

BEFORE THE
BOARD OF EDUCATION
SAN JUAN UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation (Layoff):

PROPOSED REDUCTION OR
ELIMINATION OF PARTICULAR KINDS
OF SERVICES BY 121.35 FULL TIME
EQUIVALENT CERTIFICATED
EMPLOYEES

OAH No. N2006020107

Respondents.

PROPOSED DECISION

On April 19 and 20, 2006, in Sacramento, California, Leonard L. Scott, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Diana D. Halpenny, General Counsel, represented the San Juan Unified School District (School District).

Michael N. McCallum, Attorney at Law, assisted by his Paralegal Robin Thompson, represented all of the respondents.

Evidence was received and the evidentiary part of the hearing was closed, but the record was left open until May 1, 2006, for the receipt of written closing arguments. The School District's written closing argument was received on or before May 1, 2006, was marked for identification and admitted for jurisdictional purposes as the School District Exhibit 29. Respondents' written closing argument was received on or before May 1, 2006, was marked for identification and admitted for jurisdictional purposes as Respondents' Exhibit CC. Respondents also submitted, by facsimile, a two page document, a cover page

and a copy of an April 26, 2006 memorandum. The two page document was marked for identification as Respondents' Exhibit DD, but was not admitted into evidence and was not considered in reaching this decision. The record was closed and the matter was submitted on May 1, 2006.

FACTUAL FINDINGS

1. On or about February 14, 2006, Board of Education (Board) of the School District adopted Resolution No. 2360 reducing or discontinuing particular kinds of services and thus eliminating 118.35 full time equivalent (FTE) certificated positions at the end of the 2005-2006 school year.

2. Subsequently, on or about March 14, 2006, Board adopted Resolution No. 2360 (Revised) reducing or discontinuing particular kinds of services and thus eliminating 121.35 FTE certificated positions at the end of the 2005-2006 school year. The action was taken in the best interests of the School District and of the students.

The Resolution provided for the reduction or discontinuance of the following particular kinds of services:

<u>Administrators</u>	<u>FTEs</u>
Elementary Principals	2.00
Middle School Vice Principals	3.00
Director (Instruction)	1.00
Subtotal	6.00

<u>Non-Administrative Certificated Services</u>	<u>FTEs</u>
Multiple Subject/Self Contained	60.00
Elementary Specialists	5.00
English	9.40
Math	9.40
Science	9.40
Social Science	9.40
Physical Education	2.82

French	2.82
Fine Arts	1.88
Business	1.88
ROP, Computer Repair	1.00
Nurse	0.15
Counselors	2.20
Counselor, Independent Studies	0.40
Subtotal	115.35
 TOTAL	 121.35

3. The Board directed the Assistant Superintendent of Human Resources, or designee, to send notices to certificated employees that their services will not be required for the 2006-2007 school year, and that said notices should be sent to the appropriate number of certificated employees in order to effectuate a reduction of certificated staff in an amount equal to 121.35 FTE positions.

4. Prior to March 15, 2006, Larry Graser (Graser), Director, Human Resources, notified the Board of the names of the certificated personnel who would be sent a March 15 notice of layoff.

5. On or about February 14, 2006, the Board also adopted Resolution No. 2361, which established criteria to break ties among certificated staff (teachers) with the same date of hire. The Board of Education based the criteria upon the needs of the School District and of its students, and acted within its discretion in creating the tie breaking criteria.

6. On or about April 4, 2006, the Board adopted Resolution No. 2360 (Revised) with the same reductions or discontinuances of particular kinds of services (PKS) as in the March 14 revision, eliminating 121.35 FTE certificated positions at the end of the 2005-2006 school year, but retitled one category from Multiple Subject/Self Contained to K-6/Multiple Subject/Self Contained.

7. On or before March 15, 2006, the Associate Superintendent for Human Resources gave written notice to respondents that it had been recommended that notice be given to respondents that their services would not be required for the ensuing school year due to a reduction or discontinuation of particular kinds of services. The notice set forth the reasons for the recommendation, as required by Education Code sections 44949 and 44955.

Attached to the notices were blank Request for Hearing forms and copies of relevant Education Code sections.

8. Respondents timely filed Requests for Hearing to determine whether there is cause for not re-employing them for the ensuing school year pursuant to Education Code section 44949, subdivision (b).

9. Pursuant to Resolution No. 2360, on or about March 27, 2006, Graser signed and had timely served upon respondents an Accusation. Graser acted in his official capacity.

10. Respondents timely signed and served Notices of Defense pursuant to Education Code section 44949, subdivision (c)(1), and Government Code section 11506.

11. Respondents are certificated employees of the School District.

12. 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.

13. On or about November 17, 2005, Human Resources sent a letter to each certificated employee of the School District, asking that they verify the information shown on the letter regarding their seniority date, credentials, address, telephone number, total FTE worked, and whether permanent or probationary. The letter asked the certificated employees to make any changes, sign, date and return the form by December 9, 2005.

After receiving responses from certificated personnel, Human Resources, where appropriate, incorporated any new or changed information into its records and adjusted the seniority list accordingly. The School District posted copies of the Seniority List in two formats: one in alphabetical order and one by date of hire (i.e. seniority) to allow teachers to point out any remaining inaccuracies.

In a letter dated February 15, 2006, Human Resources notified all certificated employees that the revised seniority list was available and encouraged them to review the list to ensure accuracy of the information shown. Human Resources reviewed the corrections, and, where appropriate, incorporated the corrections into the seniority list.

14. The court in *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, dealt with the question of when a school district must consider positively assured attrition in a layoff, and when it need not.

At page 635, the court held that a school district must consider positively assured attrition where a layoff is due to a decline in average daily attendance (ADA):

Courts have previously held that in terminating certificated employees because of a decline in ADA a district must consider all positively assured attrition. (*Moreland Teachers Assn. v. Kurze, supra*, 109 Cal.App.3d 648; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689 [136 Cal.Rptr. 801]; *Lewin v. Board of Trustees* (1976) 62 Cal.App.3d 977 [133 Cal.Rptr. 385]; *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571 [116 Cal.Rptr. 183].)

"Positively assured attrition" is attrition which has actually occurred and is to be distinguished from "potential attrition" which may be anticipated but is still unknown.

At pages 635-636, the court held that a school district need not consider positively assured attrition where a layoff is due to discontinuation or reduction of particular kinds of services (PKS), and contrasted it with a layoff due to a decline in average daily attendance (ADA):

A board's decision as to reduction or discontinuation of a particular kind of service is not tied in with any statistical computation, such as reduction in the number of students. The number of terminations made necessary by PKS reductions depends totally upon the district's decision as to how many services to reduce. Put another way, the language of section 44955 that the governing board of a school district "may terminate the services of not more than a corresponding percentage of the certificated employees of said district" is only applicable to ADA terminations based upon an actual reduction in attendance. Where the governing board determines to discontinue or reduce a particular kind of service, there is no way to calculate a "corresponding percentage," hence it is within the discretion of the board to determine the amount by which it will reduce a particular service.

Pursuant to *San Jose, supra*, the School District is not legally required to consider positively assured attrition when reducing or discontinuing particular kinds of services. Conversely, positively assured attrition must be considered if a layoff is due to a decline in average daily attendance.

Because this layoff is due to a reduction or discontinuation of particular kinds of services, the School District was not required to consider positively assured attrition before determining which teachers would be laid off. However, although not required to consider it, the School District considered the positively assured attrition that had actually occurred, but not speculative attrition that might occur in the future.

15. Human Resources determined which certificated personnel were in positions affected by the reduction in PKS, then, where appropriate, bumped more

senior certificated personnel into positions occupied by more junior personnel, as required by Education Code section 44955, subdivisions (b) and (c), to determine those to be actually noticed for layoff. That is, those whose positions were affected by the cuts moved into the bumping process and, depending on seniority, credentials and competence, bumped into the assignments of those less senior, until those actually affected by the layoff were determined.

16. Prior to the hearing, the School District decided not to cut the nurse position by 0.15 FTE. This would reduce the layoff to 121.20 FTE but not affect those identified as respondents in this proceeding.

After negotiations with respondents, the School District dismissed certain respondents from these proceedings, or reduced the amount of his or her assignment subject to layoff. However, the School District did not state whether such changes affected the total amount of the reduction or discontinuation in PKS. The respondents no longer subject to layoff due to the dismissals were as follows:

<u>Respondent</u>	<u>FTE retained/laid off</u>	<u>DOH/Status</u>
Coulombe, Heidi	1.00	10-10-02, perm
Ferris, Sara	1.00	09-23-02, perm
Goin, Tamaryn	1.00	08-31-04, prob
Hall, Darcy	0.70/ 0.10	08-20-04, prob
Liby, Vanessa	1.00	11-04-02, perm
Misner, Jennifer	1.00	11-19-02, perm
Reidel, Elisa	1.00	09-20-02, perm
Rovai-Wieler, Amy	1.00	09-19-03, perm
Sayasy, Phetsavane	1.00	08-20-04, prob
Smith, Damon	1.00	09-30-02, perm

The School District also amended the seniority list to reflect that Robert Meng was permanent rather than probationary.

During the hearing, the parties stipulated that the following credentialed employees would be retained, Oleg Petrik, hire date August 20, 2004, for 0.80 FTE, and Stephanie Ghazanfari, hire date August 20, 2004, for 0.80 FTE. The parties stipulated that this resolved the issue regarding the reduction in English.

17. Tenure is the relationship between a teacher and the school district which gives the teacher greater job security.

Seniority is the relationship between the teachers within a school district. Among the teachers credentialed to provide a given service, greater seniority in the school district gives a greater legal entitlement to a position. (*Ferner v. Harris* (1975) 45 Cal.App.3d 363.)

18. A teacher who serves over 75 percent of the regular school year, either as a temporary or in one position replacing one teacher partially as a long term substitute and partially as a temporary, receives credit toward tenure for the whole school year. In either instance, the teacher receives credit toward seniority from the start of service as a temporary if rehired at the start of the ensuing school year without a break in service.

However, if there is a break in service, even of one day, then seniority starts after the break in service, see Education Code section 44909 and *Kamin v. Governing Board* (1977) 72 Cal.App.3d 1014. Thus, if there is a break in service between the qualifying service for working over 75 percent of a school year and the start of service in the next school year, whether the break is at the end of the one school year or at the start of the next school year, the teacher is given credit toward tenure for the earlier school year but credit toward seniority starts with the first day of paid service of the later school year.

The School District correctly applied these rules in determining the tenure dates and date of hire for the teachers affected by this layoff.

19. At the start of the school year, the School District hired certificated employees (teachers) as substitutes; some to replace absent teachers and others to teach classes while the School District determined whether it needed additional teachers, and, if so, how many. At the start of a school year, the School District had only an estimate of the number of students who would enroll, and thus only an estimate of the number of teachers required. Once the students were enrolled and school started, the School District could determine its actual enrollment, and, thus, the number of teachers it needed.

Respondents claim that the School District may only hire substitutes to replace absent teachers one for one, and cite Education Code section 44917. Respondents claim that any substitutes hired in excess of the number needed to replace absent teachers automatically become temporary employees, and because they do not have contracts stating that they are temporary, they become probationary pursuant to *Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911.

Education Code section 44917 provides, in relevant part:

Except as provided in Sections 44888 and 44920, governing boards of school districts shall classify as substitute employees those persons employed in positions requiring certification qualifications, to fill positions of regularly employed persons absent from service.

Section 44917 requires school districts to classify as a substitute those teachers hired to fill the positions of absent teachers, until those teachers return. However, Section 44917 does not prohibit hiring substitutes to fill other teaching positions; positions that may or may not exist, while the School District determines its actual needs.

Section 44888 has been repealed. Section 44920 establishes the requirements for employing temporary teachers. It provides, in relevant part:

Notwithstanding the provisions of Sections 44917 and 44919, the governing board ... may employ as a teacher, for a complete school year, but not less than one semester during a school year ... any person holding appropriate certification documents, and may classify such person as a temporary employee. The employment of such persons shall be based upon the need for additional certificated employees during a particular semester or year because a certificated employee has been granted leave for a semester or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

Section 44920 requires school districts to use temporary employees only to fill the positions of absent teachers, until those teachers return, on a one for one basis. Section 44920 prohibits using temporary employees to fill other teaching positions that may or may not exist for only a short time. Thus, section 44920 prohibits doing exactly what respondents claim should be done, that is, it prohibits using temporary teachers to fill in those teaching positions that may or may not exist.

20. The School District classifies Julie Finney (Finney) as a probationary employee, but she asserts that she should be permanent. Her date of hire was August 19, 2002, and she has been with the School District for four school years. However, she taught full time for only one school year before taking a leave of absence for one school year. When she returned to work, she voluntarily chose to work half time and share a position with another teacher, who also worked half time. Finney has worked half time for two school years sharing the 1.0 FTE position. While working half time, Finney has not worked at least seventy-five percent of the number of days the school was in session during either school year. Instead, she has only worked approximately half of the days the school was in session during the school year, because she works three days one week and two days the next week.

Finney cited Education Code sections 44908 and 44929.21, and *Ferner v. Harris* (1975) 45 Cal.App.3d 363, as the basis for her position that she became permanent at the commencement of the 2005-2006 school year.

The School District cited Education Code sections 44908, 44914 and 44929.21 as the basis for its position that Finney has not met the legal requirements to become permanent.

Education Codes section 44908 states that a "probationary employee who, in any one school year, has served at least 75 percent of the number of days the regular schools of the district in which he is employed are maintained shall be deemed to have served a complete school year."

Education Code section 44929.21, subdivision (b), provides that employees "who, after having been employed by the district for two complete consecutive years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year" become permanent.

In *Griego v. Los Angeles Unified School District* (1994) 28 Cal.App.4th 515, 519, the court held that there are two distinct criteria in section 44929.21 regarding the two years of service. The first is that it must be two complete school years and the second is that the school years must be consecutive.

Education Code section 44975 modifies the meaning of the word consecutive, by providing that a leave of absence does not constitute a break in the service required for tenure, but that the time spent on a leave does not count toward fulfillment of the two years service requirement under section 44908.

Pursuant to section 44908, a probationary employee must serve 75 percent of days the school is in session to receive credit for serving a complete school year. And pursuant to section 44929.21, an employee must work two complete school years to become permanent at the commencement of the succeeding school year.

Unfortunately for Finney, her half time work, wherein she served one-half of the days the school was in session does not meet that requirement of section 44908, regarding serving 75 percent of the days. And nothing in section 44908 or elsewhere in the Education Code specifically requires the amalgamating of two half years to meet the requirement for a complete school year. On the other hand, nothing prohibits adding the two half school years, either. However, because it is not required, it is within the discretion of the School District to decide whether or not to amalgamate the two half years. There was no evidence that the School District abused its discretion when it chose not to add the two.

Respondent cited *Ferner v. Harris* (1975) 45 Cal.App.3d 363, 368, as a basis for her position. Ferner was a community college instructor, who was initially hired to teach full time as a probationary employee. After he taught full time for two years, he was subject to a layoff and accepted a part time position. He then taught part time for another year. (A community college instructor had to teach for three years to receive tenure [become permanent].) Based upon the fact that he was a probationary employee, not a temporary employee, the court held that he was tenured part time:

Although Education Code section 13304 is silent on the question, the case law has long sanctioned the creation of tenure limited to part-time teaching. Most recently in *Vittal v. Long Beach Unified Sch. Dist.*, 8 Cal.App.3d 112 [87 Cal.Rptr. 319], the court held at page 120 that "It was the apparent intent of the Legislature in enacting the 'tenure' statutes that teachers who have faithfully served the indicated portion of the school year for three consecutive years should be entitled to permanent classification upon their contracting to teach a fourth year." Also in accord are *Holbrook v. Board of Education*, 37 Cal.2d 316 [231 P.2d 853], and *Crawford v. Board of Education*, 20 Cal.App.2d 391 [67 P.2d 348].

The College contends that the teacher is, under authority of the above cases, tenured only as to 13/45ths of a full-time teaching position and, therefore, only entitled to a preference under Education Code section 13448 to such a part-time position. Based on the above cases, it is true that he is tenured only as to 13/45ths of a full-time teaching position.

However, there are distinctions between the *Ferner* case and this matter. Whether Ferner worked 75 percent of the days the school was in session was not an issue in the *Ferner* case; instead, the court was only concerned with whether he had worked for three consecutive school years. In this case, pursuant to Education Code sections 44908 and 44929.21, an employee must work at least 75 percent of the days the schools are in session to have a qualifying complete school year and must work two complete school years to become permanent at the commencement of the succeeding school year. In *Hunt v. Alum Rock Union Elementary School District* (1970) 7 Cal.App.3d 612, the court held that:

... Education Code sections 13328 and 13304 ... provide that a probationary employee must serve at least 75 percent of each school year (Ed. Code, § 13328) for three consecutive school years in order to be certified as a permanent employee of a school district (Ed. Code, § 13304).

In *Brightman v. Board of Education* (1935) 4 Cal.App.2d 394, the court held that because Brightman had not served the required number of days, the service did not count in

determining a question as to permanent tenure status. And in *Wood v. Los Angeles City School District* (1935) 6 Cal.App.2d 400, the court held that a teacher who served less than the number of days constituting the school year, was not entitled to classification as a permanent employee.

Therefore, Finney is properly classified as probationary.

21. Pursuant to the provisions of Education Code section 44955, subdivision (d), the School District decided to exempt those with certain credentials from the layoffs due to the need for certificated personnel with those credentials and the difficulty encountered hiring qualified people with those credentials. The exempted credentials are special education, mathematics, physics and agriculture. The School District skipped a number of individuals because they are credentialed and competent to teach one of these areas. The skipping is legal, so long as each of the skipped individuals is assigned only to teach in the specified subject area. If any of them were assigned to teach another subject, where a more senior certificated employee was laid off, it would violate the requirements of Education Code section 44955, subdivisions (b) and (c).

22. Pursuant to the authority granted by Education Code sections 44225, subdivisions (d), (g) and (q), and 44300, the Commission on Teacher Credentialing promulgated regulations for the issuance and renewal of emergency and limited assignment teaching permits, including California Code of Regulations, title 5, sections 80023.2, 80024.3.2, 80026 and 80027. Pursuant to the criteria found in these sections, securing an emergency or limited assignment teaching permit is not an easy process nor is the end result a foregone conclusion.

In general, emergency or limited assignment permits must be renewed each year. In order to qualify for a renewal, certificated personnel must complete six (6) units of course work toward the credential area, math. Both the School District and the teacher must agree to any renewal. And the School District must file a Declaration of Need for such services. The issuance or renewal must be sought annually from the Commission on Teacher Credentialing, which makes the final determination regarding whether to renew.

Section 80023.2 establishes the basic criteria for the issuance of an emergency permit. It requires that applicants, who already possess a California teaching credential, must meet a number of additional requirements, including: subdivision (c) applicant must satisfy the relevant permit criteria for the requested permit as specified in Sections 80024.1 through 80024.8; subdivision (d) the school district must submit a Declaration of Need for Fully Qualified Educators that satisfies the provisions of Section 80026; and subdivision (f) applicant must submit a complete application packet, including a completed Application for Credential Authorizing Public School Service.

Section 80024.1 establishes the criteria for the issuance or renewal of an Emergency Multiple or Single Subject Teaching Permit. It requires that applicants, who already possess a California teaching credential, must satisfy a number of additional requirements, including: subdivision (a)(1) applicant and the school district must meet the general requirements specified in Section 80023.2; subdivision (a)(2) applicant must provide a written affirmation of his or her intent to complete the requirements set forth in Section 80026.6 during the period of the permit; subdivision (a)(3) applicant must provide evidence of qualification for the initial permit; subdivision (b) for renewal, applicant must meet the above requirements, and either provide evidence of completion of six hours of course work toward the credential or pass the subject matter examination.

Section 80026 requires that the employing agency annually submit a Declaration of Need for Fully Qualified Educators as a prerequisite to the issuance of any emergency or limited assignment teaching permit to certificated employees of that agency. Subdivision (a) requires that the declaration must specify the number of each type of emergency permit sought. Subdivision (b) requires a brief description of efforts that the employing agency has undertaken to locate and recruit individuals who hold the needed credentials. Subdivision (c) requires information about efforts to train people to fill the need, such as by co-sponsoring internships or other certification programs. Subdivision (d) requires the employing agency to certify that there are an insufficient number of certificated persons who meet the criteria to fill the positions. Subdivision (e) requires the governing board of a school district to adopt the Declaration of Need.

Section 80027, subdivision (a), establishes the criteria for the issuance of a limited assignment permit. It requires that applicants, who already possess a California teaching credential, must satisfy a number of additional requirements, including: subdivision (a)(1) requires the employing agency to submit a Declaration of Need; subdivision (a)(6) requires written agreement by the teacher to serve under the limited assignment permit; and subdivision (a)(7) requires that the teacher submit a completed Application for Credential. For renewal, subdivision (b) requires the applicant meet the criteria for issuance, and pursuant to subdivision (b)(3)(C) verify completion of at least six semester units, or the equivalent quarter units, in the subject area. Subdivision (b)(6) allows only two renewals of the permit. Subdivision (d) provides that the limited assignment permit shall be valid for one year.

As can be seen from the above criteria, issuance or renewal of permits is not automatic and there is no assurance that one will be issued. Not only must the applicant demonstrate compliance with the criteria, but the School District must submit a Declaration of Need each year.

MATHEMATICS

23. Jeffrey Allen, hire date August 27, 2004, teaches grades 7-8 pre-algebra for 0.4 FTE and science for 0.6 FTE. He has a single subject credential, which authorizes him to teach physical education, and an emergency single subject permit in science, which authorizes him to teach geology. He does not have a mathematics credential or special authorization or permit to teach mathematics, so he was mis-assigned this school year and cannot bump into a mathematics class. In addition, his emergency single subject permit will expire at the end of the school year and would have to be renewed. As a result, he is subject to the layoff for the whole 1.0 FTE.

24. Rocco Marrongelli, hire date October 20, 2003, teaches grades 7-8 pre-algebra and one period of history for 1.0 FTE. He has a single subject credential in social science with clad emphasis and an emergency single subject, limited assignment permit for mathematics. His limited assignment permit for mathematics will expire at the end of this school year and would have to be renewed for him to teach mathematics next school year. Renewal would require a Declaration of Need from the School District and approval by the Commission on Teacher Credentialing. Marrongelli did not notify the School District before March 15, 2006, whether he had or had not completed the required six units this year. Whether his permit would be renewable and whether it would be renewed is unknown. Marrongelli is subject to the layoff for the whole 1.0 FTE.

25. The School District appropriately skipped the following individuals because they are credentialed and competent to teach mathematics, so long as each of them is assigned only to teach mathematics.

Amanda Blair, hire date January 24, 2005, teaches grades 7-8 pre-algebra for 0.4 FTE and mathematics for 0.6 FTE. She has a single subject credential that authorizes her to teach mathematics.

Pardeep Bains, hire date August 18, 2005, teaches grades 7-8 pre-algebra for 1.0 FTE. She has a single subject credential that authorizes her to teach mathematics.

Jesse MacDonald, hire date August 20, 2004, teaches trigonometry for 0.67 FTE and advanced placement economics, a social science class, for 0.33 FTE. MacDonald has single subject credentials that authorize teaching mathematics and economics. MacDonald would not be exempt from layoff if assigned to teach economics, a social science.

PHYSICS

26. The School District appropriately skipped the following individuals because they are credentialed and competent to teach physics, so long as each of them is assigned only to teach physics.

Scott Martinez, date of hire August 19, 2005, teaches physics 1.0 FTE. He has a single subject credential that authorizes him to teach science: physics.

Charles Saylor, date of hire August 20, 2004, teaches physics for 0.4 FTE and earth science for 0.6 FTE. He has a single subject credential that authorizes him to teach science: physics, and a supplementary authorization for introductory science.

AGRICULTURE

27. The School District appropriately skipped the following individual because she is credentialed and competent to teach agriculture, so long as she is assigned only to teach agriculture.

Christina Tannehill, date of hire January 20, 2006, teaches agriculture 1.0 FTE. She has a single subject credential in agricultural science that authorizes her to teach agriculture classes. She is the only certificated employee with an agricultural credential.

SPECIAL EDUCATION

28. Neither party raised any issue about skipping those with special education credentials.

INDEPENDENT STUDIES COUNSELOR

29. The School District is laying off regular school counselors and reducing or discontinuing 0.4 FTE counselor position in the Independent Studies program.

Karen Murphy (Murphy) is a counselor at the Independent Study High School. She started with the School District in 1995-1996 as a substitute, then received her counseling pupil personnel services credential. She has worked as a counselor in the Independent Studies program since 1997. When she took the position, she was not aware that certificated personnel in the Independent Studies program were on a different seniority track than certificated personnel in the regular schools. She was aware that it was possible to transfer between the Independent Studies program and the regular school program, with administrative approval. However, she did not submit a request for voluntary transfer to the regular school. If she had submitted a request, it would have been up to the School District whether to grant it or not.

The Independent Study High School is accredited by the Western Association of Schools and Colleges. It has its own California Department of Education code number and generates its own revenue. Independent Studies operates as a separate and distinct alternative education program for students. Students must sign up and qualify to participate in it, and

once in it, they receive instruction only once each week, then do the assigned work independently. It is an alternative for high school students who voluntarily transfer into the program for a variety of reasons, and who qualify for admission based on an assessment of their ability to learn independently.

Certificated personnel, teachers and counselors, are specifically hired for the Independent Studies program based on the needs of the program and the special qualifications of the counselor or teacher. Education Code section 44865 permits the district to assign a teacher or counselor to the Independent Studies program, with the consent of the teacher or counselor, if the person meets the requirements of Section 44865.

Certificated personnel working in the Independent Studies program are employed subject to different contract provisions than those employed in the regular school, have a different pay scale, different class sizes, work different hours, and work a different number of days each school year. Certificated personnel in the Independent Studies program, like those in the adult school program, are on separate seniority tracks from the certificated personnel in the regular school. Just as the regular school certificated personnel cannot bump into the Independent Studies program, certificated personnel in the independent Studies program cannot bump into the regular school.

However, even if it were held that certificated personnel could bump between the Independent Studies program and the regular school, Murphy would not qualify. She would not qualify because she failed to request a voluntary transfer to the regular school prior to the March 15 notice. Pursuant to the union contract, the School District could not have transferred her without her consent to the reassignment. Murphy's failure, to give her consent and request a transfer prior to March 15, prevented the School District from taking any responsive action before the March 15 notice. Instead, she waited until after the March 15 notices had been sent to make this claim. Her delay in acting caused prejudice to the School District because the School District was required by law to determine which certificated employees were affected by the layoff, and give them the March 15 notice.

The appellate courts have dealt with similar situations, and provided guidance to us in resolving this matter.

In *Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 814-815, the court held that it was each respondent's duty to timely have on file at the School District office all credentials, transcripts and any other qualification documentation that might qualify him or her to teach additional subjects, such as special education.

In *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 77, the California Supreme Court held: "The doctrine of laches bars a cause of action when the plaintiff unreasonably

delays in asserting or diligently pursuing the cause and the plaintiff has acquiesced in the act about which the plaintiff complains, or the delay has prejudiced the defendant.”

In *American Federation of Teachers v. Board of Education* (1977) 77 Cal.App.3d 100, the court held that where a temporary teacher failed to make a claim that she should have been classified as probationary until after March 15, the point in time when a school district was required to issue a notice of non-reelection, the teacher was guilty of laches and was estopped from impeaching the temporary nature of her employment. The court held that her actions foreclosed the school district from giving her the dismissal notice, which must be given by March 15, and thereby caused prejudice to the school district.

Like the above cases, Murphy failed to timely raise the issue before March 15, and her failure prejudiced the School District. Murphy is barred by laches and estoppel from claiming that the School District should have transferred her.

30. Alain Negretot, date of hire August 20, 2004, teaches French for 1.0 FTE. He has a provisional credential to teach French and expects to receive his clear credential at the end of this school year. He was hired in the fall of 2004. He believes he should be skipped because he is part of a unique program at Mira Loma High School, which offers an International Baccalaureate diploma. He completed a special, four-day training course to qualify to teach in the International Baccalaureate program. He is subject to the layoff because the School District is reducing or discontinuing French and he is less senior.

31. No permanent or probationary certificated employee junior to respondents is being retained to perform a service which respondents are certificated and competent to render. Those certificated employees junior to respondents being retained will provide services which respondents are not certificated and competent to perform.

32. The services identified in the Governing Board Resolution are particular kinds of services that can be reduced under Education Code section 44955. The Governing Board's decision to reduce the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

33. The reduction of the particular kinds of services and the resultant reduction in full time equivalent certificated positions are for the welfare of the School District and the pupils. The reduction in particular kinds of services is the sole cause for not re-employing respondents.

LEGAL CONCLUSIONS

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 reassignments 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 Studies 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 Studies, 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 Studies or to provide those services, which others with more seniority do not possess.

3. Education Code section 44956(a)(1) provides in relevant part:

(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 Studies or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

4. Education Code section 44908 provides:

A probationary employee who, in any one school year, has served for at least 75 percent of the number of days the regular schools of the district in which he is employed are maintained shall be deemed to have served a complete school year. In case of evening schools, 75 percent of the number of days the evening schools of the district are in session shall be deemed a complete school year.

5. Education Code section 44909 provides:

The governing board of any school district may employ persons possessing an appropriate credential as certificated employees in programs and projects to perform services conducted under contract with public or private agencies, or categorically funded projects which are not required by federal or state statutes. The terms and conditions under which such persons are employed shall be mutually agreed upon by the employee and the governing board and such agreement shall be reduced to writing. Service pursuant to this section shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee unless (1) such person has served pursuant to this section for at least 75 percent of the number of days the regular schools of the district by which he is employed are maintained and (2) such person is subsequently employed as a probationary employee in a position requiring certification qualifications. Such persons may be employed for periods which are less than a full school year and may be terminated at the expiration of the contract or specially funded project without regard to other requirements of this code respecting the termination of probationary or permanent employees other than Section 44918.

Whenever any certificated employee in the regular educational program is assigned to a categorically funded project not required by federal or state statute and the district employs an additional credentialed person to replace that certificated employee, the replacement certificated employee shall be subject to the provisions of Section 44918.

This section shall not be construed to apply to any regularly credentialed employee who has been employed in the regular educational programs of the school district as a probationary employee before being subsequently assigned to any one of these programs.

6. Education Code section 44914 provides:

If an employee has served as a probationary employee of the district in a position requiring certification qualifications, for one complete school year, and in the year immediately preceding the service as probationary employee has served as a substitute, or as a substitute and probationary employee, serving in both capacities during the same school year in the schools of the district at 75 percent of the number of days the regular schools of the district were maintained, the governing board may count the year of employment as a substitute or as a substitute and probationary employee as one year of the probationary period which he is required by law to serve as a condition to being classified as a permanent employee of the district.

7. Education Code section 44916 provides:

The classification shall be made at the time of employment and thereafter in the month of July of each school year. At the time of initial employment during each academic year, each new certificated employee of the school district shall receive a written statement indicating his employment status and the salary that he is to be paid. If a school district hires a certificated person as a temporary employee, the written statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. If a written statement does not indicate the temporary nature of the employment, the certificated employee shall be deemed to be a probationary employee of the school district, unless employed with permanent status.

8. Education Code section 44917 provides:

Except as provided in Sections 44888 and 44920, governing boards of school districts shall classify as substitute employees those persons employed in positions requiring certification qualifications, to fill positions of regularly employed persons absent from service.

After September 1 of any school year, the governing board of any school district may employ, for the remainder of the school year, in substitute status any otherwise qualified person who consents to be so employed in a position for which no regular employee is available, including persons retired for service under the State Teachers' Retirement System. Inability to acquire the services of a qualified regular employee shall be demonstrated to the satisfaction of the Commission for Teacher Preparation and Licensing.

Any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a position requiring certification qualifications, be classified by the governing board as a probationary employee and the previous year's employment as a temporary employee shall be deemed one year's employment as a probationary employee for purposes of acquiring permanent status.

9. Education Code section 44920 provides:

Notwithstanding the provisions of Sections 44917 and 44919, the governing board of a school district may employ as a teacher, for a complete school year, but not less than one semester during a school year unless the date of rendering first paid service begins during the second semester and prior to March 15th, any person holding appropriate certification documents, and may classify such person as a temporary employee. The employment of such persons shall be based upon the need for additional certificated employees during a particular semester or year because a certificated employee has been granted leave for a semester or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

Any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a vacant position requiring certification qualifications, be classified by the governing board as a probationary employee and the previous year's employment as a temporary employee shall be deemed one year's employment as a probationary employee for purposes of acquiring permanent status.

For purposes of this section "vacant position" means a position in which the employee is qualified to serve and which is not filled by a permanent or probationary employee. It shall not include a position which would be filled by a permanent or probationary employee except for the fact that such employee is on leave.

10. Education Code section 44929.21 defines tenure:

(a) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for three complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.

This subdivision shall apply only to probationary employees whose probationary period commenced prior to the 1983-84 fiscal year.

(b) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.

The governing board shall notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

This subdivision shall apply only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter.

11. Education Code section 44225, subdivisions (d), (g) and (q), provide:

The commission shall do all of the following:

...

(d) Establish standards for the issuance and renewal of credentials, certificates, and permits. In setting standards, the commission shall seek to ensure, through its credentialing of teachers, that public school teachers satisfy all of the following criteria:

- (1) Are academically talented.
- (2) Are knowledgeable of the subjects to be taught in the classroom.
- (3) Are creative and energetic.
- (4) Have the human skills to motivate and inspire pupils to achieve their goals.

(5) Have the sensitivity to foster self-esteem in pupils through recognition that each pupil has his or her own goals, talents, and levels of development.

(6) Be willing to relate the educational process and their instructional strategies to meet pupils' needs.

(7) Are able to work effectively with and motivate pupils from a variety of ethnic, socioeconomic, cultural, academic, and linguistic backgrounds.

(8) Have an understanding of principles and laws related to educational equity, and the equitable practice of the profession of education among all pupils regardless of their ethnicity, race, gender, age, religious background, primary language, or handicapping condition.

...

(g) Establish alternative methods for entry into the teaching profession, and into other certificated roles in the schools, by persons in varying circumstances, including persons who have been educated outside of California, provided that each applicant satisfies all of the requirements established by the commission. One alternative method shall be the successful completion of at least two years of classroom instruction under a district intern certificate, pursuant to Article 7.5 (commencing with Section 44325). In establishing alternative methods for entry into the teaching profession, the commission shall develop strategies to encourage classroom aides to become credentialed teachers.

...

(q) Propose appropriate rules and regulations to implement the act which enacts this section.

12. Education Code section 44300 provides:

(a) Commencing January 1, 1990, the commission may issue or renew emergency teaching or specialist permits in accordance with regulations adopted by the commission corresponding to the credential types specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 44225, provided that all of the following conditions are met:

(1) The applicant possesses a baccalaureate degree conferred by a regionally accredited institution of higher education and has fulfilled the subject matter requirements of Section 44301.

(2) The applicant passes the state basic skills proficiency test as provided for in Section 44252.

(3) The commission approves the justification for the emergency permit submitted by the school district in which the applicant is to be employed. The justification shall include all of the following:

(A) Annual documentation that the district has implemented in policy and practices a process for conducting a diligent search that shall include, but is not limited to, distributing job announcements, contacting college and university placement centers, advertising in local newspapers, exploring the incentives included in the Teaching As A Priority Block Grant established pursuant to Section 44735, participating in the state and regional recruitment centers established pursuant to Sections 44751 and 90530, and participating in job fairs in this state, but has been unable to recruit a sufficient number of certificated teachers, including teacher candidates pursuing full certification through internship, district internship, or other alternative routes established by the commission.

(B) A declaration of need for fully qualified educators based on the documentation set forth in subparagraph (A) and made in the form of a motion adopted by the governing board of the district or the county board of education at a regularly scheduled meeting of the governing board or the county board of education. The motion may not be part of the consent agenda and shall be entered in the minutes of the meeting.

(b) The commission may deny a request for an emergency permit that does not meet the justification set forth in subparagraph (A) of paragraph (3) of subdivision (a).

(c) It is the intent of the Legislature that all of the following occur:

(1) The commission shall issue preintern certificates in place of emergency teaching permits as sufficient resources are made available to school districts to provide services pursuant to Article 5.6 (commencing with Section 44305) to preinterns pursuing multiple subject or single subject teaching credentials.

(2) If the examination of the Pre-Internship Teaching Program required by this chapter demonstrates that the program should continue because it has been successful in better preparing and retaining preintern teachers than the emergency permit system, sufficient resources to fully fund the Pre-Internship Teaching Program shall be appropriated by July 2002. For purposes of this paragraph, two thousand dollars (\$ 2,000) in state funding per preintern shall be deemed to be sufficient resources.

(3) The commission shall continue to issue emergency teaching permits to individuals employed by school districts defined in regulations as remote from regionally accredited institutions of higher education.

(d) Commencing January 1, 1990, the commission may issue and reissue emergency permits corresponding to the credential types specified in paragraph (4) of subdivision (b) of Section 44225. The commission shall establish appropriate standards for each type of emergency permit specified in paragraph (4) of subdivision (b) of Section 44225.

(e) The exclusive representative of certificated employees, if any, as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, may submit a written statement to the commission agreeing or disagreeing with the justification submitted to the commission pursuant to paragraph (3) of subdivision (a).

(f) Commencing January 1, 1990, a person holding an emergency teaching or specialist permit shall attend an orientation to the curriculum and to techniques of instruction and classroom management, and shall teach only with the assistance and guidance of a certificated employee of the district who has completed at least three years of full-time teaching experience, or the equivalent thereof. It is the intent of the Legislature to encourage districts to provide directed teaching experience to new emergency permitholders with no prior teaching experience.

(g) The holder of an emergency permit shall participate in ongoing training, coursework, or seminars designed to prepare the individual to become a fully credentialed teacher or other educator in the subject area or areas in which he or she is assigned to teach or serve. The employing agency shall verify that employees applying to renew their emergency permits are meeting these ongoing training requirements.

(h) Emergency permits for pupil personnel services shall not be valid for the purpose of determining pupil eligibility for placement in any special education class or program.

(i) This section shall not apply to the issuance of an emergency substitute teaching permit, or of an emergency permit to a teacher who has consented to teach temporarily outside of his or her field of certification, for which the commission shall establish minimum requirements.

13. California Code of Regulations, title 5, section 80023.2 provides:

The following requirements apply to the initial issuance of all emergency permits specified in Section 80023.

(a) The applicant must possess a baccalaureate or higher degree from a regionally accredited college or university.

(b) The applicant must verify passage of the California Basic Educational Skills Test (CBEST), unless exempt by statutes or regulations.

(c) The applicant must satisfy the requirements for the permit being requested as specified in Sections 80024.1 through 80024.8.

(d) The employing agency must submit a Declaration of Need for Fully Qualified Educators that satisfies the provisions of Section 80026.

(e) If the applicant does not already have fingerprint clearance on file with the Commission, the permit application must include two fingerprint cards and the completed Application for Character and Identification Clearance (form 41-CIC, rev 11-93), and fee(s). No permit will be issued until the clearance process is completed.

(f) Issuance of an emergency permit also requires the submission of a complete application packet, including a completed Application for Credential Authorizing Public School Service (form 41-4, rev 11-94), payment of the fee(s) required by Section 80487, and other documents required by the Commission to verify completion of all requirements for the emergency permit.

14. California Code of Regulations, title 5, section 80024.1 provides:

(a) Requirements for the initial issuance of an Emergency Multiple or Single Subject Teaching Permit include all of the following:

(1) The applicant and the employing agency must meet the general requirements specified in Section 80023.2.

(2) The applicant must provide a written affirmation of his or her intent to complete the requirements set forth in Section 80026.6 during the period of the permit.

(3) The applicant must verify one of the following:

(A) Passage of the appropriate subject matter examination(s) approved by the Commission for the related credential; or

(B) Successful completion of the specified number of semester units, or equivalent quarter units, of appropriate course work taken at a regionally accredited college or university as follows:

1. For the Emergency Single Subject Teaching Permit, at least 18 semester units, or nine upper division or graduate semester units, of course work in the subject to be taught; or

2. For the Emergency Multiple Subject Teaching Permit, at least 10 semester units of course work in each of at least four of the following subject areas or at least 10 semester units of course work in each of three subject areas and an additional 10 semester units in a combination of two of the remaining subject areas. The subject areas are as follows: language studies, history, literature, humanities, mathematics, the arts, science, physical education, social science, and human development.

(b) To reissue an Emergency Multiple or Single Subject Teaching Permit, the applicant and the employing agency must meet the requirements for reissuance of emergency permits specified in Section 80026.6.

(1) The applicant who has not completed the subject matter knowledge requirement specified in Section 80413(a)(3) may, for the first reissuance only, take all components of the appropriate subject matter examination as described in Section 80071 in lieu of six semester units of coursework from a regionally accredited college or university.

(c) Authorization:

- (1) An Emergency Multiple Subject Teaching Permit authorizes the same service as a Multiple Subject Teaching Credential.
- (2) An Emergency Single Subject Teaching Permit authorizes the same service as a Single Subject Teaching Credential in the authorized field(s) listed on the permit.

15. California Code of Regulations, title 5, section 80026 provides:

Declaration of Need for Fully Qualified Educators

Submission of a Declaration of Need for Fully Qualified Educators by the employing agency shall be a prerequisite to the issuance of any emergency permit and/or limited assignment permit for that agency. Charter schools as defined in Education Code Section 47600 shall be exempt from submitting a Declaration of Need for Fully Qualified Educators. The Declaration of Need for Fully Qualified Educators by an employing agency shall be valid for no more than twelve months, and shall expire on the June 30 following its submission to the Commission, unless the employing agency has an approved Plan to Develop Fully Qualified Educators which specifies a period of validity longer than twelve months. The Declaration of Need for Fully Qualified Educators shall be submitted to the Commission on a form to be provided by the Commission, and shall include all of the following information:

- (a) Estimated Need: This shall include the title(s) and number of each type of emergency permit and limited assignment permit which the employing agency estimates, based on previous year actual needs and projections of enrollment, it will need during the year covered by the Declaration. In addition, it shall include each subject to be listed on Emergency Single Subject and Limited Assignment Single Subject Teaching Permits and the target language on Emergency Multiple Subject or Single Subject Teaching Permits with a Bilingual, Crosscultural, Language and Academic Development (BCLAD) Emphasis or on Emergency BCLAD Permits. The Declaration of Need for Fully Qualified Educators shall be revised, when the number of emergency permits and limited assignment permits needed exceeds the estimate by ten percent, by the governing board or superintendent/administrator of the employing agency, as specified in subsection (e) below.
- (b) Efforts to Recruit Certified Personnel. This shall include a brief description of efforts that the employing agency has undertaken to locate and recruit

individuals who hold the needed credentials, such as dated copies of written announcements of its vacancy or vacancies which were mailed to college or university placement centers.

(c) Efforts to Establish Alternative Training Options. The Declaration shall:

(1) identify the names of institutions of higher education co-sponsoring internships or other certification programs with the employing agency or, if no such programs exist, briefly explain why;

(2) if the employing agency participates in pre-internship or internship programs, estimate the number which the employing agency reasonably expects to employ during the year covered by the Declaration; and

(3) indicate whether the employing agency has considered developing a "Plan to Develop Fully Qualified Educators" in cooperation with other education agencies in the region pursuant to Section 80026.4, or if not, briefly explain why.

(d) Stipulation of Insufficiency of Suitable Applicants. The employing agency shall certify that there is an insufficient number of certificated persons who meet the employing agency's specified employment criteria to fill necessary positions.

(e) Adoption of the Declaration. The Declaration of Need for Fully Qualified Educators shall be adopted by the governing board of a school district, or by the superintendent of a county office of education or by the administrator of a state school or nonpublic, nonsectarian school or agency.

(1) A Declaration of Need for Fully Qualified Educators by a school district shall be adopted by the governing board in a regularly-scheduled, public meeting of the board. The entire Declaration of Need for Fully Qualified Educators shall be included in the board agenda, and shall not be adopted by the board as part of a consent calendar.

(2) A superintendent of a county office or the administrator of a state school or nonpublic, nonsectarian school or agency shall publicly announce his or her intent to adopt a Declaration of Need for Fully Qualified Educators at least 72 hours prior to adopting the Statement. The adopted Statement shall be signed by the superintendent or administrator.

16. California Code of Regulations, title 5, section 80027

Limited Assignment Multiple or Single Subject Teaching Permit

(a) Requirements for the initial issuance of a Limited Assignment Multiple or Single Subject Teaching Permit include all of the following:

- (1) The employing agency must submit a Declaration of Need for Fully Qualified Educators that satisfies the provisions of Section 80026.
- (2) Applicant is currently employed by the local governing board requesting such assignment.
- (3) Applicant holds a valid California teaching credential based on a baccalaureate degree and a professional preparation program, including student teaching or the equivalent.
- (4) Applicants who have not obtained permanent status as defined in Education Code 44929.21 or 44929.22 or 44929.23 shall be assigned an experienced educator by the employing agency in the subject area of the Limited Assignment Multiple or Single Subject Teaching Permit who has completed 3 years of full-time classroom teaching experience in that subject area.
- (5) The Limited Assignment Single Subject Teaching Permit may be issued in the subject areas listed in Education Code Section 44257.
- (6) The employing agency must keep on file a written statement verifying consent of the teacher to serve on the Limited Assignment Multiple or Single Subject Teaching Permit.
- (7) The applicant submits a completed Application for Credential Authorizing Public School Service (form 41-4, rev. 8/00), and the fee(s) as specified in Section 80487.

(b) Requirements for the renewal of a Limited Assignment Multiple or Single Subject Teaching Permit.

- (1) Applicant is currently employed by the local governing board requesting such assignment.
- (2) Applicant holds a valid California teaching credential based on a baccalaureate degree and a professional preparation program, including student teaching or the equivalent.

(3) An application for the renewal of a Limited Assignment Multiple or Single Subject Teaching Permit shall be submitted to the Commission by the employing agency, and shall include all of the following.

(A) A completed Application for Credential Authorizing Public School Service (form 41-4, rev. 8/00).

(B) Payment of the fee(s) required by Section 80487.

(C) Verification of the completion of at least six semester units, or the equivalent quarter units, of course work required for issuance of the related credential.

(4) The employing agency must submit a Declaration of Need for Fully Qualified Educators that satisfies the provisions of Section 80026.

(5) Validation of Professional Development Statement. The holder of a Limited Assignment Multiple or Single Subject Teaching Permit who has previously taught three or more years on a credential other than an emergency credential or permit may submit the following in lieu of the required 6 semester units:

(A) Verification that he or she has completed ninety hours of professional development activities that are directly related to the subject or class authorized by the Limited Assignment Multiple or Single Subject Teaching Permit; and

(B) Submission of a Validation of Professional Development Statement, signed by the employing agency and the permit holder, that includes a brief description of the content of the teacher's professional development program, a brief description of the means by which the employing agency validated the quality and appropriateness of the teacher's professional development program, and a brief description of the manner in which the results of the teacher's professional development program were evaluated.

(6) An individual may renew a Limited Assignment Multiple or Single Subject Teaching Permit in any one specific subject only twice during his or her lifetime.

(7) The employing agency must keep on file a written statement verifying consent of the teacher to serve on the Limited Assignment Multiple or Single Subject Teaching Permit.

(c) Authorization:

(1) A Limited Assignment Multiple Subject Teaching Permit authorizes the same service as a Multiple Subject Teaching Credential.

(2) A Limited Assignment Single Subject Teaching Permit authorizes the same service as a Single Subject Teaching Credential in the authorized field(s) listed on the permit.

(d) The Limited Assignment Multiple or Single Subject Teaching--Permit shall be valid for no less than one year and expires one calendar year from the first day of the month immediately following the date of issuance.

17. The Governing Board may reduce or discontinue 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, [rehearing denied, review denied] and *California Teachers Association v. Board of Trustees of Goleta Union School District* (1982) 132 Cal.App.3d 32.)

18. In the course of reducing or discontinuing a particular kind of service, the Governing Board may retain certificated employees junior to respondents to perform services which respondents are not certificated and competent to render. (*Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648 and *Lewin v. Board of Trustees* (1976) 62 Cal.App.3d 977.)

19. 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.)

20. 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. Tamalpais 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* (1981) 116 Cal.App.3d 831.)


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. With the changes noted in the Findings regarding which respondents are affected by the layoff, cause exists for the reduction or discontinuation of particular kinds of services and of 121.20 full-time equivalent certificated positions at the end of the 2005-2006 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 the affected respondents that their services will not be required for the ensuing school year, 2006-2007.

ORDER

The School District may reduce or discontinue particular kinds of services and 121.20 full-time equivalent certificated positions at the end of the 2005-2006 school year, pursuant to Education Code sections 44949 and 44955. Notice shall be given to affected respondents that their services will not be required for the ensuing school year, 2003-2004, because of the reduction or discontinuation of particular kinds of services. Notice shall be given to respondents in inverse order of seniority.

Dated: May 4, 2006


LEONARD L. SCOTT
Administrative Law Judge
Office of Administrative Hearings