proceeding in her official capacity.

2. Respondents at all times relevant were certificated District employees.

3. On March 13, 2012, the Board, following the recommendation of the District's Superintendent, adopted Resolution Number 11/12-14 (Resolution), deciding to reduce or discontinue certain particular kinds of services (PKS) no later than the beginning of the 2012-2013 school year. Pursuant to Education Code² sections 44949 and 44955, the following particular kinds of services were recommended to be reduced or discontinued:

¹ The CAP serves as the advisory body for the Somis Academy and is intricately involved in all decision making regarding the school's management, budget, charter implementation, etc. The CRP incorporates the Charter of the Somis Academy and contains a description of how the charter is organized and how it will operate.

² All further statutory references shall be to the Education Code unless otherwise specified.

AT SOMIS SCHOOL:		
Somis School Elementary Reading Teacher	1.0	FTE
Somis School English Learners Instruction	1.0	FTE
AT SOMIS ACADEMY:		
Somis Academy Director	1.0	FTE
Somis Academy Supervising Teacher (Grades 6-12) plus Yearbook and ASB	0.5	FTE
Somis Academy Supervising Teacher (Grades 9-12)	1.0	FTE
Somis Academy Supervising Teacher (Grades K-8) plus Library and Enrichment	1.0	FTE
Somis Academy Counselor and Testing Coordinator	1.0	FTE
Somis Academy Social Studies Instruction (Grades 6-12)	1.0	FTE
Somis Academy Supervising Teacher (Grades K-12) plus Art Instruction (Grades K-12)	1.0	FTE
Somis Academy Supervising Teacher (Grades K-12) plus CELDT instruction and Foreign Language Instruction	0.5	FTE
Somis Academy High School Math Instruction and Grades 6-12 Physical Education Instruction	0.5	FTE
Somis Academy Visual Arts and Performing Arts Instruction and English Instruction	0.5	FTE
Somis Academy English Instruction and Business Instruction	1.0	FTE
Somis Academy Supervising Teacher (Grades K-8)	0.5	FTE
Somis Academy Supervising Teacher (Grades K-5)	0.5	FTE
Somis Academy Math Instruction (Grades 6-12)	HOURLY	
Somis Academy Special Education English Instruction	HOURLY	
Somis Academy Special Education Math Instruction	HOURLY	
Somis Academy Science Instruction (Life Science, Biology, Marine Biology, Advanced Placement) (Grades 9-12)	HOURLY	
Somis Academy Driver Education Instruction	HOURLY	
Somis Academy Science Instruction (Physical Science, Physics, Chemistry) (Grades 6-12)	HOURLY	
Somis Academy Science Instruction (Junior High)	HOURLY	
Somis Academy Psychologist	HOURLY	
Somis Academy Speech and Hearing Instruction	HOURLY	
Somis Academy Supervisor of Special Education Instruction	HOURLY	

TOTAL 12.0 FTE plus HOURLY

4. Pursuant to the Board's Resolution, the Superintendent, or her designee, was directed to serve appropriate notices in accordance with sections 44955 and 44949 to all permanent and probationary employees possibly affected by virtue of the reduction

or discontinuance of the particular kinds of services specified in the Resolution. The Superintendent, on behalf of the District, complied with this directive. On or before March 15, 2012, Respondents, and 18 other certificated employees, were given written notice pursuant to sections 44949 and 44955 that their services would not be required for the following school year. Each notice contained an attached copy of the Board's Resolution which specified the reasons for the recommendation not to reemploy them, including the Board's decision to reduce and/or discontinue identified particular kinds of services.

5. Of the 24 employees sent notices by the District, Respondents were the only employees to file timely requests for hearing. Any certificated employee who failed to file a request for hearing has waived his or her right to a hearing, and is subject to layoff by the District. On March 30, 2012, the District filed, and thereafter served, the Accusation on Respondents. The District stipulated that all Respondents had filed timely notices of defense. Respondents are all certificated employees currently employed at the Somis Academy.

