

BEFORE THE  
GOVERNING BOARD  
WHEATLAND UNION HIGH SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ERIC VALENCIA and THERON  
HOPKINS,

Respondents.

OAH No. 2011020719

**PROPOSED DECISION**

This matter was heard before Linda A. Cabatic, Administrative Law Judge, Office of Administrative Hearings, State of California, in Wheatland, California on April 26, 2011.

Kim Kingsley Bogard, Attorney at Law, represented the Wheatland Union High School District (District).

Ted Lindstrom, Attorney at Law, represented respondents Eric Valencia and Theron Hopkins.

Evidence was received, the record was closed and the matter was submitted for decision on April 26, 2011.

**FACTUAL FINDINGS**

1. Dr. Vic Ramos is the Superintendent of the Wheatland Union High School District (a single school district) and also the Principal of Wheatland Union High School.

2. On March 7, 2011, the Governing Board of the Wheatland Union High School District (Board) adopted Resolution No. 10.68 entitled "Reduction in Certificated Staff Due to Reduction or Elimination of Particular Kinds of Services" (PKS Resolution.) Pursuant to the PKS Resolution, the Board determined it was necessary to reduce or eliminate certain particular kinds of services and to decrease a corresponding number of certificated District employees at the close of the 2010/2011 school year for the 2011/2012 school year. In the

PKS Resolution, the Board directed the Superintendent, or his designee, to send appropriate notices to all employees<sup>1</sup> to be affected by virtue of the PKS reduction and elimination.

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

<b>Services</b>	<b>Full-Time Equivalent</b>
ACE Coordinator	1.0
Counselor	0.8
English	1.6
Math	0.4
Music	0.2
Spanish	1.0
<b>Total</b>	<b>5.0</b>

In arriving at its determination, the Board considered anticipated certificated employee attrition (resignation, retirements, non-reelections, temporary teacher releases, etc.) but nevertheless found it necessary to terminate certificated full-time equivalent positions.

4. On March 7, 2011, the Board also passed Resolution No. 10.69, “Concerning Order of Seniority of Certificated Employees First Rendering Paid Probationary Service on the Same Day” and established the following criteria to be applied, in the order listed, to determine the relative seniority of those certificated employees who first rendered paid probationary service on the same day:

- a. Possession of a credential which meets an exceptional need of the school program;
- b. Subject matter experience in an area of exceptional need;
- c. Breadth of credentials and certificates possessed in areas of need;
- d. Advanced degrees;
- e. Total years teaching; and
- f. All other factors deemed equal, by lot.

5. Resolution No. 10.69 also approved the exercise of judgment of the District Superintendent, or designee, in applying the criteria set forth above.

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<sup>1</sup> Notices were also sent to James Achilles, Terri Dawn Arnold, and Paula Rogers. None of these employees submitted a Request for Hearing or a Notice of Defense. Since no Requests for Hearing or Notices of Defense were submitted, this is tantamount to a default proceeding against these employees and will proceed accordingly.

6. On or about March 10, 2011, Dr. Ramos, in his official capacity, sent out precautionary notices that services will not be required for the 2011-2012 school year, along with Resolution Nos. 10.68 and 10.69, copies of Education Code sections 44949 and 44955, and the Request for Hearing form to five certificated employees, including Eric Valencia and Theron Hopkins (respondents). On March 15, 2011, the District received Requests for Hearing from respondents. On March 28, 2011, a Notice of Defense was filed on behalf of respondents. On March 31, 2011, Accusations, copies of Resolution Nos. 10.68 and 10.69, Notices of Defense, and Notices of Hearing were served upon respondents.

7. Respondents are currently certificated employees of the District. Each respondent was properly and timely served with a preliminary layoff notice and timely requested a hearing. Each was also properly and timely served with the Accusation, copy of Resolution Nos. 10.68 and 10.69, Notice of Defense, and Notice of Hearing and had filed on their behalf a timely Notice of Defense.

8. Respondent Valencia holds a Clear Single Subject Teaching Credential in the subject he is authorized to teach, Spanish. Respondent began teaching for the District on August 9, 2002, and currently teaches three periods of Spanish and two periods of Skills for Living. Each period equals two-tenths of a Full Time Equivalent (FTE) position.

9. Respondent Valencia has also taught the State Requirements class in the past, which he believes a less senior teacher will be teaching next year. He also believes that if he is laid off, the district will only have one Spanish teacher to serve all the students in the district, which is comprised of approximately 650 to 700 students.

10. Dr. Ramos stated that respondent Valencia was given a layoff notice because of the need to reduce 1.0 FTE in Spanish. Dr. Ramos explained that the District has gone from three FTEs to two FTEs in Spanish. Dr. Ramos explained that even though some middle school students are coming to the high school for Spanish and geometry courses, the enrollment for Spanish classes continues to drop. After the layoff, there will only be one teacher left to teach Spanish who he believes can absorb respondent's classes.

11. Respondent Hopkins holds a Clear Single Subject Teaching Credential and is authorized to teach English. He also holds a Clear Crosscultural, Language and Academic Development Certificate. This certificate, when held in conjunction with a prerequisite credential or permit specified in Education Code section 44253.3 authorizes respondent to provide specific services to limited-English-proficient pupils. Respondent also holds a Certificate of Completion of Staff Development (Registration only/not a CTC-document.) This authorizes respondent to teach specially designed Academic Instruction in English.

12. Respondent Hopkins began teaching for the District on September 8, 2005. Respondent teaches English to approximately 115 students and he believes that less senior teachers are being retained over him. Respondent received training in the Advancement Via Individual Determination (AVID) in 1993, which is a national program for students, but has not had any refresher training in AVID. He does not have a certificate for this training.

13. Dr. Ramos explained that there will be five English teachers if respondent Hopkins is laid off. These five English teachers will absorb respondent Hopkins classes.

*Inverse Bumping*

14. Respondents contend that the more senior employees such as Patricia Agles and Susan Kirby, should be reassigned in order to save the more junior employees from layoffs. Ms. Agles and Ms. Kirby's information is as follows:

<i>Patricia Agles</i>	Seniority Date:	September 1969	
	Credential:	Life Standard Secondary Social Science, History, Supp. – English Life PPS CLAD	
	FTE:	1.0	
	2010/2011		
	Assignment:	0.2	Psychology
		0.8	Counselor
	2011/2012		
	Assignment:	0.2	Psychology
		0.4	English
		0.4	ACE English
<i>Susan Kirby</i>	Seniority Date:	January 7, 1985	
	Credential:	Clear Single Subject PE; Supp. Intro. English CLAD	
	FTE:	1.0	
	2010/2011		
	Assignment:	Physical education; physical fitness	
	2011/2012		
	Assignment:	Physical education; physical fitness	

15. Dr. Ramos explained that Patricia Agles was in fact, reassigned because of the need to reduce counseling services. Ms. Agles has a seniority date of September 1969, is more senior than respondent Hopkins and has taught English in the past. It was determined that Ms. Agles would be assigned to teach English and ACE English for the 2011-2012 school year and could best serve the district in this capacity. Dr. Ramos explained that Ms. Kirby is the physical education teacher and is needed to teach physical education full time at the Community Day School.

16. Education Code section 44955, subdivision (b) provides that whenever a particular kind of service is to be reduced or discontinued the governing body, not later than the beginning of the following school year may terminate the services of certificated employees of the district at the close of the school year and subdivision (c) provides that 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. (Emphasis added.)

17. The District has discretion as to whether additional assignments and reassignments should be made to save other junior teachers consistent with their qualifications. Its obligation to make assignments and reassignments under Education Code section 44955, however, is “limited to attempting to place an employee who would otherwise be terminated in a position being held by another employee with less seniority.” (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 568.) The District is therefore not obligated to reassign senior teachers who are not losing their positions in an effort to save junior teachers. To the extent respondents are seeking “inverse bumping”, this was not contemplated or required by the process in which the District exercised its discretion in making assignments and reassignments.

#### *Retention of Junior Teachers over Senior Teachers*

18. Respondents state the following teachers are less senior and should not be retained:

<i>Julie Winkel</i>	Seniority Date:	August 18, 2006
	Credential:	Clear Single Subject Science: Geoscience CLAD
	FTE:	1.0
	2010/2011 Assignment:	AVID; Earth Science
	2011/2012 Assignment:	AVID; Earth Science
<i>Casey Mara</i>	Seniority Date:	September 11, 2006
	Credential:	Clear Single Subject Social Science; CLAD
	FTE:	1.0

<i>Cylas Olsen</i>	2010/2011 Assignment:	U.S. History; State Requirements
	2011/2012 Assignment:	U.S. History; AVID
	Seniority Date:	August 17, 2007
	Credential:	Clear Single Subject Social Science
	FTE:	1.0
<i>Melissa Taylor</i>	2010/2011 Assignment:	World History; Civics; Student Government
	2011/2012 Assignment:	World History; Civics; Student Government
	Seniority Date:	August 18, 2008
	Credential:	Clear Specialist Instruction – Agriculture; Clear Single Subject – Agriculture; Clear Single Subject – Biological Science; CLAD
	FTE:	1.0
<i>Susan Landau</i>	2010/2011 Assignment:	State Requirements; Agricultural Construction; Construction Arts; ACE - Science
	2011/2012 Assignment:	Biological Science; Agricultural Construction; Construction Arts; ACE – Science
	Seniority Date:	August 17, 2009
	Credential:	District Intern: Mild/Moderate Disabilities
	FTE:	0.60

<i>Ashley Freeman</i>	2010/2011	
	Assignment:	Academic Intervention; Team Teach; LC English; Supp. English; Support English
	2011/2012	
	Assignment:	Academic Intervention; Team Teach; LC English; Supp. English; Support English
	Seniority Date:	August 17, 2010
	Credential:	Level 1 Education Specialist (Mild to Moderate); Clear Multiple Subject – Intro Social Science; CLAD
	FTE:	1.0
	2010/2011	
	Assignment:	Special Ed. Team Teach; Supp. English; Supp. Life/phy. Sci., LC Math; Support Algebra
	2011/2012	
	Assignment:	Special Ed. Team Teach; Supp. English; Supp. Life/Physical Science LC Math; Support Algebra

19. Dr. Ramos explained that Casey Mara was trained last year in the Advancement Via Individual Determination (AVID) program and had two sections of AVID. AVID is a national program that requires training in order to be able to serve as an instructor. No credential is required, but training is necessary and anyone who is trained can teach the course. Dr. Ramos explained that the program needs to meet the national standards and certification for the program can be revoked. He explained that Wheatland's certification was pulled in the past and they only regained the certification for the program this past year. Julie Winkel also taught AVID, but has a Clear Single Subject credential in Science: Geosciences: CLAD. She was assigned to teach AVID and Earth Science and has been assigned to teach both courses again in the 2011-2012 school year. Neither respondent, however, has a credential in Science or Geosciences or Social Sciences. Further, Dr. Ramos noted respondent Hopkins was trained in AVID 18 years ago and has not had any refresher training.

20. Dr. Ramos explained that Cylas Olsen has been assigned to teach World History and Student Government for the 2011-2012 school year and that a Social Science credential was required to teach the Student Government course. Neither respondent has a Social Science credential.

21. Melissa Taylor has a Clear Specialist Instruction in Agriculture; Clear Single Subject in Agriculture; and a Clear Single Subject in Biological Science; and CLAD. She is assigned to teach Biological Science; Agricultural Construction; Construction Arts; and ACE Science in the 2011-2012 school year. Neither respondent has a Biological Science credential.

22. Dr. Ramos explained that with respect to Ms. Landau and Ms. Freeman, both were junior to respondent Hopkins, but both have special education credentials that allow them to teach support English, which is a special education class. Neither respondent has a special education credential which would allow them to bump into these positions. He also explained the circumstances with respect to Paula Rogers, who is a probationary employee and was given a precautionary notice. Ms. Rogers has a seniority date of January 3, 2011 and has a Preliminary Multiple Subject CLAD, Supplemental: English, Physical Education and Intro Social Science credential. Ms. Rogers teaches all subjects and is the only Community Day teacher. He stated respondents do not have the requisite credentials to enable them to bump into the Community Day teacher position.

23. Both respondents, however, agree that no one is being retained that has less seniority or is otherwise not competent.

24. Thus, the junior teachers with less seniority possess credentials in subjects that respondents do not have and are assigned to courses for the 2011-2012 school year that respondents are not qualified to teach. The District's decision to retain these less junior teachers with the appropriate credentials over respondents in order to serve the needs of the students was proper.

#### *New Seniority List Not Prejudicial to Respondents*

25. On March 22, 2011, the District provided to respondents a document entitled "Modified Seniority List, Certificated Layoff 2011-2012." This document was updated as of April 25, 2011, and provided to respondents at the hearing. This document is the seniority list and lists the 2010-2011 assignments as well as the 2011-2012 assignments. The only difference between the March document and the April document is with respect to Patricia Agles, in which the 0.4 ACE English course is assigned to her for the 2011-2012 year; Casey Mara, in which the State Requirements assignment is no longer assigned to him for the 2011-2012 year and in its place is an "AVID" course; and Melissa Taylor, in which the State Requirements assignment is no longer assigned to her for the 2011-2012 year and in its place is a Bio-Science course.

26. Respondents contend that their case was prejudiced by the production of a new seniority list dated April 25, 2011, at the hearing. The preparation of their case was based on the seniority list provided to them earlier, rather than the list provided on April 25, 2011. In particular, they claim the course entitled "State Requirements" was a course assignment on the prior seniority list and has now been eliminated from the new list. Both argue they can



teach the State Requirements course. As a result, they claim their defense was prejudiced by the production of the updated seniority list.

27. Respondents, however, suffered no actual prejudice. The seniority list provided to respondents at the hearing did not change the seniority status of the teachers listed. The seniority list merely showed changes in assignments for the 2011-2012 year. The document provided in March shows Mr. Mara was assigned to teach U.S. History and State Requirements for the 2011-2012 school year and Ms. Taylor was assigned to teach State Requirements; Agricultural Construction; Construction Arts; and ACE. Both Mr. Mara and Ms. Taylor have less seniority than respondents. Unlike respondents, however, Mr. Mara holds a Clear Single Subject Social Science Credential and Ms. Taylor holds a Clear Specialist Instruction – Agriculture credential; a Clear Single Subject – Agriculture Credential; and a Clear Single Subject – Biological Science credential.

28. The only changes cited by respondents on the April seniority list were the fact that the State Requirements course was eliminated from the assignments for 2011-2012 for both Mr. Mara and Ms. Taylor. Mr. Mara is still assigned to teach U.S. History and the AVID course replaced the State Requirements course. With respect to Ms. Taylor, the Biological Science course replaced the State Requirements course. Neither respondent Valencia nor Hopkins holds the requisite credentials to teach U.S. History or Biological Science; Agricultural Construction; Construction Arts; or ACE-Science.

29. The fact that the State Requirements course is not on the list of assignments for the 2011-2012 year did not preclude respondents from arguing the fact that they can teach that course. Indeed, Dr. Ramos testified that three courses of State Requirements will be taught but he does not know who will be teaching those courses. Thus, there was no actual prejudice suffered by respondents.

30. Dr. Ramos described the State Requirements course as a one semester course that teaches study skills and health. He stated the course could be taught by anyone with a credential and stated that respondent Valencia taught the course before. Dr. Ramos explained that because of the way in which the master schedule is developed, the State Requirements course cannot be assigned to one teacher because several of these courses could be offered at the same time. It is considered to be a “singleton” in scheduling parlance and singletons are placed wherever they fit on the master schedule. The State Requirements course is required by the District and Dr. Ramos does not know who will be teaching the course next year. He believes there will be three sections of the State Requirements course.

## LEGAL CONCLUSIONS

1. The District employees receiving notices that their services would not be required next year have rendered valuable services to the District.

2. All of the notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Findings 4, 5, and 6.) The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838.).

3. Respondents claim the District's layoff is improper, unlawful and the need for the layoffs has not been proven. They claim they should be allowed to bump into positions assigned to less senior teachers. Respondents, however, do not have the specific credentials that would allow them to bump into these positions. (Findings 8, 11, 14, 18, 19, 20, 21, 22 and 23.) As previously noted, Education Code section 44955 subdivision (c) provides that 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. (Emphasis added.)

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

The services identified in the Resolution are particular kinds of services that may be reduced or discontinued under Education Code sections 44949 and 44955. (Findings 2 and 3.) 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 reduction or discontinuance of services relates solely to the welfare of the school and the pupils in the District within the meaning of Education Code sections 44949 and 44955.

5. The District is under no obligation to cobble together portions of classes to create a teaching position for respondents.<sup>2</sup> There is no obligation on the part of the District

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<sup>2</sup> Respondents cite to OAH Case No. N2007030785 for the proposition that they should be allowed to bump into portions of a FTE that already exist where they are competent as the junior employee being retained to teach the assignment in the upcoming year. This case is

to combine the State Requirements courses, the Skills for Living courses and the AVID courses for respondents. Further, there is no basis to establish the teachers assigned to those courses next year should be laid off. (Findings 8, 11, 14, 18, 19, 20, 21, 22 and 23.) Respondents do not have the requisite credentials to bump Ms. Winkel, Mr. Mara, Mr. Olsen or Ms. Taylor and the District is under no obligation to create positions for respondents.

#### RECOMMENDATION

Notice shall be given to respondents that their services will not be required for the 2010-2012 school year because of the reduction or discontinuation of particular kinds of services.

Dated: May 4, 2011

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LINDA A. CABATIC  
Administrative Law Judge  
Office of Administrative Hearings

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inapplicable to the instant case because respondents seek to bump into full-time slots for which they are not competent to teach or, in the alternative, they seek to have the district create a slot consisting of State Requirements courses and AVID courses in order to allow them to retain their positions. As previously stated, the District has the discretion in making assignments and reassignments and is not required to make the reassignments sought by respondent into other positions.