

BEFORE THE
GOVERNING BOARD OF THE
WASHINGTON UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation (Layoff):

PROPOSED REDUCTION OR
ELIMINATION OF PARTICULAR KINDS
OF SERVICES OF 46.3 FULL TIME
EQUIVALENT CERTIFICATED
EMPLOYEES,

OAH No. N2007020258

Respondents.

PROPOSED DECISION

Catherine B. Frink, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on April 17-18, 2007, in West Sacramento, California.

The Washington Unified School District was represented by Terry Filliman, Attorney at Law, Atkinson, Adelson, Loya, Ruud & Romo, 2485 Natomas Park Drive, Suite 240, Sacramento, CA 95833.

Respondents were represented by Margaret A. Geddes, Attorney at Law, and Eileen Bissen, Attorney at Law, Beeson, Tayer and Bodine, 520 Capitol Mall, Suite 300, Sacramento, California 95814.

The record remained open for the submission of closing briefs. The District's Post-Hearing Brief was received on April 25, 2007, and was marked as Exhibit 7 for identification. Respondents' Post-Hearing Brief was received on April 25, 2007, and was marked as Exhibit L for identification. Respondents' Post-Hearing Reply Brief was received on April 27, 2007 and was marked as Exhibit 8 for identification. The District's Reply Brief was received on April 27, 2007 and was marked as Exhibit M for identification. The record was closed and the matter was submitted for decision on April 27, 2007.

FACTUAL FINDINGS

Jurisdiction

1. Steven Lawrence, Ph.D., is the Superintendent of the Washington Unified School District (District). Don Beno is the Assistant Superintendent, Human Resources, for the District, and is the Superintendent's designee for personnel matters. Mr. Beno made and filed each Accusation in his official capacity.

2. Each of the respondents¹ listed on Attachment A, attached and incorporated by reference, was at all times and now is a certificated employee of the District.

3. On March 8, 2007, the Governing Board of the District (Board) adopted Resolution No. 067-27, relating to the reduction or elimination of particular kinds of certificated services (PKS), and directed the Superintendent to give notices to certificated employees that their services would not be needed for the 2007-2008 school year.

4. On March 8, 2007, the Board adopted Resolution No. 067-31 providing for the release and reassignment of three certificated administrators whose positions were eliminated by Resolution No. 067-27.

5. On March 8, 2007, the Board adopted Closed Session Resolution No. 067-29 non-reelecting eight probationary teachers for the 2007-2008 year pursuant to Education Code section 44929.21.

6. On March 8, 2007, the Board adopted Closed Session Resolution No. 067-30 non-reelecting 11 additional probationary teachers for the 2007-2008 year pursuant to Education Code sections 44929.21 and/or 44954, if deemed applicable, for failure to hold a preliminary or clear credential.²

7. On March 8, 2007, the Board adopted Closed Session Resolution No. 067-32 releasing three temporary teachers, including respondent Michelle Pile, for the 2007-2008 school year pursuant to Education Code section 44954, and non-reelecting them as probationary employees pursuant to Education Code section 44929.21 should any of them claim to be a probationary employee.

¹ Michelle Pile is listed as a respondent, and she was permitted to participate in these proceedings in order to determine whether or not she was a probationary employee who should have received a layoff notice pursuant to Education Code sections 44949 and 44955.

² At its meeting on February 22, 2007, the Governing Board approved reclassifying 22 certificated employees as probationary who had previously been classified by the District as temporary, to comply with the holding in *Bakersfield Elementary Teachers Association v. Bakersfield City Unified School District* (2007) 145 Cal.App.4th 1260. The reclassified employees lacked preliminary or clear credentials. As probationary employees, the District chose not to re-elect them for the 2007-2008 school year, pursuant to Education Code section 44929.21, subdivision (b). If the employees were later deemed to have been erroneously classified as probationary, and were in fact temporary, the Board also resolved to release said employees pursuant to Education Code section 44954.

8. On March 9, 2007, the Superintendent notified the Board in writing of the recommendation that notice be given to certificated employees of the District, including respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year, and stating the reasons therefor.

9. On March 12, 2007, District site administrators hand-delivered notices of non-reelection to the 19 probationary employees who were named in Resolution No. 067-29 and Resolution No. 067-30.

10. On March 13, 2007, 12 of the 19 non-reelected probationary employees were served with written "precautionary" notice that they had been "non-reelected" according to law and were also being noticed for layoff; such layoff and right to hearing would be provided only if it was determined they were entitled to such rights under law. Due to a concern about incorrect postage, the 12 non-reelected probationary employees were served with a second notice by certified mail on March 15, 2007. All 12 teachers actually received the precautionary layoff notice.

11. Ten of the 12 non-reelected employees requested a hearing within the time limit specified in Education Code section 44949, subdivision (b).

12. On March 13, 2007, 30 respondents were served in the manner prescribed by law with written notice that it had been recommended that notice be given to them that their services would not be required for the ensuing 2007-2008 school year. Such notice stated the reasons for such recommendation, and Board Resolution No. 067-27 was attached.

13. The 30 respondents, within the time limit specified in Education Code section 44949, subdivision (b), requested a hearing to determine if there is cause for not reemploying them for the ensuing school year.

14. Michelle Pile was not served with written notice of proposed layoff pursuant to Education Code sections 44949 and 44955. Nevertheless, Ms. Pile submitted a request for hearing, which was received by the District on March 22, 2007.

15. The District filed Accusations which were timely served on all respondents, except Michelle Pile who was not served with an Accusation because the District considered her to be a temporary employee. Each respondent appearing in this matter, including nine non-reelected probationary employees, filed a timely Notice of Defense.³ Ms. Pile also filed a Notice of Defense.

³ Sharon Atkins, one of the non-reelected probationary employees who received a "precautionary" layoff notice, filed a timely request for hearing and was served with the Accusation. Ms. Atkins did not file a Notice of Defense, and she was not a party to the administrative hearing.

16. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

Status of Non-reelected Probationary Employees

17. The District provided notice of non-reelection to two groups of probationary teachers prior to March 15, 2007. The first group of eight teachers was non-reelected because, after either one or two years of service, they did not fit the needs of the District, considering the skills and other qualities possessed by the teachers. The eight teachers given notice of non-reelection were identified based on principal recommendations. The second group of 11 teachers was non-reelected because they did not hold preliminary or clear credentials, and the District has identified a goal to employ fully-credentialed teachers, as reflected in Board Resolution No. 067-30.

18. The Board considered and approved the non-reelection of the two groups of probationary employees in closed session on March 8, 2007, at the same meeting at which the Board in open session considered and approved Resolution No. 067-027, calling for reduction or discontinuation of PKS (economic layoff). However, the reasons for non-reelection of the 19 probationary employees were not related to the economic layoff, and the 19 probationary teachers were identified for non-reelection in a process totally separate from the process that identified services to be reduced or eliminated. Furthermore, there is no evidence that the non-reelection of the probationary teachers identified in Resolutions No. 67-029 and No. 67-030 was a pretext to avoid including the teachers in the layoff proceeding.

19. The District has authority to non-reelect probationary teachers for any non-discriminatory reason. (*Summerfield v. Windsor Unified School District* (2002) 95 Cal.App.4th 1026; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87; *Bellflower Education Association v. Bellflower Unified School District* (1991) 228 Cal.App.3d 805.) However, a school district may **not** non-reelect probationary teachers exclusively for the purpose of reducing staff for economic reasons; such action must be taken in accordance with the layoff statutes. (*Cousins v. Weaverville Elementary School District* (1994) 24 Cal.App.4th 1846; *Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911, 917, fn. 4.)

20. In *Cousins v. Weaverville Elementary School District, supra*, the district expressly admitted that the purpose of the non-reelections was to reduce staff due to financial circumstances and to avoid the time and expense of a layoff hearing. The district did not conduct any layoff hearing. The court held that all provisions of the Education Code had to be read together, to harmonize and give effect to every section; to allow a district to use the non-reelection procedure to reduce probationary staff for economic reasons would render inapplicable the statutory protections afforded to probationary employees under the Education Code section 44949 and 44955. "Section 44955 is a specific provision dealing with terminations for economic reasons and, **when applicable**, prevails over the general provisions of section 44929.21." (*id.*, at p. 1854, emphasis added.) The court further stated:

When read together it is apparent that section 44929.21 is qualified by sections 44955 and 44949. A school district may elect not to retain a probationary employee and need not assert a reason for termination **but where, as here, it is undisputed that termination was prompted by the conditions described in section 44955** (decline in daily attendance, reduction or discontinuance of services, modification of curriculum) then a school district is obliged to provide appropriate notice and right to a hearing as prescribed by section 44949. Layoffs must proceed in accordance with the criteria set forth in section 44955 and the procedures prescribed by section 44949 [citations omitted]. (*Ibid.*, emphasis added.)

21. In *California Teachers Association v. Mendocino Unified School District* (2001) 92 Cal.App.4th 522, the probationary teacher's position was slated for layoff, she was in fact laid off, and then the District chose not to reelect her for the next school year. At that point, the decision was not considered to be an economic one, and the District's action was upheld. The court stated:

Sections 44949, 44955 and 44957 together recognize that economic considerations may sometimes force school districts to lay off otherwise good and effective teachers. Under those statutes, if the economic factors that motivated the layoffs abate, the affected teachers can have their jobs back. Section 44929.21, by contrast, has a different purpose: to ensure that the children of this state are instructed by qualified teachers. As our Supreme Court has explained, "our school system is established not to provide jobs for teachers but rather to educate the young. Establishing a test period for teachers to prove themselves is essential to a good education system." (*Turner v. Board of Trustees* (1976) 16 Cal.3d 818, 82; see also *Round Valley*, *supra*, 13 Cal.4th at p. 278.) To carry out this important function, school districts have been given "the *absolute* right to decide not to reelect probationary teachers without providing cause or other procedural protections . . ." (*Round Valley*, *supra*, 13 Cal.4th at p. 281, italics added.) A "school board can base its final determination about reelection or nonreelection of probationary teachers on any lawful reason regardless of the sufficiency of the cause. . ." (*Fischer v. Los Angeles Unified School Dist.* (1999) 70 Cal.App.4th 87, 94, citation omitted.) ... When the policies reflected by these competing statutory schemes conflict, the critical task of educating the children of this state must, in our view, prevail. Harmonizing section 44929.21 with section 44949, 44955, or 44957, we hold that a

school district that has told a probationary teacher he or she will be laid off for economic reasons under section 44955, may thereafter validly determine not to reelect the teacher under section 44929.21. (*California Teachers Association v. Mendocino Unified School District*, *supra*, 92 Cal.App.4th at p. 528.)

22. The process utilized in *Mendocino* to non-reelect a probationary employee after the employee was laid off in accordance with Education Code sections 44949 and 44955 was cited with approval in *California Teachers Association v. Vallejo City Unified School District* (2007) 149 Cal.App.4th 135, stating, "Based on the *Mendocino* decision, if a school district wishes to nonreelect certain probationary employees after a layoff (such as those lacking full credentials), it may do so." (*Id.*, at p. 157). The court went on to state in a footnote:

This is not to say that a school district may rely on section 44929.21 to deny layoff rights to probationary employees in the first place **when they are terminated for economic reasons**. The *Mendocino* court carefully distinguished *Cousins, supra*, 24 Cal.App.4th 1846 and *Gassman v. Governing Board, supra*, 18 Cal.3d 137, because the district's decision not to reelect the teacher in question was not based on economic considerations; rather, the district had concluded the teacher was "not a good match for the district." (*Mendocino, supra*, 92 Cal.App.4th at pp. 529-530.) Thus, although a school district must follow the layoff statutes **when it releases a probationary employee for economic reasons** (*Cousins, supra*, 24 Cal.App.4th at pp. 1853-1854), it may thereafter choose to nonreelect that employee for other reasons, such as his or her lack of a full or clear teaching credential. (*Mendocino, supra*, 92 Cal.App.4th at pp. 528-530.) (*Id.*, at p. 157, fn. 11, emphasis added.)

23. The question not specifically resolved by case law is the one that is presented by the facts in this case, namely, (1) if the District chooses not to reelect certain probationary employees for non-economic reasons, and that decision is made at or before the time the District chooses to reduce or eliminate PKS; and (2) if the PKS layoff includes services that the non-reelected employees are providing; are those probationary employees entitled to the protections of Education Code sections 44949 and 44955? When a district chooses to non-reelect a second-year probationary employee, notice must be given to the employee "on or before March 15 of the employee's second complete year of employment by the district in a position or positions requiring certification qualifications..." (Ed. Code § 44929.21, subd. (b).) If the district fails to give notice pursuant to section 44929.21 on or before March 15, "the employee shall be deemed reelected for the next succeeding school year."⁴ Thus, in

⁴ In *Mendocino*, the non-reelected teacher was a first year probationary employee.

many instances, a district that waited until after completing the layoff procedure to non-reelect probationary employees would be precluded from doing so by the terms of Education Code section 44929.21, subdivision (b).

24. Under all the facts and circumstances herein, the District was entitled to issue notices of non-reelection to the 19 probationary employees affected by Resolutions No. 067-29 and No. 067-30 for non-economic reasons. Since the non-reelections were not motivated by economic considerations, the more specific provisions of Education Code sections 44949 and 44955 are not applicable to those employees, and they are not properly subject to this layoff proceeding, notwithstanding the fact that they received "precautionary" layoff notices from the District.

25. Respondents contend that the District's issuance of precautionary layoff notices to the affected respondents after they received notices of non-reelection established and/or revived their rights to hearings and preferential rehire under Education Code sections 44949 and 44955. This argument is not persuasive. As previously noted, the Education Code sections concerning economic layoff take precedence over the more general rules pertaining to non-reelection of probationary employees **only** when the reason for not retaining the employee is economic. Furthermore, the identification of probationary employees with provisional credentials for non-reelection was specifically discussed and approved in *Vallejo*, and was not deemed discriminatory.

26. For the reasons set forth above, the following non-reelected probationary employees are not subject to the layoff procedures of Education Code sections 44949 and 44955, and are not entitled to participate in this proceeding: Cory Cunningham; Cathy Davis; Bradley Engel; Dubarrie Fagout; Alan Frantz; Sarah Gorvad; Susan Morgan; April Pickett; and Chau Tran.⁵

Status of Michelle Pile

27. Michelle Pile holds a Professional Clear Multiple Subject Credential, with an authorization in General Subjects, and a CLAD certification. Her assignment for the 2006-2007 school year was as a sixth grade teacher.

28. Ms. Pile was employed on a temporary contract for 2006-2007. The contract did not state a specific reason for the temporary service. The District maintained three temporary teachers, including Ms. Pile, to replace four regular teachers on leave of absence for the entire school year. Ms. Pile signed her temporary contract on August 25, 2006. On

⁵ The District, in an abundance of caution, created an alternative "bumping" list in the event the non-reelected probationary teachers were deemed to be included in this layoff proceeding. The evidence established that all of the affected teachers were served with layoff notices and, had they been eligible to participate in the layoff proceeding, were properly subject to layoff, in that no less senior teacher has been retained to render a service which said probationary employees are certificated and competent to render.

February 13, 2007, the District Human Resource Office sent Ms. Pile a letter back-dating her first date of paid service from August 28, 2006 to August 21, 2006. The letter provided no explanation of why the first date of paid service was changed.⁶

29. Since Ms. Pile's first date of paid service preceded the date of her employment contract, she was improperly classified as a temporary employee, and must be reclassified as a probationary employee pursuant to *Kavanaugh v. West Sonoma County Union High School District* (2003) 24 Cal.4th 911.

30. The Board adopted Resolution No. 067-32 to release Ms. Pile as a temporary certificated employee in closed session on March 8, 2007. By means of Resolution No. 067-32, the Board also determined it to be in the best interest of the District to non-reelect her for the 2007-2008 school year pursuant to Education Code section 44929.21, should a claim of probationary status be raised. Ms. Pile was informed of the Board's action to release and non-reelect her by letter dated March 12, 2007.

31. Having successfully challenged her status as a temporary employee, Ms. Pile was nevertheless properly non-reelected by the District. Her non-reelection was not for economic reasons and was not related to the PKS layoff. For the reasons set forth in Findings 17 through 24 above, Ms. Pile is not subject to the layoff procedures of Education Code sections 44949 and 44955, and is not entitled to participate in this proceeding.

Reduction/Elimination of PKS

32. The District serves approximately 7,000 students from kindergarten through grade 12 at eight elementary schools, one middle school and one high school. The District also operates an adult education program and two alternative secondary schools - an opportunity school and a continuation high school. The District employs approximately 400 certificated employees.

33. Pursuant to Resolution No. 067-27, The Board of Education decided to eliminate 60 full-time equivalent (FTE) positions by reducing or eliminating the following kinds of certificated services:

(A) Elementary (Grades K-6) Classroom Instructional Services:

- | | |
|--|---------|
| 1. Elementary Classroom Teaching Services | 6.0 FTE |
| 2. Elementary Art Preparation Period Teaching Services | 1.0 FTE |
| 3. Elementary Music Preparation Period Teaching Services | 1.0 FTE |

⁶ District's Exhibit V, page 82, "06/07 TEMPORARY EMPLOYEES," also lists Ms. Pile's "Start Date" as August 21, 2006.

(B)	<u>Secondary (Grades 7-12) Departmentalized Classroom Instructional Services:</u>	
4.	English Teaching Services	5.0 FTE
5.	Math Teaching Services	3.0 FTE
6.	Science Teaching Services	2.0 FTE
7.	Health Teaching Services	1.0 FTE
8.	Social Science Teaching Services	5.0 FTE
9.	Foods/Vocational Education Teaching Services	1.0 FTE
10.	English Language Learner Teaching Services	2.0 FTE
11.	Wood Shop Teaching Services	1.0 FTE
12.	Physical Education Teaching Services	2.0 FTE
(C)	<u>Categorical Funded Certificated Services:</u>	
13.	Program Specialist-Math Coaching Services	2.0 FTE
14.	Reading Specialist Services (Reading Coach/ Reading Specialist)	10.0 FTE
15.	Math Specialist Services	2.0 FTE
16.	Language Development Specialist Services	8.0 FTE
17.	Reading Teacher Instructional Services	2.0 FTE
(D)	<u>Preschool Instructional Services:</u>	
18.	Preschool Teaching Services	2.0 FTE
(E)	<u>Administrative Services:</u>	
19.	Assistant Principal Services	2.0 FTE
20.	Director of Categorical Funding Services	1.0 FTE
(F)	<u>Program Services</u>	
21.	Program specialist – ROP Coordinator	1.0 FTE

34. As of the date of hearing, the District had reduced the number of positions being eliminated from 60 FTE to 46.3 FTE, by modifying the reduction or elimination of the following services (#13-#18):

(C)	<u>Categorical Funded Certificated Services:</u>	
13.	Program Specialist-Math Coaching Services	2.0 FTE
14.	Reading Specialist Services Reading Coach	3.0 FTE
	Reading Specialist	1.3 FTE
15.	Math Specialist Services	2.0 FTE
16.	Language Development Specialist Services	3.0 FTE
17.	Reading Teacher Instructional Services	1.0 FTE
(D)	<u>Preschool Instructional Services:</u>	
18.	Preschool Teaching Services	0

35. As a consequence of the District's modification of the PKS reduction, the District withdrew the Accusations against Crystal Cheng and Maureen Morales.

Reduction/Elimination of Categorically Funded Specialist/Coaches Services

36. As of the date of hearing, the District proposes to reduce or eliminate 12.3 FTE categorically funded programs. In recent years, it was not the practice of the District to classify any employees as temporary pursuant to Education Code section 44909 who were employed to serve in categorically-funded services or programs or to fill in for permanent employees assigned to such services or programs. Furthermore, the District did not require individuals filling positions designated as specialist positions to have specialist credentials or authorizations.

37. According to the testimony of Susan Brothers, Assistant Superintendent of Educational Services, the services identified in items #13-17 of Resolution No. 067-27 were funded almost 100 percent by categorical funding sources, including Title I, Part A; Title III Economic Impact Aid (English Language Learner); Title I, Part B (Reading First). The funding for these programs is not being increased, at a time when the District is seeking to raise teacher salaries. Furthermore, for the past few years, the District has been spending down its categorical reserves to maintain the current level of services. The District intends to eliminate coaching services (where teachers are assisting other teachers, and not working directly with students) and to reduce the number of language development and reading specialists working directly with students. The District is also in the process of reviewing certificated job descriptions as they pertain to specialist and coach positions, to identify outdated descriptions.

38. The District identified incumbents in positions providing the services to be reduced or eliminated as identified in items #13-17 of Resolution No. 067-27. The fact that various job descriptions may have been used by the District for individuals providing the identified services does not mean that the District has failed to identify "particular kinds of services" to be reduced or eliminated. Respondents' contention that "specialist/coach" services are not valid PKS subject to reduction or elimination is not persuasive.

Tiebreaker Criteria

39. As required by Education Code section 44955, subdivision (b), the Board adopted criteria to determine the order of termination as between employees who first rendered paid service on the same date ("tiebreaker criteria"). This criteria was set forth in Resolution No. 067-027, which states, that "the order of termination shall be based solely on the needs of the District and the students thereof, as determined by the point system described herein." Teachers who were actually impacted by a tie were awarded points based upon the criteria. District personnel applied the tiebreaker criteria between the following teachers:

- A. (#412) Donna Kellegar and (#422) Magdelana Suminska - Suminska won.
- B. (#372) Paula Liermann and (#373) Frank Parker - Parker won.
- C. (#242) Shannon Woods and (#243) Shelly Alton - Alton won.

The Board determined the order of termination as between employees who first rendered paid service on the same date solely on the basis of the needs of the District and the students thereof.

Bumping and Skipping

40. As set forth in Education Code section 44955, subdivisions (b) and (c), economic layoffs are generally to be carried out on the basis of seniority. A teacher with more seniority typically has greater rights to retain employment than a junior teacher. The District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers if the senior teacher has both the credentials and competence to occupy such positions. That displacement of a junior teacher is known as "bumping." The seniority rule is not absolute, and a junior teacher with a needed credential or skills may be retained even if a more senior teacher is terminated. Such "skipping" is recognized by statute (Ed. Code § 44955, subd. (d)(1)) and appellate law. (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of the Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.) In order to depart from a seniority-based economic layoff, Education Code section 44955, subdivision (d)(1), requires the District to "demonstrates a specific need for personnel to teach a specific course or course of study... and that the certificated employee (to be skipped) has special training and experience necessary to teach that course or course of study...which others with more seniority do not possess."

41. As set forth in Resolution No. 067-27, the Board identified two areas in which it proposed to deviate from terminating certificated employees in order of seniority. Paragraph 5 of Resolution No. 067-27 identifies "the specific need of the District to hire and retain only highly qualified teachers in core academic subject areas," and authorizes a deviation from strict seniority "in instances where a less senior employee possesses a currently valid preliminary or clear California teaching credential and evidence of core academic subject competency in accordance with the NCLB⁷ and a more senior employee meets certification or licensing requirements solely on an emergency, temporary, or provisional basis, or does not possess evidence of core academic subject competency in accordance with the NCLB." Paragraph 6 of Resolution No. 067-27 identifies "the specific need of the District to assign teachers credentialed and qualified to teach English Language Learners due to legal requirements for providing a course of study in classes containing English Language Learners," and authorizes a deviation from strict seniority "in instances

⁷ The federal No Child Left Behind Act of 2001 (NCLB) set as a performance goal for states that all students will be taught by "highly qualified teachers" in core academic subjects by the end of the 2005-2006 school year.

where a less senior employee possesses a currently valid English Language Learner certificate or authorization...and is currently assigned to teach a class with one or more English Language Learners and a more senior employee does not possess such certificated [sic] or authorization and is not eligible to teach such students."

42. On April 12, 2007, the Board adopted Resolution No. 067-34 rescinding Paragraph 6 of Resolution No. 067-27 (the English Language Learner credential criteria) because "the accurate implementation of the deviation from seniority under Paragraph #6 of Resolution 067-27 is made impracticable due to collection of data required."

43. Respondents contend that the District risks loss of federal funds for failure to ensure that English language learners are assigned to properly authorized teachers as required. Respondents argue that the District should be "estopped" from asserting the NCLB "highly qualified" requirement as a basis for skipping less senior teachers, when it is not skipping less senior teachers to meet the English Language Learner requirement. Respondents' contention is without merit. The decision to skip teachers is within the discretion of the District. The District's compliance with English Language Learner requirements is outside the scope of this proceeding.

44. Under NCLB, to be deemed "highly qualified," teachers of core academic subjects must have a bachelor's degree; hold a state credential or intern certificate, or be currently enrolled in an approved California Commission on Teacher Credentialing (CCTC) intern program; and demonstrate core academic subject matter competency. Core academic subject areas under NCLB include English, reading/language arts, mathematics, science, foreign language, civics/government, economics, arts, history, and geography.

45. As of April 4, 2007, the District identified 11 teachers who were not highly qualified, out of more than 400 teachers employed by the District. Of the 11, one resigned (Ryan Arba); four were non-reelected (Nancy Abplanalp, Jeff Cox, Dubarrie Fagout, April Pickett); three teach special education which was not impacted in the reduction of services (Catherine Ceccarelli, Cyrus Jokhi, Joseph Salonga); and one taught math where no layoffs of employees resulted due to vacancies (Val Barcenas). The last two teachers identified as not highly qualified are Miranda Burton and Mila Pantovich. Ms. Burton (#440 on the District's seniority list) was the first teacher with a multiple subject credential assignment to be bumped by the District, because she was not highly qualified.⁸ Ms. Pantovich teaches in the District's alternative education program, and her status is addressed in Finding 64 below.

Positively Assured Attrition

46. The District is not required to consider attrition in layoffs based upon reduction or discontinuance of PKS. (*San Jose Teachers Association v. Allen* (1983)

⁸ Sara Kehrt (#441) was a less senior multiple subject teacher than Ms. Burton, but Ms. Burton was bumped first because Ms. Kehrt was highly qualified. Ms. Kehrt was subsequently bumped by Stephen McNeil (#28) and is slated for layoff.

144 Cal.App.3d 627, 636.) Nevertheless, the District has considered positively assured attrition up to the date of hearing in determining the number of layoffs to be implemented, to minimize the impact on current employees. The District considered resignations, retirements, and positions being vacated by non-reelected probationary employees within the services being reduced. As a result, out of the 46.3 FTE positions currently identified for elimination, approximately 23 FTE positions will be absorbed by attrition, or by employees bumping into vacant positions.

Identification of Employees for Layoff

47. After the District identified PKS to be reduced or eliminated, the District used a seniority list to develop a proposed layoff and bumping list of the least senior employees currently assigned for each service being reduced. The District then determined whether the least senior employees held credentials in another area and were therefore entitled to "bump" into positions for which they were certificated and qualified, beginning with the least senior certificated employee. The District was not required to bump and re-bump to save a particular teacher, nor was it required to do bumping in any particular way. The District was not required to make assignments and reassessments to transfer more senior employees to other positions in order to retain more junior employees. Thus, the District has the discretion to determine how it carried out the bumping process, and so long as it did not act arbitrarily or capriciously, the process was valid.

48. The District developed a "Layoff/Bump List by Service" which summarized the results of the bumping process and identified the specific individuals to be laid off. For purposes of the hearing, the District also analyzed various alternative bumping scenarios, in anticipation of arguments that might be raised by respondents.

Teachers Retained to Provide Specific Services

49. **Charlotte Ghio.** Charlotte Ghio (#353) holds a preliminary single subject credential with a physical education authorization and CLAD certification. Her current teaching assignment is 4 periods high school physical education and 2 periods Athletic Director. Ms. Ghio's status is addressed in Finding 60 below.

50. **Shelly Alton.** Shelley Alton (#243) and Arturo Bustamante (#190) each hold a Clear Single Subject Credential with authorization to teach Social Science, with a CLAD certification. Ms. Alton currently teaches two periods of U.S. government, and three periods of Leadership; she is also assigned one period as Activities Director. Leadership and Activities Director are not positions that require a highly qualified teacher, nor do they require a particular credential. The District has proposed to lay off Ms. Alton for .4 FTE social science, and Mr. Bustamante for .6 FTE social science, due to the reduction in secondary social science teaching services. Under the District's proposal, Ms. Alton would be retained to provide services that Mr. Bustamante or any other more senior teacher is certificated and competent to render, in violation of Education Code section 44955. Consequently, Mr. Bustamante shall be retained to provide 1.0 FTE services in secondary

social science, and Ms. Alton would be subject to layoff for 1.0 FTE. Ms. Alton's status is further addressed in Finding 52, below.

51. **Shannon Woods**. Shannon Woods (#242) holds a Clear Single Subject Social Science credential and a Designated Subjects Credential in Drivers Education Training. For the past several years, Ms. Woods has consistently taught Drivers Education classes at the high school as part of a three course year-long "wheel" (Geography, Health, and Drivers Education). Her teaching assignment for the fall semester of 2006 was 4 periods of Drivers Education, 1 period of Yearbook and 1 period of Computer Literacy. For the spring semester of 2007, her assignment was 4 periods of Geography, 1 period of Yearbook, and 1 period of Computer Literacy. Ms. Woods has less seniority than Arturo Bustamante (#190), Mark Leffler (#207), and Shelly Alton (#243), all of whom hold Single Subject Social Science Credentials, and have been identified for possible layoff by the District. The District proposes to skip Ms. Woods because of the District's need for Ms. Woods to teach a specific course that requires a specialized credential not possessed by the more senior certificated employees, namely, Drivers Education. Although the Board is currently considering eliminating Drivers Education as a high school course and graduation requirement, the Board had taken no action on this issue as of the date of hearing, and Health/Drivers Education remains a high school graduation requirement. The District is entitled to skip Ms. Woods in order for her to teach Drivers Education for the ensuing school year.

52. Respondents correctly point out that Ms. Woods' current teaching assignment included social science classes, for which a specific credential and highly qualified staff is required, as well as special assignments that do not require a specific credential. Because Ms. Woods is being retained to provide a different specific service to the District that requires a particular credential that she possesses (Drivers Education), this results in the de-facto creation of a vacant position into which one of the respondents proposed for layoff can bump. Shelly Alton (#243) is the most senior teacher with the appropriate credential to fill the vacancy who is slated for layoff. Consequently, Ms. Alton shall be retained.

Bumping into "Alternative Schools"

53. The District has two secondary alternative schools. Yolo Continuation High School (Continuation School) employs seven teachers and one counselor to serve 140 students in grades 9 through 12. Some students are "at risk," and others voluntarily attend because the program is smaller and less structured than the regular high school. Classes are departmentalized with students changing classes six periods each day.

54. Yolo Opportunity School (Opportunity School) employs four certificated staff to serve 61 seventh through tenth grade students up to a maximum age of 15 years. The students have been habitually truant, insubordinate, disorderly or were failing academically while attending comprehensive school. The instructional day is 180 minutes for Opportunity School students versus a minimum 240 minute instructional day in the regular schools. Students normally stay at the Opportunity School for a maximum of one semester before returning to regular school. Instruction is provided in self-contained classes. Teachers must

be willing to work with at risk students with significant emotional instability in a different environment than exists in the regular schools.

55. As was previously noted in Findings 41 and 44, a teacher must be "highly qualified" to teach core academic subjects in secondary school under NCLB. A teacher with a Multiple Subject Credential is usually highly qualified to teach self-contained classes. The highly qualified requirement also applies to teachers in special programs, including alternative schools, and a teacher in alternative school who teaches more than one subject must be highly qualified in all core academic subjects taught, even in a self-contained class setting.⁹

56. Education Code section 44865 provides in part that, "[a] valid teaching credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing, based on a bachelor's degree, student teaching, and special fitness to perform, shall be deemed qualifying for assignment as a teacher in the following assignments, provided that the assignment of a teacher to a position for which qualifications are prescribed by this section shall be made only with the consent of the teacher:... (e) Continuation schools. (f) Alternative schools. (g) Opportunity schools...."

57. *California Teachers' Association v. Governing Board of Central Union High School District* (1983) 141 Cal.App.3d 606, held that Education Code section 44865 requires teacher consent for certain assignments outside the initial authority of the credential, but does not require consent for those assignments by teachers whose credentials already contain authority for such assignments. "The purpose of section 44865 is similar to the other enumerated sections in that it is designed to expand rather than restrict the authority of the school board to place willing individuals in job assignments *outside* the scope of their respective credentials." (emphasis in original) (*id.*, at page 615). The consent requirement adds a layer of protection for the teacher; the court noted:

[t]here is good reason for the requirement of consent if a teacher is assigned outside the scope of his or her expertise. Evaluation is made on the basis of performance of the assigned task. A teacher may be unwilling to risk a critical evaluation while teaching outside the ambit of his or her credential. (*Id.*, at page 612).

Thus, Education Code section 44865 acts as a shield to protect a teacher whose credentials do not contain authority for an assignment from involuntary placement in such an assignment. The question remains whether, and under what circumstances, it can become a sword to allow a teacher to serve in a position outside the initial authority of his or her credential.

⁹ March 1, 2004 NCLB Teacher Requirements Resource Guide, prepared by the California Department of Education, Professional Development and Educational Support Division, at page 13, section 2.3.

58. In this case, the District has demonstrated a legitimate interest in "skipping" highly qualified less senior teachers. Given the requirements imposed by NCLB, a senior teacher in the regular program is entitled to bump a highly qualified junior teacher teaching core subjects in the alternative education program only if the senior teacher is highly qualified to teach the subject matter. Under these conditions, it would not appear that the consent of the teacher would be required for assignment to an alternative program placement (since the teacher would be credentialed to serve in the assignment); however, any teacher identified for reassignment to an alternative program shall be given the opportunity to accept or decline the assignment, and if he or she declines, the teacher shall be laid off.

Continuation School

59. There are currently two vacancies at the Continuation School: physical education, and mathematics. In addition, there are five teachers currently assigned to teach the following classes: John Miller (#18) - Science; James Dawson (#130) - Social Science; Nancy Bruce (#164) – English and Home Economics; Alice Penrose (#284) - English; and Cyrus Jokhi (#391) - Special Education Resource Specialist. Teachers of all of these departmentalized subjects except physical education are required to be highly qualified. All of the teachers except Cyrus Jokhi have been determined to be highly qualified. Mr. Jokhi was first employed in 2006-2007. He holds a Preliminary Level 1 Education Specialist Credential, with a "Mild/Moderate" authorization.

60. The vacant Continuation School physical education position does not require a highly qualified teacher.¹⁰ However, the position requires "special fitness to perform," in that it requires experience teaching special education. The District has eliminated 2.0 FTE high school physical education positions from the regular education program. There is a vacant elementary physical education position as a result of the District's non-reelection of Sharon Atkins. Thus, by allowing teachers whose positions have been reduced to bump into available vacant positions, the District need not lay off any physical education teacher currently employed by the District. The two least senior high school physical education teachers are Sarah Mankewich (#356) and Charlotte Ghio (#353).¹¹ Ms. Ghio's current assignment is .6 FTE physical education and .4 FTE Athletic Director. The Athletic Director position is a special assignment for which no specific credential is required. The District shall be permitted to assign Ms. Mankewich and Ms. Ghio to vacant physical education positions in a manner that best serves the needs of the District and students. Any teacher whom the District proposes to reassign to the Continuation School vacant position shall be

¹⁰ The most senior teacher slated for layoff is Spencer Yarwood (#80). Mr. Yarwood holds a clear single subject credential in Industrial Technology Education. It was not established that Mr. Yarwood has ever taught physical education, or that he has ever taught in an alternative school. Mr. Yarwood did not request a hearing and is not a respondent in this matter.

¹¹ Paul Dennis (#189) is the next senior high school physical education teacher whose position was affected as a result of the PKS reduction. He is eligible to bump a less senior physical education teacher and is not slated for layoff. At hearing, he expressed his consent to reassignment to the vacant physical education position at the Continuation School.

given the opportunity to consent to the assignment, and if the teacher does not consent, the teacher shall be laid off.

61. With regard to the vacant mathematics position at the Continuation School, a highly qualified teacher must fill that position. There are no teachers being laid off with math credentials and/or who are highly qualified to bump into the math vacancy. Similarly, there are no teachers being laid off who are highly qualified and properly credentialed with more seniority than the incumbent teachers in the remaining positions at the Continuation School.

Opportunity School

62. There are four teachers at the Opportunity School who teach the following subjects: Mary Cook (#38) - Math; Pete Benitti (#346) - Social Studies; Sandra Lorenzo (#352) - English; and Mila Pantovich (#420) - English, Math, and Earth Science. With the exception of Ms. Pantovich, the current Opportunity School teachers have been deemed highly qualified to teach in their core subject areas.

63. Mark Leffler (#207) is a teacher in the regular education program whom the District has proposed for layoff. Mr. Leffler holds a Clear Single Subject Social Science Credential and is highly qualified in several social science subjects. He is more senior than Peter Benitti (#346) who holds a Preliminary Single Subject Social Science Credential and teaches secondary social science at the Opportunity School. Mr. Leffler is entitled to bump Mr. Benitti from his entire 1.0 FTE assignment at the Opportunity School. Mr. Leffler shall be given the opportunity to consent to the assignment, and if he does not consent, he shall be laid off.

64. Mila Pantovich (#420) has a Multiple Subject Credential, which would authorize her to teach several subjects in a self-contained classroom in kindergarten through eighth grade, and an additional authorization to teach Social Science. Ms. Pantovich is not highly qualified to teach English, mathematics, or earth science in a secondary school environment. Peter Benitti (#346) is the next most senior teacher with an academic subject credential who is slated for layoff. Mr. Benitti is entitled to bump Ms. Pantovich from her 1.0 FTE assignment at the Opportunity School. Inasmuch as Mr. Benitti is currently assigned to a position in the Opportunity School, it is not necessary for the District to obtain his consent to the assignment.

District Bumping Error

65. In its Closing Brief, the District pointed out an error on its Seniority/Bumping List (District Exhibit Tab VI). Stephen McNeil (#28) is shown as bumping .5 FTE Sarah Kerht (#441), .5 FTE Nicole Martinez (#430), and .5 FTE Tim Fegan (#424), for a total of 1.5 FTE, which is more than one full time position. The District contends that Stephanie Gregson (#290) (multiple subject) bumps .5 FTE, resulting in Mr. Fegan having a .5 FTE layoff. However, the District's contention is not supported by evidence in the record. Ms.

Gregson's current assignment is as a vice principal for the District. She was one of the three administrators whose positions was eliminated by Resolution No. 067-27, and who was reassigned pursuant to Resolution No. 067-031 (Finding 4). The District's Seniority/Bumping List does not include any information about credentials held by Ms. Gregson, and it shows that Ms. Gregson was "reassigned to admin. position." Likewise, the District's Layoff/Bump List by Service shows Ms. Gregson as being reassigned to an administrative position.¹² In the absence of any evidence of Ms. Gregson's credentials, it was not established that Ms. Gregson is certificated and competent to render the services provided by Mr. Fegan. Mr. Fegan holds a Clear Multiple Subject Credential with CLAD certification. The most senior certificated employee proposed for layoff by the District with a Multiple Subject Credential is Paula Liermann (#372). Therefore, Ms. Liermann shall be retained for .5 FTE.

Issues Involving Particular Teachers

66. Sheila Mathrole (#374) holds a Multiple Subject Credential, with supplementary authorizations to teach Social Science, English, and Mathematics. Her current assignment is high school Algebra. Ms. Mathrole is being retained by the District to teach mathematics, and no more senior teacher with a multiple subject credential can bump into that assignment. There are no math teachers with greater seniority than Ms. Mathrole being laid off.

67. Val Barcenas (#444) holds a Preliminary Single Subject Mathematics Credential and teaches middle school mathematics. Although he is not a highly qualified teacher, he is not proposed for layoff. The District has a shortage of math teachers, even with the proposed PKS reduction in math teaching services. No math teachers were actually proposed for layoff by the District, because the reduction of 3.0 FTE was accomplished through resignations/attrition.

68. Corrine Kelly (#225) testified at hearing that she should have the same seniority date as Naqiba Gregory (#224). Both Ms. Gregory and Ms. Kelly are credentialed to teach Art. The District's Seniority/Bumping list shows Ms. Gregory's seniority date as August 21, 2000, and Ms. Kelly's seniority date as August 23, 2000. Neither Ms. Kelly nor Ms. Gregory is being proposed for layoff. The evidence introduced at hearing was insufficient to support a change in Ms. Kelly's seniority date.

Other Matters

69. Except as noted above, no certificated employee junior to any respondent is retained to perform services which any respondent is certificated and competent to render.

70. The reduction or discontinuation of services is related to the welfare of the District and its pupils within the meaning of Education Code sections 44949 and 44955. The

¹² Interestingly, Mr. Fegan is not listed at all on the District's Layoff/Bump List by Service.

decision to reduce or discontinue these services is neither arbitrary nor capricious, but rather a proper exercise of discretion of the District Superintendent and Governing Board. The reduction in PKS is the sole cause for not re-employing respondents.

LEGAL CONCLUSIONS

Applicable Statutes and Case Law

1. Education Code section 44949 provides:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

2. Education Code section 44955 provides in relevant part:
 - (a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.
 - (b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

In computing a decline in average daily attendance for purposes of this section for a newly formed or reorganized school district, each school of the district shall be deemed to have been a school of the newly formed or reorganized district for both of the two previous school years.

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request,

a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

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

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

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

3. Education Code section 44956, subdivision (a)(1), provides:

(a) Any permanent employee whose services have been terminated as provided in Section 44955 shall have the following rights:

(1) For the period of 39 months from the date of such termination, any employee who in the meantime has not attained the age of 65 years shall have the preferred right to reappointment, in the order of original employment as determined by the board in accordance with the provisions of Sections 44831 to 44855, inclusive, if the number of

employees is increased or the discontinued service is reestablished, with no requirements that were not imposed upon other employees who continued in service; provided, that no probationary or other employee with less seniority shall be employed to render a service which said employee is certificated and competent to render. However, prior to reappointing any employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

4. The Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.)

5. In the course of reducing, discontinuing or eliminating a particular kind of service, the Governing Board may retain certificated employees junior to respondent(s) to perform services which respondent(s) is/are not certificated and competent to render. (*Moreland Teachers Association v. Kruse* (1980) 109 Cal.App.3d 648; *Levin v. Board of Trustees* (1976) 62 Cal.App.3d 977.)

6. A school board may reduce services within the meaning of statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

7. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent 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.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Poppers v. Tilapias Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District, supra*, 116 Cal.App.3d 831.)

Hearing Issues

8. As set forth in Findings 17 through 26, the District properly non-reelected probationary employees Cory Cunningham, Cathy Davis, Bradley Engel, Dubarrie Fagout, Alan Frantz, Sarah Gorvad, Susan Morgan, April Pickett, and Chau Tran, who are not subject to the layoff procedures of Education Code sections 44949 and 44955, and are not entitled to participate as respondents in this proceeding.

9. As set forth in Findings 27 through 31, Michelle Pile is properly classified as a probationary employee; however the District properly non-reelected her. Therefore, she is not subject to the layoff procedures of Education Code sections 44949 and 44955, and is not entitled to participate as a respondent in this proceeding.

10. As set forth in Finding 35, the Accusations against Crystal Cheng and Maureen Morales are withdrawn.

11. As set forth in Findings 36 through 38, the District properly reduced and/or eliminated categorically funded specialist/coaches services.

12. As set forth in Findings 40 through 45, the District properly exercised its discretion in identifying highly qualified teachers as a basis for deviating from strict seniority in determining which employees should be laid off, and which employees should be retained.

13. Pursuant to Finding 50, Arturo Bustamante shall be retained to provide 1.0 FTE services in secondary social science.

14. Pursuant to Finding 51, Shannon Woods shall be retained to provide Drivers Education services.

15. Pursuant to Finding 52, Shelly Alton shall be retained by the District to provide services which she is certificated and competent to render.

16. As set forth in Finding 60, the District shall retain Paul Dennis, Charlotte Ghio, and Sarah Mankewich to provide services which they are certificated and competent to render, and which shall include possible assignment to a position teaching physical education at Yolo Continuation School, provided the teacher consents to the assignment; if the teacher does not consent, he or she shall be laid off.

17. Pursuant to Finding 63, Mark Leffler shall be retained to provide services in a teaching position at Yolo Opportunity School, provided he consents to the assignment; if Mr. Leffler does not consent, he shall be laid off.

18. Pursuant to Finding 64, Peter Benitti shall be retained to provide services in a teaching position at Yolo Opportunity School.

19. As set forth in Finding 65, Paula Liermann shall be retained by the District to provide .5 FTE services which she is certificated and competent to render.

20. All other arguments of the parties not specifically addressed herein were considered and are rejected.

Conclusion

21. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955. All notices and other jurisdictional requirements of those sections have been met.

22. Cause exists for the reduction or discontinuation of the particular kinds of services and of 46.3 certificated positions at the end of the 2006-2007 school year, pursuant to Education Code sections 44949 and 44955. Therefore, cause exists pursuant to Education Code sections 44949 and 44955 to give notice to respondents that their services will not be required for the ensuing school year, 2007-2008.

ORDER

1. The accusations against Crystal Cheng and Maureen Morales are dismissed pursuant to Legal Conclusion 10. They shall be retained for the 2007-08 school year.

2. The District shall comply with Legal Conclusions 8 and 9, and 11 through 19.

3. Notices shall be given, in inverse order of seniority, to the following individuals, including respondents, that their services will not be required for the 2007-08 school year because of reduction or discontinuation of particular kinds of services: Jamie Hughes (#443); Sarah Kehrt (#441) (.5 FTE); Miranda Burton (#440); Nicole Martinez (#430); Erica Alvarado (#429); Tim Fegan (#424) (.5 FTE); Mila Pantovich (#420); Elizabeth Paredes (#419); Mindy Yu (#416); Elizabeth Altschule (#414); Donna Kellagher (#412); Susan Peyton (#401); Amy Sceirine (#400); Jean Strothers (#399); Carissa Walker (#396); Cindy Robinson (#383); Sally DeLaMora (#382); Paula Liermann (#372) (.5 FTE); Joshua Strong (#350); Leora Roscoe-Moses (#317); Dave Contreras (#266); and Spencer Yarwood (#80).

DATED: May 3, 2007

Catherine B. Frink

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A
WASHINGTON UNIFIED SCHOOL DISTRICT
RESPONDENTS TO HEARING

Alton, Shelley
Alvarado, Erika
Advis, Nikki
Avelar, Veronica
Bustamante, Arturo
Cheng, Crystal
Contreras, Dave
Cunningham, Cory
Davis, Cathy
De La Mora, Sally
Dennis, Paul
Engel, Bradley
Fagout, Dubarrie
Fegan, Timothy
Frantz, Alan
Ghio, Charlotte
Gorvad, Sarnah
Kellagher, Donna
Kelly, Corrine
Leffler, Mark
Liermann, Paula
Mankewich, Sarah
Martinez, Nicole
Morales, Maureen
Morgan, Susan
Pantovich, Mila
Parades, Elizabeth
Parker, Frank
Peyton, Susan
Pickett, April
Pile, Michelle
Rabb-Patterson, Belinda
Roscoe-Moses, Leora
Sceirine, Amy
Shields, James
Stewart, Laurie
Strothers, Jean
Suminska, Magdalena
Tran, Chau
Walker, Carissa