6. All prehearing jurisdictional requirements have been met.

Reduction of Services

7. In identifying the particular kinds of services it intends to reduce or discontinue in Factual Finding 3, the District identified several positions at the Somis Academy which it stated were "hourly." The Superintendent testified that some employees of the Somis Academy were hired as "hourly" employees to provide services to the students, including instructional services. However, the District does not specify an FTE for the "hourly" positions, and the record is void as to the identity or status of these employees. Consequently, the District has not sufficiently identified the particular kind of service these "hourly" employees represent because there is no indication of the number positions or FTEs effected. It is noted, however, that the 12 FTE positions identified by the District, and sought to be reduced in this proceeding, do not include the "hourly" positions. The Respondents in this case are not "hourly" employees and therefore are not impacted by the "hourly" positions in the Resolution. To the extent the District seeks to layoff certificated probationary or permanent employees based upon the "hourly" positions referenced in the Resolution's in Factual Finding 3, the term "hourly" does not define with sufficient specificity the FTEs for the positions. Thus, the "hourly" positions may not be considered a particular kind of service subject to reduction or discontinuance if the "hourly" position is for a certificated probationary or permanent employee. All other services identified in the Resolution (Factual Finding 3) are particular kinds of services that may be reduced or discontinued within the meaning of section 44955.

8. The Board took action to reduce or discontinue the services set forth in Factual Finding 3 due to a lack of funding and the need for the Board to ensure the solvency of the District for the upcoming fiscal and school year. Specifically, the

Superintendent testified that the Somis Academy is operating with a deficit of approximately \$187,000 for the 2011-2012 school year, and that unless a plan is developed to bring the budget into balance, the District would not be able to keep Somis Academy open. The Superintendent also cited declining enrollment and a decline in average daily attendance, which impacts funding for the Somis Academy, as additional reasons for the budget deficit.³

9. The Board's decision to reduce the particular kinds of services in Factual Finding 3 will not result in a reduction of services below the levels mandated by state and federal law. Respondents did not argue that the layoff would reduce the District services below levels mandated by law and no evidence was offered to establish this fact. However, the District only seeks to layoff the employees at the Somis Academy to restructure the charter school and avert financial insolvency. The District does not seek to permanently close the charter academy, and intends to rehire employees as needed after the restructuring.

10. The Board's decision to reduce the particular kinds of services in Factual Finding 3 is neither arbitrary nor capricious but is rather a proper exercise of the Board's discretion.

11. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board, with the noted exceptions.

12. The District properly considered all positively assured attrition, including all known resignations and retirements as of March 15, 2012.

13. The District maintains a Seniority List (Exhibit 4) containing employees' first date of paid service, current assignments and locations, credentials, and authorizations. The District used the Seniority List to develop a proposed order of layoff of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held other credentials entitling them to displace or "bump" other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by known vacancies, and determined who must be laid off in inverse order of seniority. Respondents did not disagree with the accuracy of the Seniority List.

³ Respondents did not argue that the District's layoff should be based upon average daily attendance (ADA) as opposed to a reduction in the particular kinds of services (PKS). But, the District has broad discretion in determining whether to base the layoff upon PKS or ADA. ADA was but one factor cited by the District for the layoff. The lack of funds and the Somis Academy's budget deficit were the primary reasons cited for the layoff.

14. Article 17.9 of the CBA between the District and the Somis Teachers Association provides, in relevant part, that:

The District and the Somis Teachers Association therefore agree, in accordance with Government Code section 3543.2(c)⁴, that when the Board takes action to reduce particular kinds of service, and it becomes necessary to reduce the number of certificated employees, unit members assigned to District schools/programs (including home study independent program) will not be eligible to displace unit members assigned to the Somis Academy, and unit members assigned to the Somis Academy will not be eligible to displace unit members assigned to District schools/programs. In all other aspects the layoff of Somis Teachers Association unit members shall be governed by the provisions of the California Education Code. This provision becomes effective July 1, 2011.

15. In addition to section 17.9 of the CBA, the District has also established “bumping” criteria which it included the Board’s Resolution. In pertinent part, the Board’s Resolution provides that a more senior employee is defined as certificated and competent for reassignment into a position currently held by a more junior employee if he or she:

- (1) currently possesses a clear, professional clear, life, or preliminary credential in the subject(s) or grade level to which the employee will be assigned at the beginning of the 2012-2013 school year (in the case of displacing junior employees teaching in a departmentalized setting, single subject credential(s) or subject matter authorization in that subject area);
- (2) is compliant with the provisions of the No Child Left Behind Act and holds the status of “highly qualified” in the subject(s) or grade level to which the employee will be assigned at the beginning of the 2012-2013 school year;
- (3) has an appropriate EL authorization for the assignment;

⁴ Government Code section 3543.2, subdivision (c) provides that “Notwithstanding Section 44955 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding procedures and criteria for the layoff of certificated employees for lack of funds. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44955 of the Education Code shall apply.”

- (4) in the case of displacing junior employees teaching in a traditional classroom setting at Somis School, has at least one complete year of experience teaching in a traditional classroom setting at the Somis School in the last five years in the subject matter area to be assumed.

The Resolution's "bumping" criteria incorporate section 17.9 of the CBA by providing that in accordance with said section:

a more senior employee currently serving at the Somis Academy is specifically not competent for reassignment into a position currently held by a more junior [employee] at the Somis School (including home study independent study program), and a more senior employee currently serving at the Somis School (including home study independent study program) is specifically not competent for reassignment into a position currently held by a more junior employee at the Somis Academy. Moreover, in no event may a more senior employee displace a more junior employee unless the more senior employee is both certificated and competent for the entire assignment of the more junior employee.

16. The Board's Resolution No. 11/12-14 (Exhibit 2) established tie-breaking criteria to determine relative seniority of certificated employees who first rendered paid service on the same date. The validity or application of the tie-breaking process was not challenged at hearing and is not at issue in this case. But the tie-breaking criteria are determined to be reasonable and were appropriately applied by the District.

Somis Academy

17. Somis Academy is a dependent charter school for grades K-12 which is closely aligned with the District although its budget is separate and apart from the Somis School's budget. Somis Academy is governed by the District and the Somis Union School District Board of Trustees (SUSBDT). The Superintendent of the District retains supervisory and oversight responsibility for the Somis Academy, is responsible for its budget, and acts as a liaison between the Somis Academy and SUSBDT. Somis Academy's charter was renewed for a second five year term in 2007 and the current charter is scheduled for expiration and/or renewal in August 2012. The CRP provides that Somis Academy's staff are employees of the District and that they will participate in the State Teacher's Retirement System, the Public Employee's Retirement System and the federal Social Security System according to the same guidelines and requirements applicable to other District staff members.

18. According to the CRP, Somis Academy's instructional program emphasizes individualized learning for each student. The school offers curriculum through classroom, web based school to home and home based education. Its primary

mode of deliverance of the curriculum is home based education through the use of the internet and email. Students are typically assigned a “supervising teacher” who meets with the student and the student’s family on a weekly basis. There are also teachers who provide specific subject matter instruction to the students, some as certificated permanent employees of the District, others as hourly employees of the District. Supervising teachers also provide subject matter instruction to students, when required. Teachers, supervising teachers, and students communicate primarily through a school-provided, secure email system. Assignments are made and coursework submitted through the school’s reporting system, a School Pathways product called “Report Writer Web.” The teacher and/or supervising teacher gives assignments on a monthly basis, and monitors the student’s weekly progress. Students having difficulty may meet with the teachers either by web cam or by personal visit, and teachers have office hours to facilitate student visits. Teachers also provide instruction to students using in person “labs” in computer, science, art, performing arts, and foreign languages. The method of teaching and delivering instruction in the home study educational program at the Somis Academy is markedly different than the instruction provided in the Somis School traditional classroom environment. The testimony established that a different skill set is required for teachers in the Somis Academy to effectively teach students in the individualized manner employed in the home study program at the charter academy.

19. The Superintendent testified that if the Somis Academy’s \$187,000 budget deficit is not addressed, the District could risk insolvency. She stated that the budget deficit for the charter school is projected to increase to \$230,000 for the 2012-2013 school year if no action is taken. The Superintendent clarified that the District was not seeking to close the Somis Academy, but instead, was attempting to restructure and balance the school’s budget to reduce the risk of financial exposure to the District. She believed that the layoff was the only way to ensure the solvency of the District. The District will consider rehiring teachers and employees as necessary to meet the needs of the Somis Academy after restructuring is complete and fiscal solvency is assured.

Specific Challenges to Layoff

20. Respondents collectively argued that the District failed to comply with Somis Academy’s CRP (Exhibit A) dispute resolution provisions and the bylaws of the CAP (Exhibit B) in seeking to layoff the employees at Somis Academy. Specifically, Respondents argue that the layoff notice provisions in Education Code sections 44949 and 44955 do not conform to the notice requirements in the CRP which require the District to notify the CAP of any noncompliance by the Somis School and give the CAP 15 days to respond in writing. The CAP bylaws also require that the CAP be consulted prior to any decision by the District that effects the operation of the Somis Academy. Consequently, Respondents assert that the District’s layoff has denied them due process because the CAP was not properly

notified of the layoff and was not given an opportunity to respond. Respondent's argument on this issue is not persuasive.

21. The Somis Academy is a dependent charter that is governed by the SUSDBT and is closely aligned with the District. The Somis Academy charter was granted pursuant to Education Code section 47600 et seq., and the District is deemed its exclusive public school employer pursuant to Education Code section 47611.5. The CRP provides that the District is the "Charter School Employer" for purposes of the Education Employment Relations Act (EERA)⁵ and that the teachers at Somis Academy are represented by the bargaining representative for the District. The CRP further provides that all of the Somis Academy employees are employed by the District. Essentially, the CRP provides that certificated employees at Somis Academy are entitled to the rights and protections afforded by the statutes and regulations governing public school employers, and thus, the tenure, merit, and civil service provisions applicable to public school employers are also applicable to Somis Academy. (See § 47611.5, subds. (b) and (c).)

22. Although Education Code section, 47610 provides that charter schools are exempt, with specified exceptions, from laws governing school districts, this provision applies to the charter school and its operation, and not to the certificated employees employed by a dependent charter who has a school district acting as the public school employer. The District must comply with the layoff provisions contained in Education Code sections 44949 and 44955 before laying off a certificated employee. Provisions of the CRP that require the SUSDBT and the District to consult with the CAP before making decisions regarding the Somis Academy are not applicable to the layoff proceedings. The layoff proceedings are intended to ensure that the District complies with notice and seniority protections afforded certificated employees when the District determines that it necessary to reduce or discontinue particular kinds of services.

23. To the extent Respondents assert that the District is improperly attempting to close the charter school without complying with the notice and procedure requirements in the CRP and the CAP bylaws, such disputes are between the Somis Academy, SUSDBT and the District, and are not proper issues for resolution during a layoff hearing. These disputes are more appropriately addressed under the statutory provisions governing charter schools, section 47600 et seq., more specifically section 47607, which provides the process for appeals, notice, and hearings for charter school disputes. These disputes are ultimately heard and decided by the County Board of Education and/or the State of Board of Education. (See § 47607.)

⁵ Government Code section 3540 et seq.

CBA's Prohibition Against Bumping

24. The District contends that the Somis Academy certificated employees are prohibited from bumping into the District's Somis School (traditional school) because section 17.9 of the CBA (Factual Finding 14) between the District and the Somis Teachers Association prohibits bumping between the two schools in the event of a teacher layoff.

25. Section 44955, subdivision (b), provides, in pertinent part that "[t]he 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." Section 17.9 of the CBA effectively nullifies this statutory provision if a more senior teacher at the Somis Academy who is certificated and competent is prohibited from bumping into a position that a less senior employee at the Somis School has been retained to fill. The same is true for a teacher at the Somis School seeking a position at the Somis Academy.

26. The EERA, Government Code section 3540 et seq., seeks to improve personnel management and employer-employee relations within the public school system and gives collective bargaining rights to teachers. Government Code section 3543.2, subdivision (c), provides in pertinent part that "notwithstanding Section 44955 of the Education Code, the public school employer and the exclusive representative shall, upon requests of either party, meet and negotiate regarding procedures and criteria for layoff of certificated for lack of funds." However, Government Code section 3540 provides that "nothing contained herein shall be deemed to supersede other provisions of the Education Code and the rules and regulations of the public school employers which establish and regulate tenure or a merit or civil service system...."

27. The California Supreme Court has held that in enacting the EERA the Legislature intended to preclude contractual agreements which would replace, set aside, or annul statutory provisions that mandate particular procedures, protections, or entitlements. (*San Mateo City School District v. Public Employment Relations Board* (1983) 33 Cal3d 850, 864-66 (the court in a layoff case found a provision of a CBA invalid because it replaced or set aside a provisions of the Education Code relating to the layoff of classified employees, noting Gov. Code § 4501, subd. (g), and Ed. Code §§ 45114, 45115, 45117, 45298, and 45308).) In *Board of Education of the Round Valley Unified School District vs. Round Valley Teachers Association* (1996) 13 Cal.App.4th 269, a decision involving a teacher dismissal under Education Code section 44944, the Court also held that a CBA provision which set forth procedures for the dismissal or decision not to reelect probationary teachers, was invalid because the CBA provision was directly contrary to, and superseded the procedures established in Education Code section 44929.21, subdivision (b), which specifies procedures that a school district must follow when notifying a probationary employee of its decision "to reelect or not reelect the employee for the next succeeding school year to the position." (*Board of Education*

of the Round Valley Unified School District vs. Round Valley Teachers Association, supra, 13 Cal.App.4th 269, at pp. 284-286.)

28. Government Code section 3540, and the Supreme Court's interpretation of that provision, invalidate CBA provisions that are contrary to, or directly in conflict with a provision of the Education Code, thereby superseding or annulling the Education Code provision. Sections 44949 and 44955 require certain procedures for layoffs that are intended to ensure that seniority rules and regulations are not violated during a layoff of certificated employees. Section 44955, subdivision (b), specifically prohibits the District from retaining a less senior employee to perform a service that a more senior employee is certificated and competent to perform. Section 17.9 of the CBA is contrary to this provision and is therefore invalid for the purpose determining the bumping rights of the certificated employees in this proceeding.

Challenge to the Bumping Criteria in the Resolution

29. The District has established "bumping" criteria (Factual Finding 15) that incorporates the bumping prohibition between the Somis Academy and the Somis School in the CBA, in addition to requiring that the certificated employee possess (1) credential or authorization for the subject or grade level being sought; (2) with NCLB and "highly qualified" in the subject or grade level being sought; (3) has an appropriate EL authorization; and (4) has at least one complete year of experience teaching in a traditional classroom setting at the Somis School in the last five years in the subject matter area to be assumed to displace a less senior employee teaching in a traditional classroom at the Somis School. Because the bumping prohibition in the CBA is invalid, and all Respondents meet the first three bumping criteria, this court need only consider the requirement that certificated teachers must have at least one year teaching in a traditional classroom environment in order to bump into the Somis School, the only positions available to the Respondents.

30. As stated above, section 44955, subdivision (b), provides that no permanent employee may be terminated while an employee with less seniority is retained to render a service the terminated employee is certificated and competent to render. "Certificated" is defined by the provisions of the Education Code pertaining to credentials, but "competent" is not specifically defined. In *Forker v. Board of Trustees* (1994) 160 Cal.App.3d 13, 19, the court defined the term in a reemployment proceeding under section 44956, in terms of the teachers' skills and qualifications, specifically, as "relating to special qualifications for a vacant position, rather than relating to the on-the-job performance of the laid-off permanent employee." In doing so, the court noted that courts in reduction in force cases, namely *Brough v. Governing Board* (1981) 118 Cal.App.3d 702, 714-15, and *Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 654-55, had interpreted the term in a similar manner.

Courts in analogous layoff and reemployment contexts, construing provisions similar to section 44955, have recognized that school districts have discretion to

establish rules to define teacher competency. Thus, after reviewing earlier cases, the Court in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565 (*Duax*), wrote: “Hence, from these authorities we conclude that a board’s definition of competency is reasonable when it considers the skills and qualifications of the teacher threatened with layoff.” (See *Martin v. Kentfield School District* (1983) 35 Cal.3d 294, 299-300; *Forker v. Board of Trustees*, *supra*.)

In *Duax*, the governing board had established a standard of competency that required one year of full-time teaching in the subject area within the last ten years. The Court found such standard “clearly related to skills and qualifications to teach” and therefore a reasonable one. (*Duax*, *supra*, 196 Cal. App.3d 555, at p. 567.) The Court also concluded that the standard did not define competency too narrowly.

31. Here, the District contends that the a competency standard or criteria that requires one year of teaching in the last five years in a traditional classroom setting at the Somis School is needed to ensure that teachers are competent to teach in traditional classrooms prior to being assigned to the Somis School. The Superintendent testified that the District is a small school district with essentially three different instructional programs that are separate and distinct from one another. The District has the Somis School program for grades K-8 with traditional classroom instruction, and approximately 225 students housed on the District’s single school campus. There is also the Somis Academy, the dependent charter for grades K-12 that is a separate home based educational program, which has approximately 167 students and whose staff is house off-site. Finally, the District has an independent home study program within the Somis School, but that is housed off-site for grades K-8 and has approximately 55 students.

32. The Somis Academy and the Somis School educational programs are significantly different in their approaches to teaching in that the Somis Academy does not utilize traditional classroom instruction and relies heavily on individualized teaching methodology. Teachers primarily work with students and their families on a one-to-one basis through web based communication devices and processes. Conversely, the Somis School requires its teachers to instruct very diverse classroom populations with structured, traditional curriculums and lesson plans. The Superintendent testified that it requires teachers to have at least one year in the last five years teaching in a traditional classroom to ensure that teachers who have been in the home-study based program are currently skilled and qualified to instruct a traditional classroom. The Somis Academy and Somis School, with the exception of the home study program within the Somis School, employ two very different educational teaching methodologies. It is not unreasonable or arbitrary for the District to impose the one year in the last five years requirement for teaching in a traditional classroom.

33. However, the District may not use its bumping criteria in Factual Finding 15 to prohibit Somis Academy certificated employees from bumping into the

Somis School independent home study program because that program does not employ the traditional classroom teaching techniques and it was the model upon which the Somis Academy's home study program was designed.

34. Respondents, although admitting that the Somis Academy and the Somis School teaching methods are significantly different, nevertheless argued that as teachers for many years, the Somis Academy teachers were still competent to teach in traditional classrooms. Although Respondents suggested that the reverse would not be true for a teacher in a traditional classroom setting attempting to assume a position at the charter academy. Respondents admitted that a special skill set was required to teach in the web based home study program at the Somis Academy because of the lack of frequent personal interaction with the students in the home study program. However, several Respondents claimed that they still taught in the traditional classroom setting, although not nearly as frequent as the teachers in the Somis School.

35. The District's bumping criteria, with the exception of the section 19.9 CBA prohibition, as set forth in Resolution 11/12-14 and quoted in Factual Finding 15, relates to the skills and qualifications of its certificated employees, as required by the foregoing authorities, and may be used by the District in implementing the layoffs. The time period established in the competency rule is not unduly restrictive.

Respondents' Individual Challenges to the Bumping Criteria

Carol Anderson

36. Carol Anderson (seniority date November 1, 1996) currently serves in the position of the Director of the Somis Academy. The position was eliminated by Resolution 11/12-14. Ms. Anderson holds a multiple subject clear credential entitling her to teach self-contained multiple subject classrooms and an administrative services credential. Ms. Anderson has never taught in a classroom setting, although she was instrumental in setting up the Somis School independent home study program, and had served as a teacher in the home study program for the Somis School. Ms. Anderson was asked to start up the Somis Academy dependent charter school because of her experience in setting up the home study program for the Somis School. The Somis School's independent home study program is currently staffed by Heidi Moon and David Jackson, certificated employees who are less senior to Ms. Anderson. Ms. Moon and Mr. Jackson are the only two certificated teachers in the Somis School home study program.

37. At hearing, the District stipulated that Ms. Anderson was certificated and competent to bump into the independent home study position at the Somis School

held by Ms. Moon (seniority date October 14, 1998).⁶ Ms. Moon will be reassigned to a position that became available due to the retirement of a certificated employee after March 15, 2012. The independent home study position is not in a traditional classroom at the Somis School. Thus, the requirement of teaching one year in the last five years in a Somis School traditional classroom would not apply to this position. No other Respondent with more seniority than Ms. Anderson can challenge for the independent home study position offered to Ms. Anderson at the Somis School. Respondents also can not challenge the position held by Mr. Jackson (seniority date August 25, 1999) because no Respondent is more senior than Mr. Jackson. Therefore, the District has agreed to rescind its notice to terminate the services of Ms. Anderson, and the Accusation against Ms. Anderson will be dismissed.

Lorin Maygren

38. Lorin Maygren (seniority date August 21, 2003) is currently a supervising teacher at the Somis Academy, a position that was eliminated by Resolution 11/12-14. He has a “standard secondary” life credential, major Physical Education, and a supplemental authorization in Biological Science, which entitles him to teach Physical Education and Science in departmentalized classrooms grades 7-12 and to teach introductory courses within the general area of any subject(s) listed as majors for grades 7-12. Mr. Maygren has not taught in a traditional Somis School classroom in the last five years. He did not assert at hearing that there was a less senior employee being retained in the Somis School to perform services that he was certificated and competent to perform. Accordingly, the District may proceed with its proposed layoff of Mr. Maygren.

Laurie Allen

39. Laurie Allen (seniority date August 23, 2005) is currently a visual and performing arts and 9-12 grade English teacher at the Somis Academy, a position that was eliminated by Resolution 11/12-14. She has a “standard secondary” life credential in Music and a supplemental authorization in English, grades 7-12, which entitles her to teach Music and English in departmentalized classrooms grades 7-12 and to teach introductory courses within the general area of any subject(s) listed as majors for grades 7-12. Ms. Allen has not taught in a traditional Somis School classroom in the last five years. She did not assert at hearing that there was a less senior employee being retained in the Somis School to perform services that she was certificated and competent to perform. Accordingly, the District may proceed with its proposed layoff of Ms. Allen.

⁶ Although Mr. Jackson is less senior than Ms. Moon, Mr. Jackson is also a third grade elementary teacher in a traditional classroom. Thus, Ms. Anderson could not bump Mr. Jackson because of his traditional classroom assignment.

Alice Watson

40. Alice Watson (seniority date August 23, 2005) is currently a supervising teacher K-12 and a K-12 Art teacher at the Somis Academy, a position that was eliminated by Resolution 11/12-14. She has a multiple subject professional clear credential, which entitles her to teach multiple subjects in self-contained classrooms, or core subjects or classes to the same group of students under circumstances not relevant here. Ms. Watson has not taught in a traditional Somis School classroom in the last five years, but she did work as a teacher in the Somis School independent home study program four years ago. She does not assert that she is entitled to the independent home study teacher position that will be offered to Respondent Carol Anderson. However, she asserts that she would be entitled to bump into a position held by Carolyn Gass (seniority date August 25, 2005) at the Somis School who teaches Social Studies, English, and Drama, grades 6-8. She also asserts that she is entitled to bump into a position held by Allison Brinkman (seniority date August 30, 2006) at the Somis School who teaches sixth grade. Ms. Watson testified that she teaches three to twelve students in a classroom environment at a church in Simi Valley at least five times per week, for one hour each class. She admitted however, that the availability of the students for these classroom sessions depends entirely upon the student's parents making the students available for the session. She stated that she spends significant time preparing lesson plans.

41. Ms. Watson did not establish that she has had one year of experience in the last five years teaching in a traditional classroom at the Somis School. Although she does meet with her students at Somis Academy in the classroom setting on occasion, these meetings or sessions are rather infrequent and far less formal than a traditional classroom setting. Thus, she does not meet the competency requirement expressed in the Board's Resolution. Accordingly, the District may proceed with the proposed layoff of Ms. Watson.

Jane Coleman

42. Jane Coleman (seniority date September 15, 2005) is currently a supervising teacher and a Special Education and Spanish teacher at the Somis Academy, a position that was eliminated by Resolution 11/12-14. She has a multiple subject life credential and supplemental authorizations in English grades K-8 and Introductory Spanish grades K-8, which entitles her to teach multiple subjects in self-contained classrooms, or core subjects or classes in English and Spanish to the same group of students under circumstances not relevant here. Ms. Coleman has not taught in a traditional Somis School classroom in the last five years. She did not assert at hearing that there was a less senior employee being retained in the Somis School to perform services that she was certificated and competent to perform. Accordingly, the District may proceed with the proposed layoff of Ms. Coleman.

Francine Smith

43. Francine Smith (seniority date March 1, 2006) is currently a Social Science teacher grades 6-12 at the Somis Academy, a position that was eliminated by Resolution 11/12-14. She has a single subject professional clear credential in Social Science which entitles her to teach departmentalized classes K-12 in Social Science. Ms. Smith also has supplemental authorizations in Introduction to Music and Introduction to English which would entitle her to teach these subjects in departmentalized classes grades K-12. Ms. Smith has not taught in a traditional Somis School classroom in the last five years. She asserts that she is entitled to bump into a Music class position previously held by Cora Branchflower (seniority date August 29, 2011) at the Somis School. Ms. Branchflower is no longer in this position effective March 28, 2012, and the position is currently being advertised for hire by the District. Ms. Smith testified that she has taught eighth grade English and Music and that she teaches in a classroom environment at the Somis Academy. She stated that she conducts “labs” in her History classes at least twice per semester for each class and that she teaches History for grades 6-11. The labs are typically set for one hour but sometimes last about two hours, and attendance varies between 1 to 15 students. Ms. Smith stated that she prepares lesson plans and has a set agenda for her classes.

44. Ms. Smith did not establish that she has taught in a traditional classroom setting in the Somis School for one year in the last five years. Although she meets with her students in a classroom environment, these classroom meetings are far less frequent than that which is required in the traditional classroom at the Somis School and appear to be less structured. There was also insufficient evidence to conclude that the lesson plans and agendas prepared by Ms. Smith for her students at the Somis Academy were equivalent to the lesson plans and curriculums prepared at the Somis School. Accordingly, the District may proceed with the proposed layoff of Ms. Smith.

45. The District did not retain any certificated employee junior to Respondents to render services that Respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents by reason of Findings 1 through 6.

2. The services listed in Factual Finding 3, Board Resolution No. 11/12-14, with the noted exception of the “hourly” positions, are particular kinds of services within the meaning of Education Code section 44955, by reason of Factual Findings 3 through 11.

3. Cause exists to reduce the number of certificated employees by 12.0 FTEs due to the reduction of the particular kinds of services described in Factual Finding 3, by reason of Factual Findings 1 through 45. The District did not establish that the “hourly” positions at Somis Academy were particular kinds of services, and thus, may not layoff probationary or permanent certificated employees in “hourly” positions, by reason of Factual Findings 3 through 11.

4. Cause exists under Education Code sections 44949 and 44955 for the reduction of the particular kinds of services set forth in Factual Finding 3, because it relates solely to the welfare of the District’s schools and pupils, by reason of Factual Findings 1 through 45.

5. Cause exists to give notice to Respondents Laurie Allen, Jane Coleman, Lorin Maygren, Francis Smith, and Alice Watson, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the 2012-13 school year, by reason of Factual Findings 1 through 45.

6. Cause does not exist to terminate the services of Respondent Carol Anderson, by reason of Factual Finding 1 through 45, and the District shall rescind its layoff notice to Respondent Carol Anderson.

ORDER

1. The District’s Accusation Against Respondents Laurie Allen, Jane Coleman, Lorin Maygren, Francis Smith, and Alice Watson is sustained, and the District may notify them that their services will not be needed during the 2012-2013 school year due to the reduction of particular kinds of services.

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

3. The Accusation against Respondent Carol Anderson is dismissed.

Dated: May 21, 2012

MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings