

BEFORE THE  
GOVERNING BOARD OF THE  
DURHAM UNIFIED SCHOOL DISTRICT  
COUNTY OF BUTTE, STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

DINA BARLOW, CHRISTY BAVIERE,  
REBECCA BILL, DANIEL WESLEY BILL,  
CARRIE BROWN, CHRISTINA COPPER,  
BRIAN GLOVER, NICOLE JARMUSH,  
VERONICA MASUDA, JEAN MURPHY-  
ATKINS, HEATHER OPALINSKI, ANNA  
SOARES, TALLY STURM, and DAVIS VAN  
ARSDALE,

Respondents.

OAH No. 2010030498

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, in Durham, California, on April 20, 2010.

Michelle L. Cannon, Attorney at Law, represented the Durham Unified School District (District).

Ted Lindstrom, Attorney at Law, represented respondents.

Evidence was received, the record was closed, and the matter was submitted for decision on April 20, 2010.

**FACTUAL FINDINGS**

1. On or about March 10, 2010, John T. McIntosh, Interim Superintendent, gave notice to the District's Board of Trustees (Board) of his recommendation that particular kinds of services be reduced or discontinued, and that notice be given to respondents, pursuant to Education Code sections 44949 and 44955,<sup>1</sup> that their services will not be required for the 2010-2011 school year.

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<sup>1</sup> All statutory references are to the Education Code unless otherwise indicated.

2. On March 10, 2010, the Board adopted Resolution No. 10-18, entitled “Resolution of Intention to Dismiss Certificated Employees” (PKS Resolution). Pursuant to the PKS Resolution, the Board determined that it was necessary for the District to reduce or discontinue particular kinds of services (sometimes referred to herein as PKS) and to decrease a corresponding number of certificated District employees at the end of the 2009-2010 school year. In the PKS Resolution, the Board directed the Superintendent to send appropriate notices to all employees whose positions may be affected by virtue of the PKS Resolution.

3. The PKS Resolution identified the following particular kinds of services for reduction or elimination:

Eliminate Intermediate School Principal by	1.0 FTE <sup>2</sup>
Reduce Special Education RSP Services district-wide by	.60 FTE
Reduce Special Education SDC Services district-wide by	.20 FTE
Reduce Gifted and Talented Education Services by	.12 FTE
Reduce Independent Study instruction by	.40 FTE
Reduce 7-12 ELD by	.20 FTE
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Reduce K-5 classroom instruction by	4.0 FTE
Reduce Elementary Visual and Performing Arts Services by	.13 FTE
Reduce Elementary Physical Education by	1.20 FTE
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Reduce Intermediate School English Language Arts by	1.60 FTE
Reduce Intermediate School Math by	.20 FTE
Reduce Intermediate School Science by	.20 FTE
Reduce Intermediate School Social Science by	.20 FTE
Reduce Intermediate School Physical Education by	.20 FTE
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Reduce Continuation High School by	.80 FTE
Reduce High School English by	.40 FTE
Reduce High School Math by	.40 FTE
Reduce High School Biology by	.20 FTE
Reduce High School Auto Mechanics by	.20 FTE
Reduce High School Spanish by	.20 FTE

TOTAL: 12.45 FTE

4. On or about March 15, 2010, Mr. McIntosh sent preliminary layoff notices to the certificated employees identified for layoff. The preliminary layoff notices informed the certificated employees of their right to request a hearing, and enclosed copies of the PKS resolution, sections 44944 and 44955, and a blank request for hearing form. In response to

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<sup>2</sup> “FTE” stands for full-time equivalent.

the preliminary layoff notices, the District received requests for hearing from respondents. On March 26, 2010, the District served the Accusation, Statement to Respondent, form Notice of Defense, Notice of Hearing, and Request for Discovery on respondents. On March 29, 2010, a Notice of Defense was served on behalf of respondents.

5. Respondents are certificated employees of the District. The District timely served all notices required by sections 44949 and 44955. The Notice of Defense was timely served on behalf of respondents.

6. At the hearing, the District rescinded the preliminary layoff notice served on respondent Daniel Wesley Bill.

7. The District clarified that, pursuant to the preliminary layoff notices, it is proposing to reduce respondents' FTE's as follows:

<u>Respondents</u>	<u>Current FTE</u>	<u>FTE Reduction</u>	<u>Remaining FTE</u>
Dina Barlow	1.0	1.0	0
Christy Baviere	.60	.40	.20
Rebecca Bill	1.0	.40	.60
Carrie Brown	.40	.40	0
Christina Copper	1.0	1.0	0
Brian Glover	1.0	1.0	0
Nicole Jarmush	.30	.20	.10
Veronica Masuda	1.0	.33	.67
Jean Murphy-Atkins	1.0	.60	.40
Heather Opalinski	.60	.60	0
Anna Soares	1.0	.40	.60
Tally Sturm	.60	.60	0
Davis Van Arsdale	1.0	1.0	0

8. Respondents raised the following arguments against the District's proposed layoffs: (1) the District's reserves are too high to warrant making the proposed certificated employee cuts; (2) the District improperly permitted administrative employees to bump into assignments currently held by certificated employees; (3) the District will be unable to provide state-mandated services if it reduces Special Education Resource Specialist (RSP) services as it has proposed; (4) the District will be unable to provide state-mandated services

and will violate the collective bargaining agreement if it reduces elementary Physical Education as it has proposed; and (5) the District improperly sent a layoff notice to respondent Carrie Brown. In addition, Ms. Brown argued that her seniority date should be changed from August 14, 2008, to August 12, 2008. These arguments are addressed below.

### *The District's Reserves*

9. Respondents argued that the District's reserves are too high to warrant the proposed layoffs. The PKS Resolution states that the Board determined to reduce the identified particular kinds of services "due to the State budgetary problems and funding reductions in general and specific programs." At the hearing, Mr. McIntosh testified that he recommended to the Board the reductions reflected in the PKS Resolution because: (1) the District is subject to significant budget cuts as a result of the state's financial crisis; (2) there are not enough students enrolled in certain of the elective classes to support their continuation; and (3) due to a reduction in enrollment, specific services must be cut. The District has the discretion to determine its financial and budgetary needs, and the level of proposed layoffs to meet those needs. Respondents did not establish that the District's reasons for pursuing the proposed layoffs were arbitrary or capricious, or an abuse of the District's discretion.

### *Administrative Reductions*

10. The PKS Resolution calls for the elimination of one Intermediate School Principal by 1.0 FTE. (Finding 3.) Greg Blake is currently a .80 FTE principal of the Durham Intermediate School. He also teaches a .20 FTE Yearbook class at Durham High School. Mr. Blake's seniority date with the District is August 24, 1994. He is a permanent certificated employee. He holds a clear single subject teaching credential in Business and Social Science. He also has an Internship Administrative Services credential and a Preliminary Administrative Services credential.

11. According to Mr. McIntosh, when Mr. Blake's position as the Intermediate School Principal was eliminated by the PKS Resolution, Mr. Blake "resigned" from that position and decided to return to classroom teaching. Given Mr. Blake's seniority date and credentials, Mr. Blake was permitted to bump into .40 FTE of the ROP Retail classes currently taught by respondent Anna Soares, and .20 FTE of the Leadership classes currently taught by respondent Carrie Brown. Ms. Soares's seniority date is August 12, 2008. Ms. Brown's seniority date is August 14, 2008. (See Findings 46 through 51 below.) Mr. Blake was also permitted to bump into .20 FTE of the Computer classes currently taught by Kevin Martin.

12. Mr. Martin is currently the Principal of Durham High School. The PKS Resolution does not eliminate that position. Mr. Martin, however, has decided to resign from that position and return to teaching. Mr. Martin's seniority date with the District is August 20, 1998. He holds a Multiple Subject teaching credential and a Preliminary Administrative Services credential. Given his seniority date and his Multiple Subject credential, the District

determined that he has the right to return to teaching and bump respondent Dina Barlow from her 1.0 FTE first-grade assignment at the Durham Elementary School. Respondent Barlow's seniority date is August 16, 2007.

13. Mr. McIntosh testified that the Board included the Intermediate School Principal position in the PKS Resolution in order to eliminate and not have to refill it.

14. On April 14, 2010, the Board held a special meeting. During that special meeting, the Board approved a new position of Assistant Principal/Manager of Maintenance, Operations and Transportation, which combines into one position two currently separate positions.

15. The PKS Resolution provides that the Board "has considered all positively-assured attrition which has occurred to date [and] but for the attrition already assured and the attrition anticipated would have found it necessary to reduce additional particular kinds of service." At the hearing, respondents asserted that, since the Board is eliminating only one administrative position – Intermediate School Principal – the administrative position being vacated by Mr. Martin – High School Principal – should be deemed to be attrition and Mr. Blake should be assigned to fill that vacant position. Respondents argued that given these facts, Mr. Blake's bumps of Ms. Soares and Ms. Brown should be voided and their preliminary layoff notices rescinded. In addition, respondents argued that, because the District is recruiting to fill a new position of Assistant Principal/Manager of Maintenance, Operations and Transportation at a time when the District is making layoffs, Mr. Martin's bump of Ms. Barlow should be deemed to be "void" and her preliminary layoff notice rescinded. As set forth below, respondents' arguments are not persuasive.

16. Given his seniority and Multiple Subject credential, Mr. Martin has the right to resign as the High School Principal, return to teaching in the elementary school, and bump Ms. Barlow, the most junior elementary teacher, from her current first-grade assignment. Even though Mr. Martin is voluntarily vacating the position of High School Principal, the District is not required to consider that administrative position to be attrition for the purposes of this layoff and assign Mr. Blake to it. The District has the discretion to determine who, if anyone, should fill a vacant administrative position. Thus, the District properly determined that, upon the elimination of the Intermediate School Principal, Mr. Blake, given his seniority and credential, may return to teaching and bump Ms. Soares and Ms. Brown, the most junior certificated employees teaching subjects that Mr. Blake is credentialed and competent to teach.

17. The District also has the discretion to determine whether it needs to recruit for a new position, such as Assistant Principal/Manager of Maintenance, Operations and Transportation, at a time when it is conducting layoffs relating to different positions. Respondents did not cite any law that would prevent the Board from making the business decision that, given its existing and ongoing operational requirements, the District needs to hire an Assistant Principal/Manager of Maintenance, Operations and Transportation, even

though it is currently laying off certificated employees. Respondents did not show that the District has acted arbitrarily or capriciously, or abused its discretion by seeking to hire an Assistant Principal/Manager of Maintenance, Operations and Transportation at this time. Consequently, respondents failed to establish that Mr. Martin's bump of Ms. Barlow should be voided.

### Special Education RSP

18. Respondents argued that the District will be unable to provide mandated services if it reduces a Special Education RSP. As set forth below, respondents' argument is not persuasive.

19. As set forth in the PKS Resolution, the Board has decided to reduce Special Education RSP services district-wide by .60 FTE. The District currently employs three RSP's: Heidi Hovey, Nancy Riley, and respondent Heather Opalinski. Ms. Opalinski is the most junior of these three RSP's. Her seniority date is August 18, 2009. She has a .60 FTE, and currently teaches three RSP classes at Durham Intermediate School. She holds a preliminary Multiple Subject teaching credential and a preliminary Level I Education Specialist Instruction credential.

20. At the hearing, Ms. Opalinski testified that she is currently working with approximately 19 students. She also testified that she has observed Special Education RSP classes taught by Ms. Riley at Durham High School and Ms. Hovey at Durham Elementary School. Both Ms. Riley and Ms. Hovey have 1.0 FTE's. According to Ms. Opalinski, when she was observing, Ms. Riley had approximately 12 to 14 students in her class, and Ms. Hovey had approximately 10 to 12 students in her class.

21. Ms. Opalinski argued that, if she were laid off from her RSP position, the District would not have enough RSP's to meet the state's mandates for RSP students. The District disputed Ms. Opalinski's argument. According to the District, it will be able to comply with the state's mandates in all three of its schools with two full-time RSP's.

22. Section 56362 sets forth the state's mandates regarding RSP's. Subdivision (c) of that section provides: "No resource specialist shall have a caseload which exceeds 28 pupils." Given the number of students that Ms. Opalinski is now teaching at the intermediate school and the number of students she observed Ms. Riley and Ms. Hovey teaching at the high and elementary schools, it was not established that the District would not be able to comply with the mandates of section 56362, subdivision (c), if it reduces RSP services by .60 FTE. Consequently Ms. Opalinski failed to establish that her preliminary layoff notice should be rescinded.

### Physical Education

23. The PKS Resolution calls for the reduction of elementary Physical Education by 1.20 FTE and intermediate school Physical Education by .20 FTE.

24. Respondent Jean Murphy-Atkins is a permanent certificated employee of the District. She has a 1.0 FTE. Her seniority date is August 20, 1998. She holds a single subject teaching credential in Physical Education, with a supplementary authorization in Geography. She is currently teaching two periods (.40 FTE) of elementary Physical Education, two periods (.40 FTE) of high school Health, and one period (.20 FTE) of high school Physical Education. Pursuant to the PKS Resolution and the bumping rights of a more senior certificated employee (Dean Martin), the District proposes to eliminate all of Ms. Murphy-Atkins's Physical Education assignments (.60 FTE). She will retain her .40 FTE Health assignment in the 2010-2011 school year.

25. Respondent Brian Glover is a permanent certificated employee of the District with a 1.0 FTE. His seniority date is August 23, 1999. He has a single subject teaching credential in Physical Education. He is currently teaching one class (.20 FTE) of Physical Education at Durham Intermediate School and four classes (.80 FTE) at Durham Elementary School. As a result of the District's reduction of Physical Education at both its elementary and intermediate schools, the District has proposed to fully layoff Mr. Glover.

26. As a result of the elimination of 1.20 FTE of elementary Physical Education, there will be no certificated employees with a Physical Education credential teaching at Durham Elementary School in the 2010-2011 school year. Respondents Glover and Murphy-Atkins argued that, by eliminating all the Physical Education teachers at the elementary school, the District will be unable to comply with the state's physical education mandate.<sup>3</sup>

27. The District disputed respondent's argument. The District asserted that, in the 2010-2011 school year, it intends to assign elementary classroom teachers, all of whom hold Multiple Subject teaching credentials, to teach Physical Education to elementary school students.

28. Although Mr. Glover asserted that he did not believe that elementary school teachers are "qualified" to teach Physical Education, both Mr. Glover and Ms. Murphy-Atkins conceded that elementary school teachers with Multiple Subject teaching credentials are legally authorized to teach Physical Education to elementary school students.

29. Respondents argued further that the District will not be able to meet the state's mandate for elementary Physical Education by utilizing elementary school teachers because

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<sup>3</sup> At the hearing, Mr. Glover did not challenge the reduction of his .20 FTE intermediate school Physical Education assignment.

such utilization would violate the terms of the collective bargaining agreement currently in effect. Mr. Glover and Ms. Murphy-Atkins teach elementary Physical Education during elementary school teachers' "prep" periods. The collective bargaining agreement currently provides, in relevant part,

The District will provide a minimum of 270 minutes of preparation time (in minimum 45 minute blocks) within two weeks for classroom teachers in grades 1-5. This time will be used for physical education, visual and performing arts (VAPA) or other programs agreed upon by the Board and bargaining unit. Due to holidays and staff development days, this may vary occasionally. In the event of special programs, assemblies, and other reasons, preparation time staff will supervise students and teachers will maintain their scheduled prep period.

30. The District argued that issues relating to the collective bargaining agreement are not subject to the jurisdiction of this proceeding. The District argued further that the collective bargaining agreement does not require that Physical Education teachers be assigned to relieve teachers during prep periods, and that the prep periods associated with VAPA and other programs would continue. The District also noted that it was seeking to negotiate with the teachers' union the terms of the collective bargaining agreement currently in effect.

31. The District's arguments are persuasive. The question of whether the District's proposal to assign elementary school teachers to teach Physical Education may violate the collective bargaining agreement's provisions regarding prep time is not an issue for determination in this proceeding. Because elementary school teachers with Multiple Subject teaching credentials are authorized to teach Physical Education to their students, respondents did not establish that the District will be unable to comply with the state's Physical Education mandates if it reduces elementary Physical Education as it has proposed. Respondents also did not establish that the Board's decision to reduce elementary Physical Education as set forth in the PKS Resolution was arbitrary or capricious, or an abuse of its discretion. Consequently, Ms. Murphy-Atkins and Mr. Glover did not establish that their FTE reductions relating to elementary Physical Education should be rescinded.

32. Ms. Murphy-Atkins also argued that she should not be bumped from her current assignment teaching one period of high school Physical Education because it will result in there being no female Physical Education teacher to oversee the girls' locker room.

33. The District argued that there is no state mandate requiring that a Physical Education teacher must oversee the girls' locker room. The District asserted that the site administrators will assign personnel as appropriate to perform this function.



34. The District's arguments are persuasive. Consequently, Ms. Murphy-Atkins did not establish that her .20 FTE reduction relating to high school Physical Education should be rescinded.

Carrie Brown's Status

35. Respondent Carrie Brown is a probationary II certificated employee. The District's seniority list reflects that Ms. Brown's seniority date is August 14, 2008 (see Findings 46 through 51 below), and that she has a .40 FTE. She holds a preliminary clear single subject teaching credential in Social Science and a clear Pupil Personnel Services (PPS) credential. At the beginning of 2009-2010 school year, she was assigned to teach one class (.20 FTE) of Leadership at Durham Intermediate School and one class (.20 FTE) of Leadership at Durham High School.

36. Dina Spaggiari is a permanent certificated District employee. She has been the counselor at Durham High School for most of the past 11 years. During the current 2009-2010 school year, Ms. Spaggiari has been absent approximately 60 percent of the time. Prior to April 2010, when Ms. Spaggiari was absent, Ms. Brown, given her PPS credential, filled in as the high school counselor.

37. On or about April 5, 2010, Mr. Martin asked if Ms. Brown would work full-time as the high school counselor. Ms. Brown testified that she was advised that she would be substituting for Ms. Spaggiari until the end of the school year. According to Ms. Brown, she began working full-time as counselor on April 7, 2010.

38. Mr. McIntosh signed a letter to Ms. Brown dated April 9, 2010, entitled "Long-Term Substitute Position - DHS Counselor." That letter stated:

This letter is to acknowledge that for the remainder of the 2009-10 school year, you will [be] serving as a long-term substitute. As this is a substitute assignment, there are no reemployment rights or changes to the medical coverage afforded you pertaining to the additional FTE above your regular assignment. [¶] Please submit a timesheet no later than the 20th of each month for the time worked in excess of your regular contracted hours. [¶] Thanks for filling in and assuring that the students at Durham High School have all their counseling needs met.

39. Ms. Brown signed the April 9, 2010 letter under an acknowledgement that stated, "I acknowledge the nature of the assignment as stipulated above." According to Ms. Brown, she received and signed the letter on April 12, 2010, five days after she began working as a full-time counselor.

40. Ms. Brown submitted a “Supplemental Time Sheet and Paid Overtime/Compensatory Time Off (CTO) Authorization” to the District dated April 20, 2010. That time sheet indicates that Ms. Brown worked as a “Test Site Coordinator” 4.5 hours each day on March 19, 22, 23, 24 and 25, and 7.0 to 8.0 hours each day on April 7, 8, 9, 12, 14, 15, 16, and 19. During this time, she organized the site for annual STAR testing. According to Ms. Brown, although “Test Site Coordinator” is not one of the “regular duties” of a counselor, this duty has been assigned to counselors in the past.

41. While Ms. Brown has been working as a full-time counselor, a substitute has been teaching her Leadership classes.

42. Ms. Spaggiari has continued to work for the District while Ms. Brown has been substituting for her as a counselor.

43. At the hearing, Ms. Brown argued that, pursuant to *Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911, because she was offered a full-time counselor position on April 5, 2010, and did not sign the April 9, 2010 letter until April 12, 2010, she must be considered to be 1.0 FTE counselor, and not a .40 FTE Leadership teacher. She also argued that, since Ms. Spaggiari is still working as a certificated employee at the high school, Ms. Brown cannot be deemed to be substituting for her.

44. Respondent’s arguments are not persuasive. In *Kavanaugh, supra*, 29 Cal.4th at p. 921, the California Supreme Court held that section 44916<sup>4</sup> requires that new certificated teachers must be informed in writing, on or before their first day of paid service to their employing districts, of their salary and employment status; if a new teacher does not receive such notice, the teacher cannot be classified as temporary and must, instead, be classified as probationary.

45. The facts in *Kavanaugh* are distinguishable from this case. Ms. Brown was already a probationary teacher on April 5, 2010, when she was asked to become a full-time substitute counselor for Ms. Spaggiari, in light of Ms. Spaggiari’s significant absenteeism. Ms. Brown had voluntarily filled in for Ms. Spaggiari on many occasions during the school

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<sup>4</sup> 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.

year. There was no evidence to suggest that she was lead to believe that she was being offered anything other than a substitute position for the remainder of the school year. The fact that Ms. Brown may not have signed the April 9, 2010 letter until April 12, 2010, five days after she began substituting full-time for Ms. Spaggiari, did not turn her .40 FTE probationary position into a 1.0 FTE probationary position. She remained a .40 FTE Leadership teacher, who had agreed to substitute full-time for the remainder of the school year as a counselor for another employee with significant absentee issues.

Ms. Brown's Seniority Date

46. At the hearing, Ms. Brown asserted that her first date of paid service in a probationary position was August 12, 2008, and not August 14, 2008, as reflected on the seniority list. Ms. Brown did not offer any documentation to support her assertion.

47. When Ms. Brown started as a certificated employee with the District in August 2008, she started in the position of counselor.

48. The collective bargaining agreement, in relevant part, provides: "Year one probationary teachers shall report to work two (2) days prior to other teachers at the beginning of the school year." The District asserted that this provision, by its plain language, applies only to teachers, and not to counselors.

49. On February 19, 2010, the District sent a letter to each certificated employee, which set forth the employee's seniority date, status, credentials and current FTE. The District asked each employee to verify the information included in their letter and return it no later than March 1, 2010. The letter informed each employee that if the District Secretary did not hear from the employee by March 1, 2010, the information included in the letter would be deemed to be correct. The February 19, 2010 letter sent to Ms. Brown stated that her seniority date was August 14, 2008. Ms. Brown signed the letter and returned it to the District with no changes.

50. Anna Soares is a probationary II certificated employee. She holds a preliminary single subject teaching credential in Social Science and Business. She has a 1.0 FTE. She is currently teaching three periods (.60 FTE) of Economics, and two (.40 FTE) periods of ROP Retail at Durham High School. Her February 19, 2010 letter stated that her Seniority Date was August 14, 2008. Ms. Soares notified the District Secretary that her first date of paid service was August 12, 2008, and not August 14, 2008. The District checked with Mr. Martin, who confirmed that Ms. Soares reported on August 12, 2008, as the first of her contractual days for new teachers. In light of the information provided by Mr. Martin, the District corrected Ms. Soares's seniority date to August 12, 2008. When the District created its bumping chart, it used the information it had received from Ms. Soares and Ms. Brown, determined that Ms. Soares was more senior, and made bumping decisions accordingly. (Finding 11.)

51. Ms. Brown did not inform the District before the hearing that she believed that her seniority date was August 12, 2008. She did not bring any documentation to the hearing to verify that her first date of paid service was August 12, 2008. Because she was not a teacher during the 2008-2009 school year, she did not qualify under the collective bargaining agreement for an earlier seniority date than the one currently reflected on the seniority list. Because Ms. Brown did not inform the District prior to the hearing of her request for an earlier seniority date and did not provide any documentation at the hearing to support her request, the District was not able to verify that she started on August 12, 2008, as she asserted. Given these facts, Ms. Brown did not establish that her seniority date should be corrected to August 12, 2008. Consequently, she did not establish that her preliminary layoff notice should be rescinded.

52. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

53. No junior employees are being retained to render services that more senior respondents are certificated and competent to perform.

54. The District's reductions and discontinuances of particular kinds of services relate solely to the welfare of the District's schools and pupils.

## LEGAL CONCLUSIONS

1. The District complied with all notice and jurisdictional requirements set forth in sections 44949 and 44955.

2. The services identified in the PKS Resolution are particular kinds of services that may be reduced or discontinued under section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

3. As set forth in Finding 6, the District agreed to rescind the preliminary layoff notice served upon respondent Daniel Wesley Bill.

4. Cause exists to reduce certificated employees of the District due to the reduction or discontinuance of particular kinds of services. The District properly identified the certificated employees to be laid off as directed by the Board.

5. No junior certificated employee is being retained to perform services that a more senior respondent is certificated and competent to render.

6. Other than for Mr. Bill (Legal Conclusion 3), cause exists to give notice to respondents that their services will be reduced or will not be required for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

#### RECOMMENDATION

1. Pursuant to Legal Conclusion 3, the District shall rescind the preliminary layoff notice served upon Daniel Wesley Bill.

2. Except as provided in Recommendation 1, notice may be given to respondents that their services will be reduced or will not be required for the 2010-2011 school year. Notice shall be given in inverse order of seniority.

DATED: May 3, 2010

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KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings