

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

In the Matter of the Plumas Unified
School District's Statement of Reduction
in Force Against:

Case No. 2014030844

BRIAN SCOTT, EMILY READ,
KATHLEEN COPELAND, MICHAEL
WEEKS, ALETHA O'KELLEY, and
SUSAN TANTARDINO,

Respondents.

PROPOSED DECISION

This matter was heard by Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, on April 28, 2014, in Quincy, California.

Attorney Michelle L. Cannon of the law firm Kronick, Moskovitz, Tiedemann & Girard represented Micheline Miglis, Superintendent of the Plumas Unified School District (District). Terry Oestreich, Assistant Superintendent of Human Resources, also appeared on behalf of the District.

Attorney Lesley Beth Curtis of the law firm Langenkamp, Curtis & Price, LLP, represented respondents.

Evidence was received, the record was closed, and the matter was submitted for decision on April 28, 2014.

FACTUAL FINDINGS

1. Superintendent Miglis made and signed the Plumas Unified School District's Statement of Reduction in Force solely in her official capacity.

Adoption of Resolution No. 1427

2. Based upon an anticipated reduction in the demand for classes and in class sizes for the 2014/2015 school year, Superintendent Miglis recommended to the Governing Board of the Plumas Unified School District (Board) that particular kinds of services (PKS) be reduced or discontinued beginning no later than the commencement of the 2014/2015 school year.

3. On March 13, 2014, the Board adopted Resolution No. 1427 authorizing the reduction or discontinuance of PKS, and affecting 6.16 Full-Time Equivalent (FTE) certificated positions.

4. Resolution No. 1427 states that it will be necessary to reduce or discontinue the following PKS of the District, and to decrease a corresponding number of certificated employees in the District no later than the beginning of the 2014/2015 school year:

PKS	FTE
FTE K-6 Self Contained Classroom Teachers	3.50
FTE K-12 Special Education Teacher	0.50
FTE 7-12 Spanish Teacher	0.33
FTE 7-12 Study Skills Teacher	0.17
FTE 7-12 English Teacher	0.83
FTE 7-12 Social Science Teacher	0.83
Total	6.16

5. The PKS set forth in Resolution No. 1427 are the “particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. The reduction or discontinuance of the PKS set forth in Resolution No. 1427 constitutes a proper exercise of the Board’s discretion within the meaning of Education Code section 44955.

6. As a result of the above PKS reductions or discontinuances, the Board determined that it was necessary to decrease 6.16 FTE certificated positions in the District before the beginning of the 2014/2015 school year in accordance with Education Code section 44955.

Implementation of the Reduction of PKS

7. Assistant Superintendent Oestreich has been in charge of the District’s Human Resources Department for the past nine months. Prior to her current position, she worked in the Human Resources Department in “classified hr.” She has also held positions in the District as the ROP director, Alternative Education director, Technology Department director, and an elementary school principal. Assistant Superintendent Oestreich is currently in her 15th year of employment with the District.

The District's seniority list for certificated employees

8. Assistant Superintendent Oestreich's current duties include overseeing the maintenance of the District's seniority list for certificated employees. That list contains the following information for each certificated employee: seniority ranking, name, first date of paid service with the District, employment status (i.e., temporary, probationary, or permanent), current site assignment, whether the person is full-time or part-time, current class(es)/grade(s) taught, credential authorization, credential expiration date, and college major/minor.

9. At the beginning of the 2013/2014 school year, Assistant Superintendent Oestreich and her staff began reviewing the personnel files for the District's certificated employees and cross-referencing the information contained in each file with the credentialing information on the California Commission on Teacher Credentialing's website for each employee.

10. Additionally, a memorandum and copy of the District's seniority list for certificated employees was sent to all school site principals and secretaries in November 2013. The memorandum instructed each school site principal and secretary to provide a copy of the seniority list to each certificated employee at the particular site and to have any employee who disputed his or her information on the list notify the Human Resources Department.

11. Based upon information obtained from each certificated employee's personnel file, as updated where necessary with information from the California Commission on Teacher Credentialing's website and information provided by the particular employee, Assistant Superintendent Oestreich and her staff updated the District's seniority list for certificated employees. At hearing, she explained that this process required the application of the tie-breaking criteria agreed to by the District and the Plumas County Teachers' Association (PCTA), the recognized bargaining unit for those certificated employees of the District in the following job classifications: elementary and secondary teachers, librarians, speech therapists, music specialist, elementary and secondary special education teachers, opportunity class teachers, community day school teachers, nurses, continuation education teachers, counselors, school psychologist, and ROP instructors, half-time or more.¹

¹ The following are the tie-breaking criteria provided in the bilateral agreement between the District and PCTA:

B. In the event that a number of individuals have the same first date of paid service, the following criteria will be used in determining the order of layoff. Equal weight shall be given each of the following:

1. Teaching experience in subject areas of credentials
2. Authorization of credentials

12. After Assistant Superintendent Oestreich and her staff applied the tie-breaking criteria to the pertinent employees, they used the seniority list to determine the specific certificated employees affected by the Board's decision to reduce or discontinue PKS.²

Determination of those affected by the reduction or discontinuance of PKS

13. Assistant Superintendent Oestreich and her staff used the seniority list to determine which certificated employees are currently performing the PKS the Board decided to reduce or discontinue. Once they determined those employees, they analyzed each of those employees' respective bumping rights, if any, by looking at each particular employee's credential(s), reviewing the seniority list, and reviewing the District's current master schedule of classes to determine whether there are any certificated employees with less seniority who are being retained to perform a service which the particular employee identified for layoff is certificated and competent to perform.

K-6 Self Contained Classroom Teachers (3.5 FTE)

14. According to the District's seniority list, and after the tie-breaking criteria is applied to determine the relative seniority between Travis Ross (No. 116 on the list)³ and Susan Tantardino (No. 118), the following are the four most junior K-6 teachers in the District, in order of most senior to least: Aletha O'Kelley (No. 108),⁴ Ms. Tantardino, and Mr. Ross. When Assistant Superintendent Oestreich and her staff analyzed Ms. O'Kelley's, Ms. Tantardino's, and Mr. Ross's respective bumping rights, it was determined that they had

3. Number of years of classroom teaching experience

C. In the event the above criteria are not successful in determining seniority, a lottery will be used to determine the order of layoff. The lottery shall take place prior to the issuance of layoff notices and shall be conducted in the presence of representatives of the Board and the Association.

² The final version of the District's seniority list (Exhibit 4) does not reflect the application of the tie-breaking criteria. For example, Susan Tantardino (No. 118 on the list) is senior to Travis Ross (No. 116 on the list) after application of those criteria.

³ Future references to numbers in parentheses refer to the particular employee's placement on the District's security list.

⁴ Ms. O'Kelley and Ryan Miller (No. 109) share the same seniority date. However, the tie-breaking criteria were not applied to determine their relative seniority because the Board received notice at its March 13, 2014 hearing that Mr. Ryan will not be returning to the District for the 2014/2015 school year.

none. Therefore, Superintendent Miglis sent each of them a Notice of Intent to Reduce or Eliminate (Notice of Intent).⁵

K-12 Special Education Teacher (.50 FTE)

15. Kathleen Copeland (No. 115) currently teaches special education full-time at Chester Junior/Senior High School. Superintendent Miglis sent her a Notice of Intent based on the Board's decision to reduce K-12 Special Education Teacher by the equivalent of a .50 FTE certificated position. Assistant Superintendent Oestreich and her staff analyzed Ms. Copeland's bumping rights and concluded she had none. But as discussed further below, their conclusion was incorrect.

7-12 Spanish Teacher (.33 FTE)

16. Brian Scott (No. 60) currently teaches Spanish full-time. He teaches a total of four sections, two sections at Chester Junior/Senior High School and two at Greenville Junior/Senior High School.⁶ He received a Notice of Intent based on the Board's decision to reduce Spanish by the equivalent of a .33 FTE certificated position, which equates to two of his sections. Assistant Superintendent Oestreich explained that Mr. Scott bumping into Tania Hutchins's (No. 70) position teaching Spanish at Portola Junior/Senior High School is "definitely an option," but requiring him to travel between Chester Junior/Senior High School, Greenville Junior/Senior High School, and Portola Junior/Senior High School (where Ms. Hutchins works) would present a "physical impossibility." As discussed below, Assistant Superintendent Oestreich did not properly analyze Mr. Scott's bumping rights.

7-12 Social Science Teacher (.83 FTE)

17. Michael Weeks (No. 122) currently teaches Social Science at Quincy Junior/Senior High School on a part-time basis equal to a .83 FTE certificated position. He is the third most junior certificated employee in the District, and is not certificated and competent to perform any of the services for which the two most junior employees are being

⁵ Mr. Ross did not request a hearing challenging his Notice of Intent and therefore waived any challenge to the Notice. (Ed. Code, § 44949, subd. (b).)

⁶ Assistant Superintendent Oestreich explained that one junior high/senior high school section equates to a .17 FTE certificated position. Teaching four sections equates to a .67 FTE position. Therefore, a reasonable inference is drawn from the evidence that Mr. Scott is allowed an amount of time equivalent to two sections (.33 FTE) for travel between his two site assignments, and his full-time position is comprised of four sections of teaching and two of travel.

retained to perform. Therefore, he received a Notice of Intent based on the Board's decision to reduce Social Science Teacher by the equivalent of a .83 FTE certificated position.⁷

Challenges to the Notices of Intent

K-6 Self Contained Classroom Teachers

Attrition

18. Respondents argued that each of the Notices of Intent issued based on the Board's decision to reduce or discontinue the equivalent of 3.5 FTE K-6 self contained classroom teaching positions should be set aside because the Board did not consider all positively assured attrition that occurred between the March 13, 2013 Board meeting and the April 28, 2014 administrative hearing. Specifically, they contend that the Board did not consider the notices it received during that time period that Kathy Morris (No. 50), Lori Hahn (No. 75), and Ryan Miller (No. 109) were not returning to the District at the beginning of the 2014/2015 school year. Therefore, respondents contend, the Notices of Intent attributable to the equivalent of 3.0 FTE K-6 self contained classroom teaching positions should be rescinded.

Respondents' argument is not persuasive. As discussed above, Assistant Superintendent Oestreich and her staff considered the notice that Mr. Miller is not returning after the current year when it identified Mr. Ross (1.0 FTE), Ms. Tantardino (1.0 FTE), and Ms. O'Kelley (.50 FTE) as the K-6 teachers to receive Notices of Intent. Mr. Miller's 1.0 FTE position, which will be vacant at the beginning of the 2014/2015 school year, makes up the remainder of the 3.5 FTE K-6 self contained classroom teaching positions designated for reduction or discontinuation. Furthermore, a district "need not consider positively assured attrition occurring between the date of the preliminary notice and the final notice in determining the number of certificated employees to be terminated by reason of a reduction or discontinuation of a particular kind of service." (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 630.)

Misclassification of temporary certificated employees

19. Janae LaGroue and Tanaya Kooyman-Gordon are identified on the District's seniority list as temporary certificated employees with seniority dates of August 29, 2013, and December 2, 2013, respectively. Both hold positions with the District as full-time K-6 Self Contained Classroom Teachers.

⁷ The remaining PKS which the Board identified for reduction or discontinuation – Study Skills (.17 FTE) and English (.83 FTE) – are currently being performed by Amanda Osburn (No. 110), and she received a Notice of Intent on that basis. However, she did not request a hearing challenging her Notice of Intent and therefore waived any challenge to the Notice.

20. Ms. Kooyman-Gordon testified that she began teaching for the District on December 2, 2013. She further testified that she never received from the District a written contract specifying that her teaching position was “temporary.” Therefore, she contends that she should be reclassified as “probationary” pursuant to Education Code section 44916 and the California Supreme Court’s decision in *Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911.

