

**BEFORE THE GOVERNING BOARD  
OF THE PANAMA-BUENA VISTA UNION SCHOOL DISTRICT  
COUNTY OF KERN, STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH Case No. 2011031474

Roberto Becerra, et al.,

Respondents.

**PROPOSED DECISION**

The hearing in the above-captioned matter was held on April 12, 2011, at Bakersfield, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by Christopher W. Hine, Esq., Schools Legal Service. Ernest H. Tuttle III, Tuttle & McCloskey, represented Respondents.

Oral and documentary evidence was received at the hearing. However, the matter was continued until April 18, 2011, so that the parties could file briefs. Complainant's Post Hearing Brief was timely received, and is marked as Exhibit 17 for identification. Respondents' submitted their brief in letter form in a timely manner, and it shall be identified as Exhibit F.

Thereafter, the ALJ set a telephonic hearing on an issue that was raised in the case by Respondent Wendy Cooper. That hearing was held on May 6, 2011. At that time it was stipulated that the deadlines under the Education Code were set back six days, the length of the continuance granted for the submission of briefs, so that the Proposed Decision was due May 13, 2011, and the District was required to send final notices by May 21, 2011. (See Education Code sections 44949, subdivision (c), and section 44955, subdivision (c).)

The ALJ hereby makes his factual findings, legal conclusions, and orders, as follow.

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## **FACTUAL FINDINGS**

### *The Parties*

1. Complainant Michael L. Brouse filed the accusations<sup>1</sup> in this proceeding in his official capacity as Assistant Superintendent of the Panama-Buena Vista Union School District (District).

2. The following persons are certificated employees of the District, and are hereafter referred to as Respondents: Roberto Becerra, Dorothy Burgess, Barbara Buchholz, Tom Clarke, Wendy Cooper, Martha Cossio, Jared Coyle, Jose J. Garza, Jr., Dustin Maxey, Tammy Pritchard, Leslie Raney, and Marie Woodard.

### *Jurisdictional Findings and Procedural History*

3. (A) On March 8, 2011, the Board of Trustees (Board) of the District adopted resolution number 11-14, entitled “Reducing or Eliminating Certain Certificated Services for the 2011-2012 School Year” (Reduction Resolution). The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2011-2012 school year. Specifically, the resolution requires the reductions of 40 “FTE”—Full Time Equivalent positions—by reducing various types of services.

(B) The FTE’s that the Board determined to reduce are described in the Reduction Resolution, as follows:

Self-Contained Classroom Instruction, Grades K-6	14 FTE
Music Teacher	3 FTE
EL Support	1 FTE
Title I Teacher	1 FTE
Parent Resource Specialist	1 FTE
Elementary/Jr. High P.E.	4 FTE

Departmentalized Instruction, Junior High:

English/Language Arts Teacher	3 FTE
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<sup>1</sup> The term “accusation” refers to a type of pleading utilized under the Administrative Procedure Act, Government Code sections 11500 and 11503, which provides the procedural framework for hearings of this type. It should be made clear that the Respondents are not “accused” in the every-day sense of that word; they have done nothing wrong. Instead, it might be said that they are accused of not having enough seniority or qualifications to retain their positions with the District in the face of a resolution to reduce positions.

Math Teacher	3 FTE
Science Teacher	4 FTE
Social Science (History) Teacher	4 FTE
Life Skills Teacher	2 FTE

Total FTE to be Reduced: 40 FTE

4. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.<sup>2</sup>

5. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion given uncertainty regarding the state budget and the District's financial resources. The evidence established that the District faces a significant budget deficit for the 2011-2012 school year unless expenditures are reduced.

6. The reduction and discontinuation of services is related to the welfare of the District's school and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board. No legally-mandated services will be reduced as a result of the planned reduction or discontinuance of services.

7. The Board adopted tie-breaking criteria on March 8, 2011, to be utilized in the event that more than one teacher subject to layoff shared the same seniority date, that is, both had the same first paid date of service in a probationary capacity. The tie-breaking criteria were adopted in Resolution number 11-15. The specific criteria to be used were credentialing, experience, extracurricular activities, training, special education needs, competence, and evaluations. The tie-breaking criteria were within the Board's discretion.

8. On or about March 11, 2011, each Respondent was given written notice that pursuant to sections 44949 and 44955, their services would not be required in the 2011-2012 school year (hereafter the preliminary notices).

9. Respondents requested a hearing, and on or about April 1, 2011, each was served with an Accusation and other documents, including a blank notice of defense. Thereafter, each Respondent filed a notice of defense.

10. In the course of the reduction in force process, the District created a seniority list. That seniority list took into account a number of factors, the primary

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<sup>2</sup> All further statutory references are to the Education Code.

factor being each certificated employee's seniority date.<sup>3</sup> However, other factors, such as credential types, current assignment, supplemental authorizations, and major course of study, were set forth on the seniority list.

*The Defense Raised by Respondent Tom Clarke*

11. (A) Respondent Tom Clarke (Clarke) is a fifth/sixth grade teacher, with a seniority date of August 19, 1997. Given that the layoffs of elementary school teachers otherwise end with those having a seniority date in 2007, he is far senior to similar teachers who are being retained by the District. Clarke holds a Ryan Multi-Subject credential, and the seniority list indicates that he has a master's degree.

(B) The reason Clarke is being laid off is because he did not have a CLAD certificate—Cross Cultural Language and Academic Development certificate—as of March 1, 2011. However, on March 9, 2011, he obtained his CLAD, and transmitted it to the District that same day, which was one day after the Reduction Resolution was adopted. His transmission of the CLAD certificate to the District occurred prior to issuance of the Preliminary Notices. (See Factual Findings 3(A) and 8.) The certificate is deemed issued on February 28, 2011, the date he applied for it.<sup>4</sup>

(C) The District points to the fact that on February 4, 2011, Mr. Birkhauser, the Director of Personnel Services, circulated a memo, reminding staff to turn in a form which set out their dates of hire and credentials by March 1, 2011. In a highlighted part of the memo, it states that the personnel section should be notified of credential changes by March 1, 2011, and that information sent after that date would not be included in the 2010-2011 seniority list.

(D) Clarke has endeavored to obtain his CLAD for a period of months, a fact known to Mr. Birkhauser. For example, the two met with the principal of the school where Clarke teaches in October 2010, and Mr. Birkhauser stressed that Clarke needed to obtain the CLAD. At that time, he did not communicate a particular deadline. By the early part of 2011, Clarke had some notice that failure to hold a CLAD could affect his status in a layoff proceeding. (See Ex. B.)

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<sup>3</sup> It should be noted that the list uses the term “start date.” Other documents used by the District, such as the letters to the staff asking for verification of their credentials, use the term “date of hire.” (E.g., Ex. 16.) Technically, these terms are not the same as seniority date, the term usually used in these proceedings. Under section 44845, one's “employment date” is the first date of paid service in a probationary position. Throughout the hearing, however, the “start date” was treated as the employment or seniority date.

<sup>4</sup> This issuance date is shown on Exhibit A.

(E) The record establishes that Clarke had faced many hurdles in obtaining the CLAD certificate. One college had stopped issuing the credential. Another would not give him credit for work he had already done. Finally, a retired professor was able to assist Respondent, and another local college issued the certificate. That process was further hampered, however, by the fact that a key person was on vacation in late February and early March 2011; thus Clarke was able to get the application in by February 28, but could not meet with the person until March 9, 2011, to complete the application and issuance process.

(F) The record does not disclose that failure to hold a CLAD was an authorized basis for layoff. Thus, while failure to be NCLB Highly Qualified was indicated as a basis for layoff in the Reduction Resolution, no such authority was granted to the Superintendent regarding CLAD. Likewise, there is no evidence that some competency criteria were formulated which mandated CLAD. There was no evidence that lack of a CLAD amounted to a skip criteria.

(G) It was not established that the District was prejudiced by receiving Clarke's CLAD certificate before the preliminary notices issued, and prior to March 15, 2011.

*The Defense Raised by Respondent Wendy Cooper*

12. (A) Respondent Wendy Cooper<sup>5</sup> (Cooper) teaches fourth grade and has a seniority date of August 10, 2005. She holds a Clear Ryan Multiple Subject Credential with CLAD, and she has a master's degree. She is senior to at least three teachers holding similar assignments, who are not being laid off. The District's justification for laying off this more senior teacher is that she is not "Highly Qualified," under the No Child Left Behind Act (NCLB). The District asserts she must pass the CSET test. Ms. Cooper asserts that she is Highly Qualified, in that when she was employed in another school district, the San Ramon Valley Unified School District (San Ramon), she was deemed Highly Qualified by that District, and that status is sufficient to resolve the issue.

(B) Respondent Cooper received her credential effective December 2, 2002. She was then working in San Ramon. In 2005, San Ramon deemed her to be Highly Qualified, although the basis of that decision is confused by various similar documents that make up part of Exhibit C.<sup>6</sup> For example, in one Certificate of Compliance, generated in June 2005, Cooper marked herself as "not new" to the

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<sup>5</sup> When Respondent Cooper was hired by the District, it was under her former name Wendy Raguza, which name appears in some of the relevant exhibits.

<sup>6</sup> A number of the pages of Exhibit C duplicate each other. They were hand-paginated by the ALJ after the case was submitted for decision.

teaching profession (Ex. C, pp. 2, 3) and she signed that document. However, on other such documents she is shown as a teacher “new” to the profession, although she does not appear to have signed those documents, which may be indicative of corrections to be made after she left the San Ramon district. (Ex. C, p. 3.)

(C) In her original Certificate of Compliance, Cooper stated she had completed HOUSSE, the state Highly Objective Uniform State Standard of Evaluation, in the core subject she taught. This was coupled with the claim that she was a “not new” to the profession teacher. (Ex. C, p. 2.) It should be noted that in that document, her “Core Academic Area Assignment” is shown as “Core 6.”

(D) After Cooper came to work for the District, it took the position that she would have to take and pass the CSET, a competency test, to be deemed Highly Qualified. This is indicated in a letter written by Cooper in December 2006 to the former Director of Personnel Services, Mr. White. In that letter Cooper notes that when she came to work for the District, she understood that her prior employer’s determination that she was Highly Qualified held true in the District. She goes on to state that when told by Mr. White she would have to take the exam, she was disappointed, but had taken the exam, had not passed it, and was continuing in her efforts to do so. (Ex. 15.)

(E) On March 10, 2011, Cooper received an e-mail from San Ramon’s Human Resources staff regarding Cooper’s NCLB status. Ms. Melissa Rude-Mahar, from San Ramon’s staff, stated that after reviewing Cooper’s records, she found that Cooper was “HOUSSE incorrectly and unnecessarily (sic). You are considered a New Teacher with the undergraduate major equivalent in the core subject that you taught. Please see the attached corrected NCLB compliant form and the original incorrect forms. Our Director of Certificated Personnel, Rick Caldera, has signed off on the correction.” (Ex. E.)

(F) The attachment to Ms. Rude-Maher’s e-mail is found at page 1 of Exhibit C. It shows Cooper as a “new” to the profession teacher, who has completed core academic subject area competence by way of coursework, as opposed to the other options, examination (including the CSET), advanced certification, or HOUSSE.

(G) During his testimony, Mr. Birkhauser indicated that Ms. Cooper had Highly Qualified status in a junior high setting in her previous district; it is inferred he was referring to San Ramon.

#### *Respondent Woodard’s Seniority Date*

13. Respondent Marie Woodard (Woodard) is shown on the seniority list as having a seniority date of August 16, 2007. She had worked for the District prior to that time, in a permanent position, but had resigned her position in 2007. However,

she had a change of circumstances, and came back to work for the District, in August 2007. The period between her resignation and her reemployment lasted from sometime in the spring of 2007 until August of that year.

14. Woodard does not dispute the fact that her seniority date must begin from when she came back to work for the District. However, she objects that she is now junior to persons who were newly-hired by the District in August 2007, and who were required to report on August 8 of that year. Because she had previously spent 11 years teaching in the District (despite resigning in the spring of 2007, she completed that school year) Woodard reported on a later date, the date that then-existing staff was to report. The then-new hires, by dint of paid service for attending the meeting on August 8, have a higher seniority date than Woodard. Had Woodard known the implication of coming a week later, she would have attended the new hire sessions to cement an earlier seniority date.

#### *Attrition by Retirement and Leave*

15. The District is reducing music teaching from 24 to 21 FTE, for a net reduction of 3 FTE. (Ex. 1.) In the course of the hearing, the District acknowledged that two music teachers have given notice of their retirement; one of them, Mr. Herbst, had submitted his retirement papers before March 1. A third music teacher, Ms. Allen, will be on maternity leave.

16. Three of the Respondents are music teachers, and they assert that this known attrition should account for the three FTE reduction in music teaching.

#### *Other Findings Necessary to Resolve the Case*

17. The District retained—skipped—some junior teachers who had special qualifications, credentials, experience, or training needed by the District, which were not possessed by more senior teachers. A prime example of such skipping was the retention of junior teachers with special education background.

18. The District teaches sixth grade as an elementary school class. The District's junior high schools are based on the seventh and eighth grades. Classes in the seventh and eighth grades, and the high school, are not taught in a "CORE" manner, where a teacher instructs on two subjects, and another instructs on others. Teachers can not be assigned to the junior high and high schools if they only have multi-subject credentials; such teachers must have single-subject credentials.

19. Except as otherwise determined below, no certificated employee junior to any Respondent was retained by the District to render a service for which a Respondent was certificated and qualified to render.

## **LEGAL CONCLUSIONS**

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 10.

2. (A) A District may reduce a particular kind of service (PKS) within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The Court of Appeal has made clear that a PKS reduction does not have to lead to fewer classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-858; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject; any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

(B) The services to be discontinued are particular kinds of services within the meaning of section 44955. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949. This Conclusion is based on Factual Findings 4 through 6 and the foregoing authorities.

3. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

4. (A) Respondent Clarke can not be laid off due to his seniority and his possession of a CLAD certificate, and the Accusation against him must be dismissed, based on Factual Findings 11(A) to 11(G), and the following authorities.

(B) As pointed out by Respondent Clarke, March 15 has been treated as the cut-off date for holding a credential, certificate, or other qualification and providing notice of that fact to an employing District. Respondent cited *Brough v. Governing Board of El Segundo Unified School District* (Brough) (1981) 118 Cal.App.3d 702 for that proposition. Other authorities cited in *Brough* for that proposition are *Degener v. Governing Board* (1977) 67 Cal.App.3d 689, 698-699, and *Campbell Elementary Teachers Assn. Inc. v. Abbott* (1978) 76 Cal.App.3d 746, 814-816. The reason for using March 15 as the cut-off date is that preliminary notices



must be issued by that date, and a district's position could be jeopardized if a teacher could show some qualification after that key jurisdictional date.

(C) To be sure, those cases do not proscribe an earlier cut-off date, but in this case the District cannot demonstrate prejudice by Clarke's inability to provide the certificate before March 1. Mr. Birkhauser was aware of Clarke's ongoing efforts to complete and obtain the CLAD, and Clarke transmitted the certificate to the District before the preliminary notices were served. Plainly, a few minutes work would have produced a modification to the seniority list—one box in one column opposite Clarke's name would have changed based on the CLAD certificate—a small matter in this day of computer-based spreadsheets. A few minutes of scrutiny would have disclosed who was the next most junior teacher exposed to layoff, and a few more minutes of work with a word processing program would have produced a Preliminary Notice with that person's name on it, rather than the vastly senior Clarke's. It is settled that once a school district can show the economic necessity of a reduction in force, then seniority is the most important single factor in the layoff process. (See *Cousins v. Weaverville Elementary School Dist.* (1994) 24 Cal.App.4th 1846, 1855.) Adhering to District's position would do violence to that cardinal principle.

(D) As noted in Factual Finding 11(F), it is not clear just why the lack of a CLAD certificate exposed Clarke to layoff. It was not shown on the Reduction Resolution as a basis for lay-off, in the manner that NCLB status was. This is in contrast to the situation involving Respondent Cooper, where the issue was disclosed early in the process. No competency criteria were established, and no skip criteria were enunciated, either. Therefore, the authority of the District to terminate Clarke for not having a CLAD by March 1, but having it by March 9, was not demonstrated.

5. Respondent Woodard's seniority date cannot be changed. When a permanent teacher resigns, but is reemployed within 39 months, they retain all of their rights, except for their seniority date. Under section 44848, the new seniority date is the first date the teacher renders paid service following her or his reemployment. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 641.) The District was under no obligation to send Woodard to an orientation so that she could improve her seniority date, nor was it obligated to inform her that not attending the class might have an effect on her future employment status. This Conclusion is based on Factual Findings 13 and 14.

6. The District was not obligated to consider attrition in this proceeding because it is a "PKS" proceeding. The authority cited by Respondents, *Santa Clara Federation of Teachers v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, does not support their position. That decision, like others that have addressed the issue, holds that positively assured attrition must only be considered in cases where the reduction in force results from a decline in attendance. (See also *Brough, supra*, 118 Cal.App.3d at 712-714.)

7. (A) Respondent Cooper can not be deemed Highly Qualified as a fourth grade teacher. However, she is Highly Qualified as a sixth grade core assignment teacher, or as a junior high teacher, based on her former employer's determination. (Factual Findings 12(A) through 12(G).)

(B) In her post-hearing brief, Cooper relies on California Code of Regulations, title 5, section 6120<sup>7</sup>, which provides:

Once a school district has determined that a teacher meets the NCLB Teacher Requirements for the grade span and/or subject taught, that teacher will not be required to demonstrate that they meet the requirements again for the same grade span and/or subject taught, even if they are later hired by another school district in California.

(C) The District relies on other regulations, asserting, essentially, that since Cooper was a "new" teacher when credentialed, she was required to take the CSET test; and that not having done so, she is not Highly Qualified. The District's Post Hearing Brief, asserting that Cooper is not Highly Qualified, tends to contravene CCR section 6120. That position, taken to its logical limits, would have the ALJ and then the Board nullify the determination that was made by San Ramon.

(D) The District cites part of the regulation that establishes definitions for establishing Highly Qualified as a cornerstone of its argument. That provision, CCR section 6100, subdivision (m), provides:

"Teacher New to the Profession" means a teacher is new to the profession if they have graduated from an accredited institution of higher education and received a credential, or began an approved intern program, on or after July 1, 2002.

Conversely, CCR section 6100, subdivision (n), provides that a teacher graduating or receiving a credential before July 1, 2002, is a teacher who is "not new to the profession."

(E) The relevance of these definitions is revealed by two other regulations cited by the District, CCR sections 6101 and 6103. The former provides that:

A teacher who meets NCLB requirements at the elementary level is one who:

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<sup>7</sup> All further references to the California Code of Regulations (CCR) shall be to title 5.

- (1) Holds at least a bachelor's degree, and
- (2) Is currently enrolled in an approved intern program for less than three years or has a credential, and
- (3) Meets the applicable requirements in Section 6102 or 6103.

CCR section 6102 provides that:

A teacher who meets the NCLB requirements and is new to the profession at the elementary level, in addition to having at least a bachelor's degree and either being currently enrolled in an approved intern program for less than three years or holding a credential, must have passed a validated statewide subject matter examination certified by the Commission on Teacher Credentialing, including, but not limited to the California Subject Examination for Teachers (CSET) Multiple Subjects, Multiple Subject Assessment for Teachers (MSAT), and National Teaching Exams (NTE).

CCR section 6103, pertaining to teachers not new to the profession at the elementary level, provides that they must either pass a test or HOUSSE as provided in section 6104.

(F) Pointing to the fact that Cooper was credentialed in December 2002, the District argues that she was “new to the profession” and therefore could not utilize the HOUSSE process, as allowed to teachers not new, but instead was obligated to take the CSET as required by CCR section 6102. Because of her credential date, Cooper was in fact a teacher new to the profession. (Factual Finding 12(B).) Based on the foregoing, she would not be able to utilize the HOUSSE process to become Highly Qualified as an elementary school teacher. Instead, she would have to take the CSET exam, and pass it.

(G) The analysis does not end at this point. It should be noted that CCR section 6110 provides somewhat different rules for NCLB compliance for middle and secondary school, as opposed to elementary school. NCLB Highly Qualified compliance for the middle and secondary schools are not controlled by sections 6102 and 6103, but rather by sections 6111 or 6112. The first of those regulations, section 6111, subdivision (a), provides:

A teacher who meets NCLB requirements and is new to the profession at the middle and high school levels, in addition to having at least a bachelor's degree and either being currently enrolled in an approved intern program for less than three years or holding a credential in the subject taught, must have passed or completed *one of the following for every core subject currently assigned*:

- (1) A validated statewide subject matter examination certified by the Commission on Teacher Credentialing,
- (2) University subject matter program approved by the Commission on Teacher Credentialing,
- (3) Undergraduate major in the subject taught,
- (4) Graduate degree in the subject taught, or
- (5) Coursework equivalent to undergraduate major.

(Emphasis added.)

(H) When Cooper sought NCLB status with San Ramon, she incorrectly took the position she was “not new” to the position and that she had completed the HOUSSE. It also shows that the academic subject area assignment was “Core 6.” (Ex. C, p. 2.) However, she was new to the profession within the meaning of CCR section 6100, subdivision (m), which was enacted in 2004. The “corrected” version of the Certificate of Compliance Worksheet, Exhibit C, p. 1, shows her to be “new,” and utilizes the coursework option, which, the form provides, is only available to middle and high school teachers. (Factual Findings 12(C), 12(E), & 12(F).)

(I) It is concluded that San Ramon properly certified Respondent Cooper as Highly Qualified for CORE 6 assignments and for middle school assignments in that district. To find that she is so certified is consistent with section 6120, which provides in part that a teacher will not be required to demonstrate that they meet the requirements again for the same “grade span and/or subject taught.” To be sure, in his testimony, Mr. Birkhauser stated that Cooper was NCLB compliant for junior high school, which testimony was almost lost in the tangle of regulatory provisions.

(J) However, it was disclosed during the telephonic hearing that in the District, sixth grade is not considered a junior high school class.<sup>8</sup> The District requires single subject credentials for assignments there and in the middle school. Its sixth grade classes are self-contained, requiring a multiple subject credential. They are not staffed with two or more teachers teaching core classes. (Factual Finding 18.)

(K) Based on all the foregoing, Cooper can not maintain her elementary school assignment because she is not NCLB Highly Qualified for elementary school. And, it has not been demonstrated that she can bump into a junior high school assignment with her multiple subject credential, even if she is deemed highly qualified for that “grade span.”

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<sup>8</sup> CCR section 6100, subdivision (f), provides: “‘Grade Span’: The local educational agency shall determine, based on curriculum taught, which grades shall be included in the elementary, middle, or high school grade spans.”

8. No Respondent established that they had the right to bump a junior employee, based on Legal Conclusion 3, and the Factual Finding 19.

9. Once the Accusation against Clarke is dismissed, it will be established that no junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, based on all the foregoing.

10. The Respondents, other than Clarke, may receive final layoff notices.

### **ORDER**

1. The Accusation against Respondent Tom Clarke is hereby dismissed.

2. The following Respondents may receive final layoff notices in inverse order of seniority, Roberto Becerra, Dorothy Burgess, Barbara Buchholz, Wendy Cooper, Martha Cossio, Jared Coyle, Jose J. Garza, Jr., Dustin Maxey, Tammy Pritchard, Leslie Raney, and Marie Woodard.

May 10, 2011

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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings

