

BEFORE THE  
BOARD OF TRUSTEES  
SUTTER UNION HIGH SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction or Elimination  
of Particular Kinds of Services and the  
Employment Status of:

HERBERT COOLEY,

Respondent.

OAH No. N2007030785

**PROPOSED DECISION**

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter at the Sutter Union High School District, Sutter, California on April 9, 2007.

Jon A. Hudak, Attorney at Law, represented the Sutter Union High School District. Ryan Robison, Superintendent and Principal, appeared on behalf of the Sutter Union High School District.

Lesley Beth Curtis, Attorney at Law, of Langenkamp and Curtis, Attorneys at Law, represented the single respondent Herbert Cooley.

The matter was submitted on April 9, 2007.

**FACTUAL FINDINGS**

1. Ryan Robison (the Superintendent) made and filed the Accusation in his official capacity as Superintendent, Sutter Union High School District (District).

2. Respondent Herbert Cooley is and at all times relevant to this Decision was a certificated employee of the District. Mr. Cooley holds a Bachelor of Science degree in Agricultural Engineering from California Polytechnic University, Sal Luis Obispo. He has completed the required post-graduate course work for a Master's Degree in Agricultural

Education. He has not yet completed his oral examinations for the issuance of the post-graduate degree.

3. Mr. Cooley was issued a Professional Clear Single Subject Teaching Credential in Agriculture by the California Commission on Teacher Credentialing (CTC), valid July 15, 2003 through August 1, 2008. The credential authorizes Mr. Cooley to teach Agriculture in grades twelve and below, including preschool, and in classes organized primarily for adults.

4. On or just before March 13, 2003, in accordance with Education Code section 44949 and 44955, the Superintendent notified the Board of Trustees of the District ("the Board") in writing of the Superintendent's recommendation that certain particular kinds of services would have to be reduced or eliminated for the upcoming school year. The Superintendent's notice specified the particular kinds of services to be reduced or eliminated, as set forth below. The Superintendent also notified the Board that a corresponding number of certificated employees of the District would have to be laid off to effectuate the reduction or elimination of the particular kinds of services. The Superintendent notified the Board that Mr. Cooley was identified as a person to whom notice should be given that his services would not be required for the ensuing school year. The recommendation that Mr. Cooley's services for the District would not be required for the upcoming school year was not related to his skills, abilities or competence as a teacher. In fact, the Superintendent took the opportunity twice in his testimony to praise Mr. Cooley's teaching, both in Agriculture and in the mathematics and physics classes he has taught for the District.

5. The Board adopted its Resolution 2006/2007-008 on March 13, 2007. The Board resolved to follow the Superintendent's recommendation to reduce 0.50 full time equivalent ("FTE") particular kinds of services, to wit, Classroom Teaching in Agriculture, Grades 9-12. The Resolution authorized and directed the Superintendent to give notice to an equivalent number of certificated employees of the District that their services would not be required for the upcoming school year in order to effectuate the reduction.

6. It was stipulated and agreed by the parties that Mr. Cooley timely received the pre-March 15 written notice ("the preliminary notice") from the Superintendent of the recommendation that his services would not be required for the upcoming school year. The preliminary notice set forth the reasons for the recommendation.

7. Mr. Cooley timely filed a written request for a hearing to determine if there was cause for not reemploying him for the ensuing year.

8. The District timely served an Accusation on Mr. Cooley following receipt of his Request for a Hearing. Mr. Cooley timely filed a Notice of Defense to the Accusation. All prehearing jurisdictional requirements were met. On or just after March 23, 2007, at the time respondent, through counsel, filed his Notice of Defense, respondent's counsel also served on counsel for the District a Request for Discovery. Item Two of the Request for Discovery sought disclosure in writing of the Board's tie-breaker criteria to be applied in the



event employees subject to layoff have the same first day of paid service to the District, and a statement regarding the manner in which those criteria were applied in this matter. Counsel for the District responded to the Request on March 2, 2007. The response disclosed that the District has not adopted criteria and had no information in writing regarding the application of such criteria. The response elaborated on the manner in which the Superintendent determined which of three employees with the first day of paid service to the District should be given a preliminary notice of layoff.

9. The Superintendent also served Ms. Cooley with a Notice of Nonreelection, pursuant to Education Code section 44929.2. The Notice of Nonreelection addressed the two periods of Pre-Algebra and one period of Physics Mr. Cooley had been teaching to fill out a full 1.0 FTE in each of the last two school years. The Administrative Law Judge ruled that there exists no jurisdiction in these proceedings to review the propriety of this Notice of Nonreelection.

10. The 0.5 FTE of "Classroom Teaching in Agriculture" the District sought to eliminate through Resolution 2006/2007-008 is composed of three periods. Two of the periods are Metal Fabrication-Regional Occupational Program (ROP), and one is a "Project Period." A Project Period is an additional preparation period specific for teachers teaching Agriculture classes. No students are assigned to the teacher during the Project Period, and the teacher is free to use the time in any fashion the teacher deems appropriate. Many teachers use the time to assist students with agricultural fair project entries or other projects being completed to complete other agricultural course requirements. Teachers often visit the students at their homes during this period to help them with their projects, especially if the projects involve animal husbandry, but there is no requirement that they do so. Use of the time is entirely discretionary with the teacher.

11. The two Metal Fabrication-ROP classes slated for reduction are partially externally funded. The State reimburses the District for a portion of a ROP teacher's salary. Students in the two ROP classes Mr. Cooley taught learn to fabricate metal projects and welding. There was no dispute that the two Metal Shop-ROP classes are not actually being reduced or eliminated. These two classes will be offered again in the upcoming school year, assuming sufficient enrollment, which is not a given. As of the time of the hearing, the District has received only nine enrollments for one of the two classes. The District plans to combine the two classes Mr. Cooley has been teaching with existing classes taught by one or two of the more senior Agriculture instructors in the District. The combinations will result in increased class sizes, but none of the remaining Metal Fabrication-ROP classes is expected to exceed 30 students.

12. The District's classification of the two Metal Fabrication-ROP classes as within the ambit of Agriculture is broad. The District treats completion of the class subject to this action as satisfaction of an Agriculture course or of a general education/vocational education elective for the successful student. The Superintendent's testimony revealed the class is actually dually classified; what he called "cross-over" classification. The two classes at issue here do not need to be taught by a teacher certificated in Agriculture. Each class can



be taught by a ROP teacher who does not need to be credentialed at all, or can be possessed of a more general vocational education credential.

13. The Superintendent testified that the District is facing a gradual decline in enrollment which he attributed to the encroachment of subdivisions into the District's primarily agricultural territory. He noted that the demands for discretionary educational offerings by the District are changing, due to changing student demand. Another change stems from the need to respond to State mandated testing requirements. There is an increasing emphasis upon "core" courses, and particularly upon English and Mathematics. There is a decreasing demand for "traditional" vocational education courses, including agriculture and shops, and an increasing demand for vocational education courses such as computer skills, animation and graphics.

The Superintendent testified the District operates on a six periods plus a prep period day. There were only eleven classes of Agriculture offered in this most recent school year; less than 2.0 FTE. There are two teachers certificated in Agriculture more senior to Mr. Cooley employed by the District. He observed that having Mr. Cooley teach the two courses he did in this current school year, which are a stretch to characterize as Agriculture, was an accommodation and an effort to keep offering as much Agriculture as possible, as long as fiscally feasible. He commented in his testimony that the contraction in the Agriculture program sought in this action is a year overdue already.

14. There is no anticipated revenue shortfall for the upcoming school year and there exists no District fiscal crisis. There was no evidence that the District anticipates having to operate at a deficit in the upcoming school year if the proposed reduction in services is not effectuated. None of the services proposed to be eliminated are State or federally mandated. The District is fully in compliance with all federal and State mandates, and there was no evidence that elimination of the proposed services would adversely affect this compliance. The Superintendent's recommendation for this reduction in services reflects a thoughtful and prudent effort to conserve scarce District resources before a fiscal problem develops, and to retain maximum flexibility to offer discretionary classes in response to student needs and desires.

15. The Superintendent, on behalf of the District, considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees. Mr. Cooley was the only District employee receiving a preliminary notice of lay-off.

16. Mr. Cooley's first day of paid service to the District was August 9, 2004. There are two other District employees with the same first date of paid service to the District, and five with less seniority, all of whom are being retained. The District's Seniority List is not complete and exists only in "Draft" form, effective March 26, 2007. It cannot be ascertained from the Seniority List what credentials the other employees junior to Mr. Cooley possess. The Superintendent candidly acknowledged that the District's Seniority List is not complete, is in "Draft" form, and lacks required information, and that the District has



not adopted any "tie-breaker" criteria for determining which employee to retain in the event more than one has the first day of paid service to the District.

17. The Superintendent attempted to fill the void created by the District's failure to adopt tie-breaking criteria. He explained these efforts in his testimony. The District implicitly contended by so doing that adoption of the tie-breaker criteria was unnecessary because the Superintendent evaluated the credentials and competence of each of the three employees with first dates of hire of August 9, 2004, and determined that Mr. Cooley could not teach any of the other two employees' assignments. The Superintendent made the same sort of evaluation for the five District employees junior to Mr. Cooley who are being "skipped."

18. The other two employees with August 9, 2004, first day of paid service dates are Ms. Burrow and Ms. Finitzer.

Ms. Burrow has "completed an intern credential." She is teaching three periods of World Studies, one period of Government, a period of "Decision Making/Driver's Education," and a period of Independent Study. The Superintendent testified that "Decision Making" is considered Health Education and Social Studies and Driver's Education is a Physical Education class in the District. He acknowledged that he was not aware of any State standards or specific credential requirements for teaching Health.

Ms. Finitzer is not credentialed in California. The Superintendent testified that he has the understanding that Ms. Finitzer has a credential issued by the State of Washington, and is "in the process" of having her credential "converted" to California. He did not know the present status of the conversion. Ms. Finitzer is teaching six periods of English. There was no evidence of the status of Ms. Finitzer's Washington credential, or what the present status is of Ms. Finitzer's "conversion."

19. Mr. Helmer is a year junior to Mr. Cooley. He has a Resource Specialist intern credential from National University. He is teaching four periods as a resource specialist in the current school year, and two periods of "Consumer Studies." The Superintendent testified that Consumer Studies is a life skills class where students learn skills such as how to obtain insurance, financial decision making, balancing a checkbook, credit and its use, and other practical skills. It requires "low level mathematics skills". The Superintendent testified that he considers the Consumer Studies class a Social Science class. He also testified he believed Mr. Helmer was "working toward" a Social Sciences credential, but he acknowledged that he did not check Mr. Helmer's credentials and Mr. Helmer did not show him any evidence of the status of his credentialing.

20. Mr. Tuttle is two years junior to Mr. Cooley. He has a degree in English and an intern credential issued through Chapman University. Mr. Tuttle teaches three periods of English and a period of Theater Arts/Drama. It does not appear that he teaches a full 1.0 FTE.



21. Ms. Wiggins is another intern with the District. She taught six periods of Algebra I in this school year. She was non-reelected for the upcoming school year.

22. Mr. Nelson is two years junior to Mr. Cooley. He teaches one half of a FTE in Biology. The evidence was unclear regarding his credential status.

23. Mr. Bowers is also two years junior to Mr. Cooley. He graduated with a double major in Biology and Chemistry. The evidence was also not clear regarding the status of Mr. Bowers' credentials. Mr. Bowers is teaching one half a FTE in this school year, composed of a period of Advanced Placement Biology and two periods of Chemistry.

24. Independent study will be retained and offered in the upcoming school year "for the good of the students of the District." The number of students to be served and the number of certificated personnel required to teach the students is not yet unknown. The Superintendent testified the program starts small and grows each year. He confirmed that it was his opinion that no specific credentialing is required to teach Independent Studies. However, he and Ms. Whitman, a credentials specialist from the County Office of Education who testified, confirmed that California's one year waiver from the full requirements of the No Child Left Behind Act (NCLBA) expires June 30, 2007. Regulations are expected to be drafted guiding compliance with the NCLBA. The Superintendent expects the regulations will require any certificated person teaching Independent Studies to qualify as a "highly qualified instructor." He expressed his opinion that he did not believe Mr. Cooley would meet those criteria, but he did not identify the criteria or why Mr. Cooley would not meet them. He did mention in his testimony that there is a two year program any certificated employee can take that will lead to certification as "highly qualified," and evidently allows the participant to provisionally qualify while participating. It did not appear that Mr. Cooley is currently enrolled in such a program, or whether he intends to so enroll. It was not clear who offers the program. The Superintendent and the credentials specialist both confirmed that there is considerable uncertainty and speculation surrounding the actual requirements of the regulations and when and in what form they will be adopted and effective.

25. Ms. Whitaker confirmed in her testimony a fact not previously known; that Mr. Cooley did follow the Superintendent's direction to contact the County Office and make application through the County Office to obtain the additional authorizations required for him to continue to teach mathematics and physics. The status of these efforts is unclear. Mr. Cooley surprised everyone associated with this matter when he announced in his testimony that had taken the California Subject Matter Examination for Teachers (CSET) examinations and subtests for Algebra and Geometry on March 17, 2007, and that he was waiting results. He has not yet taken the CSET physics subtest, but intends to do so soon. The Superintendent testified that if Mr. Cooley passed the examinations, he would be retained to teach a full 1.0 FTE of mathematics in the upcoming school year.

26. There was no evidence that Mr. Cooley is not certificated and competent to teach "Consumer Studies" or Independent Studies. The District's classification of Consumer Studies as Health Education or Social Studies does not govern what credentials and



competence are required to teach that course. There was no evidence that a single subject credential in social studies or health education is required to teach Consumer Studies as the District has arranged the curriculum for that course. Independent Studies requires no particular credential. There was no evidence that Driver's Education requires any specific credential, regardless of the District's classification of the course as Physical Education.

### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied. The District has the burden of proving by a preponderance of the evidence that the proposed reduction or elimination of particular kinds of services and the preliminary notice of layoff served on respondent is factually and legally appropriate.<sup>1</sup>

2. Respondent makes three interrelated contentions in this matter. First, respondent contends the proposed reduction or elimination of services is an illusion, because the Superintendent confirmed the same classes were to be offered in the upcoming school year.<sup>2</sup> The District counters that settled law has approved the combination of classes and increases in student populations in those classes as an appropriate reduction in services. Second, respondent contends the failure of the District to have a completed and legally sufficient Seniority List and to adopt the required tie-breaker criteria requires the layoff to fail, and unfairly prejudiced respondent's ability to assess his ability to bump one of the other two employees with the same first date of paid service to the District. The District counters that the Superintendent evaluated the credentials and competencies of each of the three certificated employees with the same first date of paid service to the District and determined that Mr. Cooley was not certificated and competent to teach anything the other two are teaching. Third, respondent contends employees with the same seniority or less are being retained to teach classes he is certificated and competent to teach in the upcoming school year. The District counters that this contention is factually inaccurate.

3. Respondent's contention that the reduction or elimination of the particular kinds of services in this particular instance is an illusion lacks merit. The contention that the District is not eliminating the services at all, but rather just the teacher who provides them is not accurate. Unlike what occurred in the *Santa Clara* case, however, the District is not simply replacing certificated nurses with other employees. The District here is eliminating the two classes Mr. Cooley is presently teaching where students are assigned and combining those classes and projected enrollment in them with other existing classes taught by two more senior Agriculture credentialed instructors. The result will be making some class sizes larger and the number of periods the subject is offered smaller. The Project Period has no students assigned and may be terminated at the District's discretion. The approach taken by

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<sup>1</sup> Education Code section 44944.

<sup>2</sup> *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal. App. 3d 831, 843-844; *Campbell Elementary Teacher's Association v. Abbott* (1978) 76 Cal. App. 3d 796.



the District to reduce services in the matter proposed here, by combining classes and allowing enrollment/class sizes to grow, has been specifically approved. A school board may reduce services by determining that services shall be reduced in extent because fewer employees are made available to deal with the pupils involved, or that the services will be provided in a different manner than they were in the preceding year.<sup>3</sup>

4. Therefore, the services the District seeks to eliminate in this matter are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not demonstrated to be arbitrary or capricious, but constituted a proper exercise of discretion. No services required by State or federal mandates are being reduced or eliminated as a result of the District's action.

5. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The District is not presently in a deficit situation or a fiscal predicament. Nevertheless, there is an economic component to this action, as set forth in Factual Finding 14. The District's enrollment is gradually declining, but more important, the District is seeing a gradual shift in discretionary academic activities selected by students away from traditional Agriculture and shop classes and toward information technology based vocational education. In one of the few areas where the District has some discretion regarding its spending for elective course offerings, the Superintendent has decided to be prudently proactive. No authority was found that requires the District to be perched on a fiscal precipice before obtaining the legal authority to reduce or eliminate discretionary services.

6. Education Code section 44955 requires layoffs to take place in inverse order of seniority, with some notable exceptions.

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 the 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

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<sup>3</sup> *Zalac v. Governing Board of the Ferndale Unified School District* (2002) 98 Cal. App. 4<sup>th</sup> 838, 854, citing *Rutherford v. Board of Trustees* (1976) 64 Cal. App.3d 167, 178-179.



give affected employees any legal right or interest that would not exist without such a requirement.<sup>4</sup>

"Thus, the statute provides that seniority determines the order of dismissals, and that as between employees with the same first date of paid service, the order of termination is determined on the basis of the needs of the district and its students. Senior employees are given "bumping" rights in that they will not be terminated if there are junior employees retained who are rendering services which the senior employee is certificated and competent to render. Conversely, as in this case, a district may move upward from the bottom of the seniority list, "skipping" over and retaining junior employees who are certificated and competent to render services which more senior employees are not."<sup>5</sup>

7. As set forth in Factual Finding 8, respondent, through counsel, sought as early as March 27, 2007, more than five days before the evidentiary hearing, disclosure of the tie breaking criteria mandated by the quoted portion of Education Code section 44949, subdivision (b). Those tie-breaking criteria could not be produced because they still do not exist.

8. As set forth in the last sentence of the portion of section 45955, subdivision (b) quoted above, failure to produce the criteria in response to the request does not, in and of itself, create a right in a certificated employee subject to layoff where one does not otherwise exist. In this instance, however, Mr. Cooley has been prejudiced by the lack of existence of the tie breaking criteria, the incomplete and inadequate "Draft" seniority list, and the manner in which the Superintendent determined which of the tied three employees received the preliminary notice. The Superintendent's reasoning with respect to which employee(s) were to receive preliminary notice of lay off, although thoughtful and well articulated, nevertheless required the substitution of his individual judgment for that of the Board. There is no statutory authority for the Superintendent to unilaterally determine the criteria for breaking ties. The Code vests that authority and discretion exclusively in the Board of Trustees.

9. Whether a certificated employee facing layoff can retain his or her position by bumping a junior employee is based upon seniority, credentials and competencies. The decisions that construe section 44949 and have created "bumping" rights assume the existence of a District wide seniority list that contains sufficient data about all certificated employees of the District that the affected employee may determine whether and to what extent those rights exist. Without a factually sufficient District wide seniority list, the displaced certificated employee is required to guess regarding the certifications and competencies of employees tied with or junior to him or herself that are to be retained.

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<sup>4</sup> Education Code section 44955, subdivision (b), in pertinent part. (Italics added)

<sup>5</sup> *Alexander v. Board of Trustees of the Delano Unified School District* (1983) 139 Cal. App. 3d 567, 571-2, *Moreland Teacher's Association v. Kurze* (1980) 109 Cal.App.3d 648, 655.



10. The District candidly acknowledged the deficiency of its seniority list and the paucity of data on it. In addition, the testimony of the Superintendent revealed that the supporting information regarding the credentials and competencies of several of the certificated employees ties with or junior to Mr. Cooley who are being retained ranges from quite vague to materially deficient. For example, the Superintendent had no idea whether the credentials of Ms. Finitzer from Washington or Mr. Helmer's credentials are valid. His testimony regarding their competencies was rather vague. A complete and final seniority list will not only include the employee's seniority date (first day of paid service) but also a complete list of the credentials the employee has filed with the District and verified by the County Office of Education.

11. The lack of a final and complete District seniority list and the absence of tie breaking criteria made it very difficult for Mr. Cooley to fully ascertain how he might exercise his seniority to bump either an employee with the same first day of paid service, or an employee junior to him. In this matter, the vagueness and ambiguity of the credential status of one employee with the same hire date as Mr. Cooley, Ms. Finitzer, and those of several junior to him made it all but impossible to determine whether any of these other employees were fully and lawfully credentialed and able to teach some of their proposed assignments for the upcoming school year.

12. The District also contends Mr. Cooley is not certificated and competent to bump into portions of assignments held by others equal to or having less seniority to him. The District contends that bumping cannot be exercised piecemeal, displacing another employee or employees class by class. No authority was cited for that contention. Presumably the District relies on *Murray v. Sonoma County of Education* (1989) 208 Cal. App. 3d 456, 460, which held that a part-time employee is not entitled to bump into a full-time position, and that a District is not required to create a part-time position to enable a part-time employee to bump. *Murray* is inapposite here. The employees Mr. Cooley has challenged are already teaching split FTE assignments, such as Mr. Helmer and Ms. Burrow. Mr. Cooley does not seek to bump into a full-time slot, nor does he seek to force the District to create a part-time position for him to bump into where one does not already exist. He seeks to move into portions of a FTE that already exist, where he is as competent as the junior employee being retained to teach the assignment in the upcoming school year.

13. The District's contention that Mr. Cooley lacks subject matter certification and competence to teach assignments currently held by employees with equal or less seniority also lacks merit. It was not proved that a Social Sciences single subject credential is required to teach Consumer Studies, regardless of the fact that the District categorizes the class as Social Science. Similarly, there was no evidence a Health, Social Sciences or Physical Education single subject credential is required to teach Driver's Education/Decision Making. Finally, the District's reasoning for precluding Mr. Cooley from taking an Independent Studies assignment is based upon speculation regarding what may come of regulations not yet drafted or adopted.



California Code of Regulations, title 5, section 80005 provides, in pertinent part, as follows:

(a) The holder of a Single Subject Teaching Credential may be assigned to teach the subjects which fall within the broad subject area listed on their document as found in 1 through 16. If a subject is listed below, it may only be taught by the holder of a Single Subject Teaching Credential with the broad subject area listed on their document. The holder of a Single Subject Teaching Credential may be assigned to teach a subject not listed below if the employing agency has determined its subject-matter content is directly related to the broad subject area.

(1) Agriculture: agricultural management, agricultural mechanics, agricultural science, animal science, forestry, horticulture, landscaping, and plant science;

[¶]...[¶]

(5) Health: child development, family life, human sexuality, nutrition, sexually transmitted disease education, and substance abuse;

[¶]...[¶]

(11) Physical Education: aquatics, dance, fundamental and creative movement, gymnastics, interscholastic sports, motor development or learning, physical conditioning, sports, and weightlifting;

[¶]...[¶]

(16) Social Science: American government, anthropology, contemporary issues, current events, cultural studies, economics, ethnic studies, geography, government, history, humanities, international government, law, politics, psychology, sociology, United States history, and world history.

(b) The holder of a teaching credential based on a baccalaureate degree and a teacher preparation program, including student teaching or the equivalent, may be assigned, with his or her consent, to teach subject-matter classes which do not fall within or are not directly related to the broad subject areas listed in (a) if the employing agency has determined the teacher has the requisite knowledge and skills. Verification of this decision



must be kept on file in the office of the employing agency for purposes of the monitoring of certificated assignments pursuant to Education Code Section 44258.9(b). Such courses may include, but are not limited to, life skills, conflict management, study skills, leadership, teen skills, and study hall. Service in such assignments is limited to the grade level authorized by the teaching credential.

14. The problem with only a draft seniority list and no adopted tie breaker criteria guidance from the Board becomes evident when assignments into which Mr. Cooley appears to be eligible to bump are examined. It appears that Mr. Cooley is as qualified and competent to teach Consumer Studies and Driver's Education as are Ms. Borrow (tied with him in seniority) and Mr. Helmer (junior to him). The regulation quoted above makes clear that no specific credential is required to take these assignments. In addition, Independent Studies will be retained and there was no evidence that any of the employees equal to or junior to Mr. Cooley were "highly qualified," or any more qualified, credentialed or competent to teach Independent Studies than is Mr. Cooley.

15. Mr. Cooley contends the layoff fails because the weight of the evidence reveals he is being laid off while the District is intending to retain at least two junior and one employee with the same first date of paid service to the District to teach assignments he is certificated and competent to teach. The contention has merit. Mr. Cooley must be retained.

16. The fact that Mr. Cooley must be retained as a District employee for the upcoming school year does not effect the District's discretion to assign him to teach where the needs of the District and its students are best served, nor does it give him rights to teach more than the 0.5 FTE he is losing as a result of this action. The fact that Mr. Cooley is able to potentially serve in a variety of assignments where he is either certificated, as in Agriculture, or competent, as in assignments where no particular single subject credential is required, in the upcoming school year, provides the District flexibility and the discretion to assign him as best serves the needs of the District.

17. Legal cause exists pursuant to Education Code section 44949 and 44955 for the Sutter Union High School District to reduce or discontinue 0.5 FTE of particular kinds of services, as set forth in the Resolution 2006/2007-008. The cause for the reduction or discontinuation of particular kinds of services relates solely to the welfare of the schools and the pupils thereof.

18. However, legal cause does not exist to sustain the charges in the Accusation against Mr. Cooley. Mr. Cooley is retained for the upcoming school year and must be reemployed to the extent of the 0.5 FTE that is the subject of this action. The Board may not give Mr. Cooley final notice that his services are longer be required by the District.



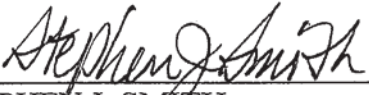
ORDER

The Accusation is SUSTAINED IN PART AND DISMISSED IN PART.

The Sutter Union High School District action to reduce or eliminate 0.50 FTE of particular kinds of services for the 2007-2008 school year is AFFIRMED, and to this extent, the Accusation is SUSTAINED.

The Accusation and its lay-off against Mr. Cooley is DISMISSED. Mr. Cooley is retained and must be reemployed for a minimum of 0.50 FTE for the upcoming 2007-2008 school year.

Dated: April 23, 2007

  
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STEPHEN J. SMITH  
Administrative Law Judge  
Office of Administrative Hearings