21. A similar argument was made on behalf of Ms. LaGroue, who did not testify at hearing. The seniority date listed for her on the District’s seniority list is the same as that which is listed on her Notice of Employment, that was introduced on her behalf.

22. Neither argument is persuasive. Education Code section 44949 makes it clear that jurisdiction in these proceedings is limited to those certificated employees of the District who: 1) received a notice from the Board that his or her services are being reduced or will not be required for the ensuing year, 2) timely requested a hearing to determine if there is cause for not reemploying him or her for the ensuing year, 3) was served with the Plumas Unified School District’s Statement of Reduction in Force, and 4) timely filed a Notice of Participation. Since the District classified them as “temporary employees,” Ms. Kooyman-Gordon and Ms. LaGroue did not, and were not entitled to, receive a Notice of Intent. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2007) 145 Cal.App.4th 1260, 1273 [“Moreover, temporary employees, unlike permanent and probationary employees, may be dismissed at the pleasure of the board and need be given only a more limited form of notice before the end of the school year, and no hearing. [Citations.]”])⁸

23. Furthermore, neither employee’s placement on the District’s seniority list affects any respondent’s bumping rights. Both Ms. Kooyman-Gordon and Ms. LaGroue received notice of the District’s decision not to reelect them for the 2014/2015 school year. (See, Ed. Code, § 44955, subd. (b) [“[T]he 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 as certificated and competent to render.”]; italics added.)

Special Education Teacher

24. As previously discussed, Ms. Copeland received a Notice of Intent based on the Board’s decision to reduce the number of the District’s special education teachers by the equivalent of a .50 FTE certificated position. She is No. 115 on the District’s seniority list, holds an Education Specialist Instruction credential with an authorization to teach students

⁸ That is not to say Ms. Kooyman-Gordon and Ms. LaGroue do not have a forum for challenging their classifications. They may file a petition for writ of mandate pursuant to Code of Civil Procedure section 1085, and nothing in this decision should be interpreted as expressing an opinion about the appropriateness of the District’s decision to classify them as temporary employees.

with mild to moderate disabilities, and currently teaches special education classes at Chester Junior High/Senior High School. Ms. Copeland is not the most junior special education teacher in the District, as both Bryan Freschi and Timmie Woods, Nos. 120 and 123, respectively, on the seniority list, teach special education and hold credentials with authorizations to teach students with moderate to severe disabilities. Neither Mr. Freschi nor Mr. Woods received a Notice of Intent.

25. Assistant Superintendent Oestreich explained at hearing that the decision to issue Ms. Copeland a Notice of Intent, and not Mr. Freschi or Mr. Woods, was based on the District's need for special education teachers authorized to teach students with moderate to severe disabilities.

26. Additionally, Assistant Superintendent Oestreich explained that Breeanna Allan (No. 99) is currently on a leave of absence from the District and scheduled to return at the beginning of the 2014/2015 school year. Ms. Allan holds an Education Specialist Instruction credential, is authorized to teach those with mild to moderate disabilities, and would be entitled to bump into the position teaching special education students with mild to moderate disabilities currently held by Jennifer Dyrr (No. 106), who in turn would be entitled to bump into Ms. Copeland's teaching position.

27. The issue is not whether Ms. Copeland is authorized to teach students with moderate to severe disabilities, but whether the Notice of Intent gave her sufficient notice to be able to reasonably assess the likelihood that her certificated position will be reduced for the 2014/2015 school year. (See, *Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 841 ["[T]he March 15 notice is intended to ensure that the affected employee is informed of the facts upon which [she] can reasonably assess the probability [she] will not be reemployed"]) And under the District's method of implementing the Board's decision to reduce PKS, the Notice of Intent did not give her sufficient notice because special education teachers teach students with many different types of disabilities which require different types of teaching credentials and authorizations. (See, Ed. Code, § 44265, see also, Cal. Code Regs, tit. 5, §§ 80046.5-80048.9.3.) Therefore, the Board's designation of "K-12 Special Education Teacher" generally as the service to be reduced or discontinued did not give her sufficient notice that two special education teachers with less seniority than her and who each hold the equivalent of an 1.0 FTE position would not be subject to layoff simply because they are authorized to teach students whom she is not authorized to teach.

28. Assistant Superintendent Oestreich's argument that the District has a legitimate basis for "skipping" Mr. Freschi and Mr. Woods based on its need for special education teachers authorized to teach students with moderate to severe disabilities was not persuasive. The District failed to demonstrate "*a specific need* for personnel to teach a specific course or course of study" (Ed. Code, § 44955, subd. (d)(1); italics added; *Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, 131 [the district has the burden of proving its right to skip the more junior employee].)

29. Assistant Superintendent Oestreich's argument about Ms. Allan's right to bump Ms. Dyrr and Ms. Dyrr's right to bump Ms. Copeland was not persuasive either. First, her contention that Ms. Allan is currently on a leave of absence is contradicted by the seniority list, which identifies her as currently teaching Alternative Education. Second, such argument only explains why the District did not issue a Notice of Intent to Ms. Allan or Ms. Dyrr (two employees with greater seniority than Ms. Copeland), and does not explain or justify the District's decision not to issue one to Mr. Freschi or Mr. Woods.

30. For the reasons discussed above, the District is required to implement the Board's directive to reduce K-12 Special Education Teacher by the equivalent of a .50 FTE position by selecting the most junior employee teaching any type of special education students. And the persuasive evidence established that Ms. Copeland is not that employee. Therefore, her Notice of Intent must be rescinded.

7-12 Spanish Teacher

31. As discussed above, Mr. Scott (No. 60) teaches four sections of Spanish. He holds a Single Subject credential in Spanish. Superintendent Miglis issued him a Notice of Intent based on the Board's decision to reduce 7-12 Spanish Teacher by the equivalent of a .33 FTE certificated position.

32. Tania Hutchins is No. 70 on the District's seniority list. She currently teaches four sections of Spanish, one section of 8th grade Science, and one section of Plumas Academies at Portola Junior/Senior High School. She holds a Multiple Subject credential, a Single Subject credential in Life Science and Spanish, and a Cross-Cultural, Language and Academic Development Certificate.

33. Assistant Superintendent Oestreich explained that Plumas Academies is a type of class in which a student may learn any one of a number of subject matters, depending on his or her particular needs. The subject matter learned may be a core class or an elective, and the class may be taken online or with a teacher in a classroom setting. While a teaching credential is required to teach Plumas Academies, the District does not require any particular type of credential.

34. In discussing her staffs' and her analysis of Mr. Scott's bumping rights, Assistant Superintendent Oestreich explained that allowing him to bump into Ms. Hutchins' four sections of Spanish at Portola High School is "definitely an option." But she also explained that requiring Mr. Scott to travel between Chester Junior/Senior High School, Greenville Junior/Senior High School and Portola Junior/Senior High School each day would constitute a "physical impossibility" due to their relative geographical locations.

35. The District relied on the decision in *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, to justify its conclusion that the "physical impossibility" of requiring Mr. Scott to travel between three different schools to maintain his full-time position teaching Spanish supersedes his seniority rights under Education Code

44955, subdivision (b). In *Hildebrandt*, the appellate court relied on a school district's wide discretion in the manner in which it defines the services provided by certificated employees when it concluded that Education Code section 44955, subdivision (b), cannot be used to force a school district to split a full-time position held by a junior employee to accommodate a senior employee's desire for a part-time position.

As the court held in *Murray*,⁹ a district may define a "service" in terms of the hours required to perform it, so that two part-time employees performing the same responsibilities do not necessarily perform the same "service" as one full-time employee. A school district need not define a service in such a manner, and in many situations may well determine that an assignment can equally effectively be shared by two or more part-time employees. However, so long as the determination is reasonable and made in good faith, neither section 49455 nor any other provision of the Education Code precludes a school district from defining a position, or a "service," as full time [sic].

(*Hildebrandt v. St. Helena Unified School District*, *supra*, 172 Cal.App.4th at pp. 343-344.)

36. The rationale of *Hildebrandt* is not applicable because allowing Mr. Scott to bump into Ms. Hutchins's four sections of Spanish would not require the District to split an existing position to allow him to travel between school sites since he already travels between Chester Junior/Senior High School and Greenville Junior/Senior High School. Additionally, Mr. Scott is certificated and competent to teach Ms. Hutchins's Plumas Academies class since Assistant Superintendent Oestreich testified that no specific type of teaching credential is required to teach that class.¹⁰ Therefore, Mr. Scott's seniority rights under Education Code section 44955, subdivision (b), must prevail, and "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." (Ed. Code, § 44955, subd. (c).) The Notice of Intent issued to Mr. Scott must be rescinded.

⁹ *Murray v. Sonoma County Office of Education* (1989) 208 Cal.App.3d 456.

¹⁰ Evidence of the anticipated class assignments for the 2014/2015 school year was not considered since those assignments are only in the draft stage and are still subject to change. (*People v. Berryman* (1993) 6 Cal.4th 1048, 1081 ["But speculation is not evidence, less still substantial evidence."]; disapproved on different grounds by *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1.)

Emily Read

37. Ms. Read is No. 119 on the District's seniority list. She has a Multiple Subject credential, and currently teaches English at Quincy Junior/Senior High School on a .50 FTE basis. The District did not introduce any evidence to show a clear relationship between the PKS designated for reduction or discontinuance in Resolution No. 1427 and Ms. Read, either by showing that Ms. Read is performing that PKS or is being bumped by a certificated employee with more seniority who either is rendering a service that is being reduced or discontinued or is being bumped by a more senior certificated employee who is certificated and competent to render the service that that employee is now rendering. The District may not lay off any respondent whose layoff cannot be traced back to a PKS being reduced or discontinued in Resolution No. 1427. Therefore, the Notice of Intent issued to Ms. Read should be rescinded.¹¹

Welfare of the District and Its Students

38. The reduction of the PKS set forth in Resolution No. 1427 are related to the welfare of the schools and the students thereof within the meaning of Education Code sections 44949 and 44955. The Board's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of its discretion.

39. After due consideration and adjustments made as discussed in Factual Findings 30, 36, and 37, no permanent or probationary employee with less seniority is being retained to render a service for which a respondent is certificated and competent to perform.

40. Any other assertions raised by the parties at hearing which are not addressed above are found to be without merit.

LEGAL CONCLUSIONS

1. Education Code section 44949 provides the following, in pertinent part, with regard to a school district's jurisdiction to lay off certificated employees:

(a)(1) 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

¹¹ Based on the information contained on the District's seniority list, it appears that Amanda Osburn (No. 110) may be certificated and competent to bump into the position currently held by Ms. Read. As previously discussed, however, Ms. Osburn did not request a hearing and has waived her right to challenge her Notice of Intent. (Ed. Code, § 44949, subd. (b).)

designee, or in the case of a school district that 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.

[¶]...[¶]

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

[¶]...[¶]

(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 of the schools. 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.

[¶]...[¶]

(e) If after a request for hearing pursuant to subdivision (b) a continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) that occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 that occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.¹²

(Ed. Code, § 44949.)

The District complied with all notice and jurisdictional requirements set forth above, and no respondent argued otherwise.

2. When a school district's governing board decides to reduce or discontinue particular kinds of services and a corresponding number of certificated employees, the general rule is that the order of layoffs must be determined by seniority. (Ed. Code, § 44955, subd. (b) ["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."]; *Davis v. Gray* (1938) 29 Cal.App.2d 403, 406.) This general rule is applied equally to probationary certificated employees. (*Krausen v. Solano County Junior College District* (1974) 42 Cal.App.3d 394, 402.)

3. After a school district's governing board decides to reduce or discontinue services, the school district's first step is to identify those certificated employees providing the particular services to be reduced or discontinued. (Ed. Code, § 44955, subd. (b).) The district has a mandatory duty to make an initial determination whether those certificated employees who are performing the services to be reduced or discontinued are certificated and competent to perform the services of any certificated employee with less seniority who is being retained. (*Hildebrandt v. St. Helena Unified School District, supra*, 172 Cal.App.4th 334, 340.) But once the school district makes the initial determination, the burden shifts to

¹² This matter was originally scheduled to be heard on April 7, 2014. Pursuant to the parties' stipulation, however, that date was continued to April 28, 2014. Therefore, the statutory deadline for issuing a proposed decision was continued from May 7, 2014, to May 28, 2014, and the statutory deadline for the District to issue final notices of termination was continued from May 15, 2014, to June 5, 2014.

the certificated employee asserting the right to bump the junior employee to prove that the former is certificated and competent to perform the service for which the latter is being retained. (*Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 656.)

4. The services identified in Resolution No. 1427 are the particular kinds of services that may be reduced or discontinued under Education Code 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. (See, e.g., *San Jose Teachers Association v. Allen*, *supra*, 144 Cal.App.3d at p. 638-639) Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and their pupils within the meaning of Education Code section 44949.

5. For the reasons discussed in Factual Findings 14 and 18 through 23, cause exists for not reemploying Susan Tantardino during the 2014/2015 school year based on the Board's decision to reduce or discontinue K-6 Self Contained Classroom Teachers by the equivalent of 3.5 FTE certificated positions, and the Board has a legal basis for issuing her a final layoff notice for that reason.

6. For the reasons discussed in Factual Findings 14 and 18 through 23, cause exists for reducing Aletha O'Kelley's certificated position by the equivalent of a .50 FTE position for the 2014/2015 school year based on the Board's decision to reduce or discontinue K-6 Self Contained Classroom Teachers by the equivalent of 3.5 FTE certificated positions, and the Board has a legal basis for issuing her a final layoff notice for that reason.

7. For the reasons discussed in Factual Findings 24 through 30, no cause exists for reducing Kathleen Copeland's certificated position for the 2014-2015 school year, and the Board has no legal basis for issuing her a final layoff notice.

8. For the reasons discussed in Factual Findings 31 through 36, no cause exists for reducing Brian Scott's certificated position for the 2014-2015 school year, and the Board has no legal basis for issuing him a final layoff notice.

9. For the reasons discussed in Factual Finding 17, cause exists for reducing Michael Weeks's certificated position by the equivalent of an .83 FTE position for the 2014/2015 school year based on the Board's decision to reduce 7-12 Social Science Teacher by the equivalent of an .83 FTE position, and the Board has a legal basis for issuing him a final layoff notice for that reason.

10. For the reasons discussed in Factual Finding 37, no cause exists for reducing or discontinuing Emily Read's certificated position for the 2014-2015 school year, and the Board has no legal basis for issuing her a final layoff notice.

11. After the adjustments discussed in Factual Findings 30, 36, and 37 and Legal Conclusions 7, 8, and 10 are made, no permanent or probationary teacher with less seniority

is being retained to render a service for which any respondent is certificated and competent to perform.

12. Except as discussed in Legal Conclusions 7, 8, and 10, cause exists to give notice to respondents that their services will be reduced or will not be required for the 2014-2015 school year because of the reduction or discontinuance of particular kinds of services.

RECOMMENDATIONS

1. Cause exists for the Plumas Unified School District to reduce or discontinue 6.16 Full-Time Equivalent certificated positions at the end of the 2013-2014 school year.

2. As set forth in Legal Conclusions 7, 8, and 10, the Plumas Unified School District shall rescind the Notice of Intent to Reduce or Eliminate issued to respondents Kathleen Copeland, Brian Scott, and Emily Read.

3. Other than as set forth in Recommendation No. 2, notice may be given to respondents that their services will be reduced or will not be required for the 2014-2015 school year. Notice shall be given in inverse order of seniority.

DATED: May 9, 2014

COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings