

BEFORE THE GOVERNING BOARD  
OF THE  
ALVORD UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force  
Involving 158 Certificated Employees of the  
Alvord Unified School District under Board  
Resolution No. 28,

Respondents.

OAH No. 2010030305

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Riverside, California, on April 22, 2010.

John W. Dietrich and Paul Z. McGlocklin, Attorneys at Law, represented the Alvord Unified School District.

Elizabeth Garfield, Attorney at Law, represented all respondents who appeared at the hearing who were identified in Exhibit A. She was assisted by Dan Bartlett, Regional Uniserv Staff, California Teachers Association.

Respondent Hugh Jackman Wood represented himself.

The matter was submitted on April 22, 2010.

**FACTUAL FINDINGS**

*The Alvord Unified School District*

1. The Alvord Unified School District (AUSD or the district) was established in 1896. Its boundaries include the western portion of the City of Riverside, the eastern portion of the city of Corona and unincorporated areas of Riverside County. The district serves the educational needs of approximately 20,000 students from Kindergarten through 12<sup>th</sup> grade, as well as providing preschool and adult education programs.

AUSD operates 14 elementary schools, four middle schools, two comprehensive high schools, and two alternative education programs. The district currently employs about 1,800

individuals, more than 900 of whom are certificated employees. AUSD's projected annual budget for the 2010-2011 school year is approximately \$140 million, about 87 per cent of which will pay employee salaries and benefits.

2. The district is governed by an elected five-member Board of Education (the governing board). Dr. Wendel Tucker, Superintendent of Schools, is AUSD's Chief Executive Officer. Craig Wells is the Assistant Superintendent of Personnel. He is assisted by an experienced administrative staff including Leah Armstrong, the Assistant Director of Certificated Human Resources.

### *The Fiscal Crisis – Economic Layoffs*

3. Proposition 13, a constitutional amendment that was passed in 1978, limited local property taxes and reduced a major source of assured revenue for public education. After Proposition 13 was implemented, public school districts have looked to the State of California and to other governmental entities for funding.

A school district cannot determine the level of funding it will receive until the state budget is chaptered, an event usually occurring each year around July but sometimes taking place much later. A school board's obligation to balance its budget sometimes requires that some teachers, administrators or other certificated employees be given preliminary layoff notices, warning them that their services will not be required for the next school year. Under Education Code section 44949, these preliminary layoff notices must be given no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior certificated employees over more junior employees, and the retention of permanent employees over probationary employees and others with less seniority. A public school district may deviate from the general rule requiring termination in reverse order of seniority only if it can demonstrate that identifiable junior employees possess credentials, special training or experience necessary to provide services that more senior employees do not possess, a process known as "skipping." A teacher whose position has been eliminated in the layoff process is entitled to displace a more junior employee and to occupy the junior employee's position upon the employee's showing that he or she has the credentials and competence to provide the services being provided by a retained junior employee, a process known as "bumping."

### *The District's Response*

4. During the course of the 2009-2010 school year, the governing board and AUSD's administration became aware of California's continuing budget problems and the probable limitation upon the district's funding for the 2010-2011 school year. After AUSD projected a budget deficit of about \$13 million for the 2010-2011 school year, Assistant Superintendent Wells and AUSD's staff prepared a recommendation to reduce or eliminate particular kinds of services currently being provided to help cover a portion of the budget shortfall. A specific recommendation was provided to Dr. Tucker who, in turn, made a

recommendation to the governing board that particular kinds of services be reduced or eliminated in the 2010-2011 school year and that the employees impacted by this recommendation be given appropriate notice.

5. On February 18, 2010, following Dr. Tucker's recommendation and the governing board's consideration thereof, the board adopted Resolution No. 28 which related to the reduction or discontinuation of particular kinds of services.

RESOLUTION No. 28 stated:

"WHEREAS, the Board of Education of the Alvord Unified School District has determined that the particular kinds of services set forth herein must be reduced or discontinued; and

WHEREAS, it is the opinion of the Board that because of the aforementioned reason, it is in the best interest of the District that the number of certificated employees of the District must be reduced; and

WHEREAS, this Board does not desire to reduce the services of regular certificated employees based solely upon reduction of average daily attendance during the past two years; and

WHEREAS, this Board has determined that due to a significant population of English language learners with specialized educational needs, a specific and compelling need exists to retain certificated employees who have Bilingual Crosscultural Language and Academic Development ("BCLAD"), Crosscultural Language and Academic Development ("CLAD") or other equivalent English Language Learner Authorization (but not emergency authorizations) and the special training and experience that comes therewith; and

WHEREAS, Education Code section 44955(d) authorizes this Board to deviate from terminating a certificated employee in order of seniority for the above reason, if necessary;

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Alvord Unified School District as follows:

A. That the particular kinds of services set forth below be reduced or eliminated commencing in the 2010-2011 school year:

<b>Elementary Teacher</b>	<b>88</b>	<b>F.T.E.</b>
<b>Middle School Core Teacher</b>	<b>12</b>	<b>F.T.E.</b>
<b>Middle School History Teacher</b>	<b>1</b>	<b>F.T.E.</b>
<b>Middle School Self Contained Teacher</b>	<b>1</b>	<b>F.T.E.</b>
<b>Middle School Math Teacher</b>	<b>3</b>	<b>F.T.E.</b>
<b>Middle School Physical Education Teacher</b>	<b>2</b>	<b>F.T.E.</b>
<b>Middle School English Teacher</b>	<b>3</b>	<b>F.T.E.</b>
<b>Middle School Leadership/ASB</b>	<b>.4</b>	<b>F.T.E.</b>
<b>Middle School Life Science Teacher</b>	<b>1</b>	<b>F.T.E.</b>
<b>Middle School Physical Science Teacher</b>	<b>1</b>	<b>F.T.E.</b>
<b>Middle School Music Teacher</b>	<b>1</b>	<b>F.T.E.</b>
<b>Middle School Computer Literacy Teacher</b>	<b>1</b>	<b>F.T.E.</b>
<b>Middle School Art Teacher</b>	<b>1</b>	<b>F.T.E.</b>
<b>High School English Teacher</b>	<b>7</b>	<b>F.T.E.</b>
<b>High School Math Teacher</b>	<b>4</b>	<b>F.T.E.</b>
<b>High School Social Science Teacher</b>	<b>4</b>	<b>F.T.E.</b>
<b>High School Earth Science Teacher</b>	<b>1</b>	<b>F.T.E.</b>
<b>High School Art Teacher</b>	<b>2</b>	<b>F.T.E.</b>
<b>High School Freshman Seminar/Focus Teacher</b>	<b>1.8</b>	<b>F.T.E.</b>
<b>High School Foreign Language Spanish Teacher</b>	<b>1</b>	<b>F.T.E.</b>
<b>High School Foreign Language French Teacher</b>	<b>1</b>	<b>F.T.E.</b>
<b>High School Physical Education Teacher</b>	<b>2</b>	<b>F.T.E.</b>
<b>High School Agriculture Teacher</b>	<b>1</b>	<b>F.T.E.</b>
<b>High School Credit Recovery</b>	<b>.2</b>	<b>F.T.E.</b>
<b>High School Independent Study 1 Teacher</b>	<b>1</b>	<b>F.T.E.</b>
<b>On Campus Intervention/Suspension Teacher</b>	<b>2</b>	<b>F.T.E.</b>
<b>Counselor</b>	<b>5</b>	<b>F.T.E.</b>
<b>Librarian</b>	<b>3</b>	<b>F.T.E.</b>
<b>Nurse</b>	<b>2</b>	<b>F.T.E.</b>
<b>TOTAL CERTIFICATED POSITIONS</b>	<b>153.4</b>	<b>F.T.E.</b>

- B. That due to the reduction or elimination of particular kinds of services, the corresponding number of certificated employees of the District shall be terminated pursuant to Education Code section 44955.
- C. That the reduction of certificated staff be achieved by the termination of regular employees and not by terminating temporary and substitute employees.
- D. That 'competency' as described in Education Code section 44955(b), for the purposes of bumping, shall necessarily include: (1) possession of a valid credential or authorization in the subject matter area; (2) Highly Qualified status as authorized by the No Child Left Behind Act; (3) an appropriate authorization or possession of a BCLAD, CLAD or other equivalent English Language Learner Authorization (but not emergency authorizations) to the extent required by the position; and (4) unique training and experience possessed by the employee to be bumped that are necessary and relevant to the position to be filled.

- E. That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by Board-adopted criteria.
- F. That the District Superintendent or designee is directed to initiate layoff procedures and give appropriate notice pursuant to Education Code sections 44955 and 44949.

**PASSED AND ADOPTED** at a regular meeting of the Board of Education of the Alvord Unified School District held on February 18, 2010.”

6. The governing board’s adoption of Resolution No. 28 was in the best interest of the district, its schools and its students. The decision to reduce particular kinds of services was a direct result of California’s continuing fiscal crisis, the probable reduction in AUSD’s funding for the 2010-2011 school year, AUSD’s obligation to submit a balanced budget to the County Board of Education, and the drastic repercussions for the district’s failure to do so including the taking over of the district’s operations by other governmental entities.

*The Reduction in Force and the Issuing of Preliminary Layoff Notices*

7. The particular kinds of services identified in the governing board’s resolution were the kinds of services the governing board was authorized to reduce and discontinue. The board’s resolution to reduce and eliminate certain services was neither arbitrary nor capricious, and the reduction and elimination of the particular kinds of services identified in Resolution No. 28 was squarely within the governing board’s sound discretion. No particular kind of service was reduced to a level below that mandated by federal or state law.

8. The governing board defined “competency” for the purposes of bumping under the Education Code to necessarily include: possession of a valid credential or authorization in the subject matter area; highly qualified status as authorized by the No Child Left Behind Act; an appropriate authorization or possession of a BCLAD, CLAD or another equivalent English Language Learner Authorization (but not emergency authorizations) to the extent required by the position; and unique training and experience possessed by an employee necessary and relevant to the position to be filled. The governing board’s definition of “competency” did not provide relative preference for a BCLAD authorization over a CLAD authorization or any other EL authorization, although no preference was given to emergency authorizations.

9. With regard to skipping, the resolution stated that the governing board had determined that due to a significant population of English language learners with specialized educational needs, there was a specific and compelling need to retain certificated employees who had Bilingual Crosscultural Language and Academic Development (“BCLAD”), Crosscultural Language and Academic Development (“CLAD”) or other equivalent English Language Learner Authorization (but not emergency authorizations) and the special training and experience that comes therewith. Again, the board’s resolution did *not* provide for the relative preference of a BCLAD employee over a CLAD employee or any employee holding another equivalent English Language Learner authorization for skipping purposes.

10. Assistant Superintendent Wells established that the district made assignments based upon an employee's seniority and upon an employee's possession of appropriate authorizations, credentials and competency for the assignment.

11. In accordance with Resolution No. 28, AUSD staff issued preliminary layoff notices to the most junior employees holding those positions that were subject to reduction and elimination. In doing so, AUSD skipped nine junior employees holding BCAD certifications over more senior employees who held CLAD certifications who were not administrators, Special Education Teachers, or employees holding assignments as teachers on special assignment or project specialist/instructional coaches. Nor did the district displace any teachers on special assignment (TOSAs) or project specialist/instructional coaches with more senior employees who held the same credentials but who were not currently serving as TOSAs or project specialist/instructional coaches.

AUSD served more layoff notices than the total number of reductions of full time equivalent positions to ensure that there was a sufficient number of layoff notices in place to cover any changes in the seniority list and to accommodate for any other exigency.

Before the district issued the preliminary layoff notices, administrative staff considered all known positive attrition including resignations, retirements and probationary non-reelects existing before March 15.

#### *Jurisdictional Matters*

12. On and before March 15, 2010, those AUSD certificated employees whose employment might be impacted by Resolution No. 28 were served with written notice that the superintendent had recommended that their services be terminated at the conclusion of the current school year and that their services would not be needed for the upcoming 2010-2011 school year. Each employee receiving notice was advised of the right to a hearing. Sixteen employees who were served with the preliminary layoff notice did not request a hearing, and they are not respondents in this proceeding. Each employee who requested a hearing was thereafter served with an accusation packet. The 158 permanent and probationary employees who requested hearings are the respondents in this reduction in force proceeding.

13. On April 22, 2010, the record in the administrative hearing was opened. Attorneys John W. Dietrich and Paul Z. McGlocklin appeared on behalf of the district. Attorney Elizabeth Garfield appeared on behalf of most of the respondents who were present at the hearing. Dan Bartlett, Regional Uniserv Staff, California Teachers Association, assisted Ms. Garfield. Respondent Hugh Jackman Wood represented himself. The district's attorney gave an opening statement. Ms. Garfield and Mr. Wood waived the presentation of opening statements. Jurisdictional documents were presented, sworn testimony was provided, documentary evidence was introduced, and several stipulations were reached.

The major issues in this reduction in force proceeding involved the district's attempt to provide holders of BCLAD authorizations with skipping preference over employees

holding other EL authorizations including CLAD authorizations, and the district's refusal to permit senior employees who were not serving as TOSAs or project specialists/instructional coaches to bump into those positions. Other factual and legal issues specific to seniority, promissory and equitable estoppel, the effect of filing of credentials after March 15, and holding certification in other districts were presented.

Following the taking of evidence and the presentation of closing arguments, the record was closed and the matter was submitted.

*The Seniority List, First Date of Paid Service, and the Implementation of Resolution No. 28*

14. AUSD maintains a district wide certificated employee seniority list, a continuously evolving schedule that sets forth each employee's seniority number (ranked in order from the most senior to the most junior employee), the employee's name, seniority date (based on the employee's first paid date of probationary service with the district), the employee's status (tenured, second year probation, first year probation), the employee's current assignment, a description of the credentials held by the employee, the school site where the employee most recently provided service, and the status of the employee's EL authorization, if any. The seniority list is compiled from information obtained from an employee's personnel file, data provided by the employee, information obtained from the California Commission on Teacher Credentialing, and relevant material provided by others. The seniority list is modified when new employees are hired and when current employees retire, resign or otherwise become separated from district employment. The seniority list is corrected and updated when new information becomes available.

15. AUSD attempts to ensure that each employee's seniority date is based upon the employee's first date of paid service in a probationary position within the district.<sup>1</sup> In December 2009, the district sent notices to all school sites requesting that certificated employees review the district's seniority list and advise the administrative staff of any errors in the seniority list or of the acquisition of any new credentials or of any changes in the employee's status.

The district staff revised the seniority list based upon the information it received after December 2009 and was able to verify.

Sometimes establishing an employee's actual first date of paid probationary service was complicated by such matters as previous service in a long-term substitute or temporary assignment or by the employee attending training sessions occurring before the formal school year began. An effort was made to resolve disputes.

16. After issuing the preliminary notices, 22 certificated employees opted to take an early retirement through a retirement incentive program that the district offered. Twenty one of

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<sup>1</sup> Education Code section 44845 provides:

"Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position."

the vacated positions were filled with the most senior employees who were certificated and qualified to fill the vacancies resulting from the retirements.

It was stipulated that the accusations filed against Brianna Chavez-Monroe, Amanda Davis, Deserae Devlin, Jennifer Doiron, Faith Johnson, Samuel Jones III, Christine Ledesma, Endelia Medina, Monica Meurer, Tonya Miller, Paul Oeser III, Heidi Powers, Sara Rodriguez, Danielle Romain, Michael Sanchez, Everton Souza, Julie Stanfield, Nadia Templeton, Rachel Thurman, Andrea Viniguerra, and Teresa Wilson were properly dismissed because these employees were the most senior employees who were certificated and qualified to fill the vacancies resulting from the retirements.

In filling the vacancies created by the retirements, the district overlooked employee Jill Heinz (seniority number 585), a tenured elementary school teacher with a seniority date of December 2, 2002. Heinz holds a clear multiple subject teaching credential and a CLAD authorization.

The parties stipulated that Jull Heinz was entitled to occupy the remaining vacancy resulting from the retirement of an elementary school teacher and that the accusation filed against her should be dismissed.

#### *The Retention of Special Education Teachers*

17. According to Assistant Director Thompson, no employee providing Special Education services was given a preliminary layoff notice in this proceeding even though other employees with more seniority (but without Special Education credentials) received such layoff notices.

There was no objection to the district's retention of persons holding Special Education credentials and permits.

#### *The BCLAD/CLAD Skipping Issue*

18. While skipping a junior employee under Education Code section 449555, subdivision (d), does not require a written board resolution, the district must nevertheless demonstrate a specific need for junior personnel to teach a specific course<sup>2</sup> or course of study<sup>3</sup> and the district must demonstrate that the junior employee being skipped possesses special training or experience necessary to teach that course or course of study which others with more seniority do not possess.

Through the testimony of Assistant Superintendent Wells, the district asserted the need to retain employees who were fluent in Spanish and other foreign languages, argued that the

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<sup>2</sup> Education Code section 51016 defines "course" as "an instruction unit of an area or field of organized knowledge, usually provided on a semester, year or prescribed length-of-time basis."

<sup>3</sup> Education Code section 51015 defines "course of study" as "the planned content of a series of classes, courses, studies, or related activities."



BCLAD certificate was an objective manner by which the district could measure an employee's fluency and teaching ability in a language other than English, and claimed that skipping employees with BCLAD certifications over employees with CLAD certifications and other EL authorizations was a valid exercise of the district's discretion and was in the best interest of the district and its students. Assistant Director Armstrong created a "bump analysis" in which employees who held BCLAD certifications were skipped over those who did not. Assistant Director Armstrong testified that she did not include BCLAD holders in the bump analysis based upon her understanding of the right of BCLAD holders to retain their employment over more senior employees. Deputy Armstrong testified she reached this conclusion following her review of the board's bumping criteria, in which BCLAD certifications were mentioned before CLAD certifications, and based upon what she was told by Assistant Superintendent Wells.

19. The district has 8,496 English Learners whose primary language is Spanish, 173 English Learners whose primary language is Vietnamese, 49 English Learners whose primary language is Rumanian, 44 English Learners whose primary language is Arabic, and about 150 other English Learners who have other primary languages. The district does not offer any classes in which content instruction is provided in a student's primary language. Instead, the district has immersion classes in which content instruction is delivered in the English language.

The CLAD (Crosscultural, Language, and Academic Development) credential issued by the Commission on Teacher Credentialing authorizes instruction of English Learners to promote the effective and efficient acquiring of listening, speaking, reading and writing skills of EL students. Instruction is authorized in English under the CLAD credential.

The BCLAD (Bilingual, Crosscultural, Language and Academic Development) credential issued by the Commission on Teacher Credentialing also authorizes instruction for EL students within the scope of the CLAD authorization but the BCLAD additionally authorizes content instruction for EL students in a subject area delivered in the student's primary language. Obtaining a BCLAD credential requires the completion of additional coursework and passing an examination.

The district assumed that holders of a BCLAD credential were better able to speak, write and instruct in the student's primary language than holders of a CLAD certificate or other EL authorizations, and that retaining the services of holders of BCLAD certifications would enhance instruction within the classrooms. While the district's assumptions were not particularly unreasonable in theory, the district did not conduct any investigation to determine if its assumptions were factually based.

No teacher within the district provides content instruction to any EL student in the student's primary language, which would require a BCLAD certification. The district had no intention of providing any EL student with content instruction in the student's primary language for the 2010-2011 school year.

As a result of the district's decision to skip employees holding BCLAD certificates over more senior employees holding CLAD certificates, Stephanie Bradley, Audrey Popoff, Cara Sweeney, Guy Harrell, Yvette Haskins, Kelli Seibert, Tiffany Star

Ferreira, Jessica Cassese, and Lilia Roney were displaced by junior employees holding BCLAD certificates. The preliminary layoff notices issued to these more senior respondents should be rescinded and the accusations filed against them should be dismissed for the reasons set forth in paragraph 20.

20. The district failed to establish that the BCLAD certification will be used in a course or a course of study, as is required by Education Code section 44955, subdivision (d). The district's attempt to provide retention priority to the holders of BCLAD certifications over their more senior counterparts who hold CLAD certifications or other EL authorizations should be denied.

#### *TOSAs and Project Specialist/Instructional Coaches*

21. AUSD did not displace any TOSAs or project specialist/instructional coaches with more senior employees who held the same credentials as employees providing TOSA or project specialist services but who were not currently serving within the district as TOSAs or project specialist/instructional coaches.

Counsel for respondents argued that the district had, in essence, improperly skipped these individuals and that more senior employees who possessed the credentials, training and experience necessary to fill the TOSA and project specialist/instructional coach positions should be entitled to bump their more junior counterparts.

Joi Huben has been employed by the district for 24 years. Huben is currently the district's Coordinator of State and Federal Programs. Huben established that AUSD is in its third years as an NCLB improvement district and that the district is required to meet certain standards.

Huben established that TOSAs and project specialist/instructional coaches are a critical component in meeting the improvement plan imposed upon the district. TOSAs and project specialists were all classroom teachers before they began their current assignments. The nine TOSAs currently serving within the district have specific content experience and they provide support to project specialists and to schools within the district. The 15 project specialists/instructional coaches currently serving within the district are assigned to specific school sites where they provide support. The TOSAs and project specialists/instructional coaches provide a particular kind of service for which there was no reduction in force; they do not provide instruction in a specific course or course of study.

Huben established that the TOSAs and project specialists currently holding these positions had a level of experience and a specific degree before they were assigned to these positions (TOSAs had to have a minimum of five years experience in the classroom and were required to hold a master's degree; project specialists had to have at least three years experience in the classroom and were required to hold a bachelor's degree in a particular subject). After their assignment, these TOSAs and project specialists received a great deal of unique, specialized training in a variety of areas (such as cognitive coaching, READ 180, Snagit and Adobe computer resources, Earobics training, Step Up to Writing, Mathematics,

ELL training of teachers, ELL strategies, and reading language arts) at great expense to the district. In addition to this specialized training, and just as important, the current TOSAs and project specialists met three hours each week during the 2009-2010 school year where additional training occurred. In addition, each employee currently providing service as a TOSA or as a project specialist must complete annual training.

22. Kristy Orona-Ramirez, who received a preliminary layoff notice in her capacity as a core language arts/history teacher at Wells Middle School, argued that she should be able to bump into a project specialist position. Orona-Ramirez has a seniority date of August 24, 2006. Her curriculum vitae indicated that she had 12 years of classroom experience, that she had one year of project specialist experience, that she had seven years of GATE classroom differentiation, that she had nine years experience in the Governor's Reading Program & Mathematics Program training, that she was trained at the UCLA Algebra Academy, that she was a master teacher, that she maintains an outstanding room environment, that she had Title 1 and Categorical Fund experience, that she is a published author of children's literature and poetry, that she was a teacher consultant, that she was a California State Test site coordinator, that she is a consultant at the Inland Area Writing Project, and that she serves as an Adjunct Professor of Education at Whittier College. Orona-Ramirez holds a master's degree in Education and Leadership. She holds CLAD authorization and is NCLB highly qualified in her area.

Orona-Ramirez testified that she served as a project specialist in her first year of employment at Loma Vista Middle School, that she received appropriate training before taking that assignment, that she received training during the assignment, that she coached teachers in her capacity as a project specialist, that she left the position of project specialist to return to the classroom, and that since making that decision she has taken training "in different programs" which she considered to be equivalent if not better than the training provided to those who currently occupy TOSA and project specialist positions. Orona-Ramirez has more seniority than some of the individuals who occupy project specialist positions, and she testified that she would return to a project specialist position if she were able to do so. No one from the district spoke with Orona-Ramirez concerning her qualifications and training to hold a project specialist position before the layoff notices were served. On cross-examination, Orona-Ramirez conceded that she did not have the same training that was given to AUSD project specialists in the 2009-2010 school year.

23. Stacey Steele is a tenured employee with a seniority date of July 2, 2004. She holds a clear multiple subject teaching credential, a CLAD authorization, and is NCLB highly qualified. She holds a master's degree in Education. Steele teaches second grade at Philip M. Stokoe Elementary School.

Steele testified that she served as a project specialist in both the 2005-2006 and 2006-2007 school years, before she returned to classroom teaching. Steele testified that she completed various modules required to hold the project specialist position, that she had completed 119.5 hours of specialized training related to the project specialist position and that not every project specialist currently holding that position has completed 270 hours of specialist training as Huben implied. Steele testified that she had performed all of the

essential functions required of a project specialist. Even though she did not have the training given to employees currently holding TOSA and project specialist positions in the 2009-2010 school year (she had elected to return to the classroom and was unable to receive that training), Steele believed she was competent to hold a project specialist position and that she was entitled to bump a more junior employee holding such a position.

24. Huben's credible testimony established that the training that the TOSAs and the project specialists received in the 2009-2010 was unique and that it was critical to the holding of the position of a TOSA or a project specialist for the 2010-2011 school year. There can be no dispute about the competency of Orona-Ramirez and Steele to continue in the capacity as classroom teachers; however, they failed to establish that they received the unique training acquired by TOSAs and to project specialists in the 2009-2010 school year, training that is vital and relevant to holding such positions in the 2010-2011 school year. Neither of these highly talented respondents established her right to bump a more junior employee currently holding a TOSA or project specialist/instructional coach position.

#### *Other Matters*

25. There was an error in the tie-breaker analysis and, when that error was discovered, it was determined that respondent Hugh Jackman Wood possessed the seniority and competence to bump employee Donald Phengsi whose services were being retained.

It was stipulated by all parties that the preliminary layoff notice served on Wood should be withdrawn and that the accusation filed against Wood should be dismissed.

26. The district improperly retained the services of Teresa Corbett. Corbett's seniority date is August 23, 2007. Corbett is a tenured employee who holds a preliminary single subject Spanish credential. Corbett teaches ELD at La Sierra High School. The Spanish credential is not required to teach ELD, which is a particular course of study. Corbett was not served with a preliminary layoff notice.

Debora Griffin's seniority date is January 3, 2006. She, too, is a tenured employee. Griffin holds a clear English single subject credential. Griffin teaches English and ELD at Norte Vista High School. Griffin was improperly served with a layoff notice because she was more senior than Griffin and she was qualified and competent to teach ELD under her English credential and, in fact, had been doing so.

The preliminary layoff notice served on Griffin should be withdrawn and the accusation should be dismissed.

27. Lynne Vasquez's seniority date is January 6, 2006. She teaches first grade at Twin Hill Elementary School. She is a tenured employee who holds a clear multiple subject teaching credential. Vasquez is intern eligible in Special Education. Before Vasquez obtained her teaching credential, she worked as a classified employee in Special Education programs for nearly two decades.

In March 2009, Vasquez received a preliminary layoff notice advising her that her services would not be required for the 2009-2010 school year. She observed that employees who held Special Education credentials were not being laid off. In May 2009, Vasquez enrolled in a Special Education credential program at Chapman University. In May 2009, Vasquez received final notice that her services would not be required for the 2009-2010 school year. Four days later, Vasquez received notification that her employment with the district as an elementary school teacher was reinstated. Vasquez decided to continue her effort to obtain a Special Education credential to better avoid the possibility of a layoff in the future. She continued her studies at Chapman University.

Before January 10, 2010, Vasquez submitted evidence to the district that she was intern eligible, a credential status indicating that she was capable of accepting an offer of employment in a Special Education program as an intern. Once Vasquez accepted an offer of employment and paid the required filing fee to the Commission on Teacher Credentialing, her credential status would change from that of being intern eligible to that of being a Special Education intern.

In January 2010, Vasquez learned of a Special Education teaching position opening at Loma Vista Middle School. She considered taking the position to clear her intern credential, but she was reluctant to do so because that would require her to abandon her first grade class. Vasquez spoke with her principal, Emily Devor, about her situation. Devor said she would make some calls. Devor later told Vasquez that she had a conversation with Assistant Superintendent Wells who told Devor that being intern eligible gave Vasquez the same bumping rights as any other Special Education teacher. Vasquez did not confirm this statement with Assistant Superintendent Wells. Vasquez decided to remain in her first grade assignment. She did not make application for the Special Education position at Loma Vista. She did not pay the required fee to the Commission on Teacher Credentialing.

In February 2010, after Vasquez learned that she might receive a layoff notice, Devor sent an email to Assistant Superintendent Wells. With regard to her previous conversation with Assistant Superintendent Wells, Devore's email stated in part, "You shared, which I shared with her, although there are no promises, her Intern status is the same as a Special Education credential when it comes to teacher placement on the seniority/bumping list. With this information, she took faith in the system and made the decision to stay at Twinhill to provide consistency for her 1<sup>st</sup> grade students."

In March 2010, Vasquez received a preliminary layoff notice. The district did not send layoff notices to any of the 26 credentialed employees with less seniority than Vasquez who provide Special Education services. Five of those 26 employees hold intern credentials.

A preponderance of the evidence did not support the reasonable reliance element required to establish promissory estoppel or equitable estoppel sufficient to rescind the preliminary layoff notice that was served on Vasquez. It is clear from Devor's February 2010 email that Assistant Superintendent Wells did not make any specific promises, and certainly he made no promises directly to Vasquez. It was clear from Vasquez's testimony

that she relied on a favorable hearsay interpretation provided to her by her principal, but not on anything that a person in a position of ultimate authority said about her situation.

28. Daniel Reyes' seniority date is September 30, 2005. He is a tenured employee who holds a clear multiple subject teaching credential and a CLAD authorization. Reyes teaches third grade at Orrenmaa Elementary School.

Before March 15, 2010, Reyes visited Assistant Director Armstrong to determine if he possessed sufficient History credits to qualify for a supplemental authorization in History. He was told that he did. Reyes submitted the paperwork necessary to receive a supplemental authorization to the district before March 15, but he did not visit the district office to sign the final paperwork until March 16, 2010, nor did Reyes pay the fee required to obtain his supplemental authorization until then.

If Reyes held a supplemental authorization in History on or before March 15, 2010, then he could have bumped Richard Dean, a tenured employee who teaches U. S. History and whose seniority date is more recent than that of Reyes.

The district requires that all updated credentialing information be in proper form and be on file with the district on or before March 15 because that is the last date the district is entitled to serve preliminary layoff notices. If information is not in proper form and on file with the district by that date, then the district cannot issue a preliminary layoff notice to a less senior employee whose position might be taken by a more senior employee with a new credential. The district's position in this regard is reasonable.

The district's issuance of a preliminary layoff notice to Reyes was lawful under all the circumstances. Reyes did not establish that he had the seniority and had his supplemental authorization on file with the district on March 15, 2010, which was necessary for Reyes to displace a more junior employee.

29. Guy Harrell has a seniority date of October 24, 2003. He holds a clear multiple subject teaching credential, CLAD certification and is NCLB highly qualified. He works in the adult education program. Harrell provides services to an extremely challenging group of students in an independent studies program.

Harrell argued that the governing board should not have eliminated his position because of the special value his program provides within the educational community.

The services Harrell provides are a particular kind of service that the board was authorized to reduce or discontinue. Harrell established that his program is unique and valuable. It was not established, however, that the board engaged in fraud or bad faith in deciding to discontinue that program. And, Harrell did not identify any position into which he could bump as a result of his seniority or qualifications. The district's issuance of a preliminary layoff notice to Harrell was lawful had the BCLAD skipping been proper; however, the skipping was improper and Harrell's services will be retained because he had been wrongly displaced by a more junior employee who held a BCLAD authorization.

30. Tracy Putnam has a seniority date of July 1, 2004. She is a tenured teacher who holds a clear credential in Agricultural Science. She does not hold NCLB highly qualified status in Biology at AUSD, but she claimed that she obtained that status during her previous employment at Coalinga Huron Unified School District where she received a High Objective Uniform State Standard of Evaluation (HOUSSE) certificate.<sup>4</sup> Based upon her previous holding of a HOUSSE certificate, Putnam believed she could bump more junior employees teaching Biology or Earth Science in middle schools.

Putnam's HOUSSE certification was not filed with the district on or before March 15, 2010. The district requires that all updated credentialing information be in proper form and on file with the district by March 15 because that is the last date the district is entitled to serve preliminary layoff notices. If information is not in proper form and on file with the district by that date, then the district cannot issue a preliminary layoff notice to a less senior employee whose position might be taken by a more senior employee. The district's position in this regard is reasonable.

The district's issuance of a preliminary layoff notice to Putnam was lawful under all the circumstances.

31. Arianna Hovde has a seniority date of July 29, 2005. She is a tenured teacher who holds a multiple subject teaching credential. She teaches Kindergarten. Hovde reported to her classroom on July 1, 2005. She was not required to do so under her employment contract with the district and she was not paid to do so. Her first required date in the classroom under her employment contract with the district was on July 29, 2005. Hovde wondered if her actual seniority date should be July 1, 2005.

Hovde's first paid date of probationary service was on July 29, 2005, which is her correct seniority date.

32. Gina Spier has a seniority date of August 23, 2007. She is a tenured teacher who holds a preliminary credential in English and a preliminary credential in Social Sciences. She teaches Language Arts and History at Villegas Middle School where she provides 0.8 FTE in a position she shares with employee Mary Newell, who has a seniority date of August 24, 2006. Newell currently provides the remaining 0.2 FTE as an English teacher. Newell was bumped into another position by reason of her seniority and credentials.

Spier did not establish that the district's issuance of a preliminary layoff notice to her was improper or unlawful under all the circumstances. Nor did Spier establish her right to bump into a position being held by a more junior employee by reason of her seniority and credentials.

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<sup>4</sup> NCLB federal law requires a one-time demonstration of competence in each core academic subject taught (or in multiple subjects for elementary teachers). Requirements differ for "New" and "Not New" teachers. NCLB law defines core academic subjects as: English, reading/language arts, mathematics, science, foreign languages, civics/government, economics, arts, history, and geography.

33. Michelle Milano has a seniority date of July 2, 2004. She is a tenured elementary school teacher who holds a clear multiple services teaching credential and CLAD certification. Milano contacted the district on March 17, after she received a preliminary layoff notice, to determine if she had sufficient English credits to obtain a supplemental authorization in English. She was told that she had sufficient credits. Had Milano obtained a supplemental authorization in English and had she filed it with the district by March 15, she would have been senior to 12 employees whose services are being retained.

The district's issuance of a preliminary layoff notice to Milano was lawful under all the circumstances. Milano did not establish that her seniority and credentials permit her to bump into an existing position held by a more junior employee.

34. Carolyn Cordova has a seniority date of July 1, 2005. She is a tenured elementary school teacher with a clear multiple subject teaching credential, a master's degree, and CLAD certification. She worked from July 7, 2004, to March 31, 2006, as a long-term substitute teacher, and then worked in a different classroom for another teacher as a long-term substitute teacher from April 1, 2005 through the end of the school session in July 2005. Cordova asserted the right to a seniority date of July 7, 2004, as a result of having worked more than 75 percent of the school days in the 2004-2005 school year as a long-term substitute teacher.

The statute on which Cordova relied (Education Code section 44918) only applies when a substitute fills a vacancy of one year duration created by the absence of one permanent teacher and it does not apply to a one year vacancy which results from the aggregate of several teachers being absent for shorter periods.<sup>5</sup>

The district's determination that Cordova's seniority date was July 1, 2005, was correct.

35. Jeri Wilson has a seniority date of September 30, 2005. She is a tenured elementary school teacher who holds a clear multiple subject teaching credential. Wilson served as a substitute teacher from August 2005 through September 30, 2005, and was then hired to serve the remainder of the year. Wilson wondered if her seniority date should be set on her first day of substitute employment in August 2005.

Wilson did not serve more than 75 percent of the school year in a long-term substitute capacity in a probationary position. Her first date of service in a paid probationary position was on September 30, 2005.

The district's determination that Wilson's seniority date was September 30, 2005, was correct.

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<sup>5</sup> *Centinela Valley Secondary Teachers Assn. v. Centinela Valley Union High Sch. Dist.* (1974) 37 Cal.App.3d 35, 44.



36. Sarah Baker has a seniority date of July 1, 2005. She is a tenured elementary school teacher with a clear multiple subject teaching credential. Baker also holds a supplemental authorization in English, but it was not on file with the district on March 15, 2010. On March 14, 2010 (a Sunday), Baker emailed the district and advised of her possession of a supplemental authorization in English, but she did not finalize the paperwork required to hold that authorization “until six or seven days later.”

The district’s determination that information must be in proper form and on file with the district by March 15 to be considered in the layoff process is reasonable for all the reasons previously stated.

The district’s issuance of a preliminary layoff notice to Baker was lawful under all the circumstances. Baker did not establish that her seniority and credentials permit her to bump into an existing position held by a more junior employee.

37. Terrence Beezley has a seniority date of September 10, 2007. He is a tenured employee. He holds a CLAD authorization. Beezley also holds supplemental authorizations in Physical Education, Health, and English. He described himself as “an overachiever.” Beezley testified that he helped found the district’s alternative education program, where he is currently one of four social science teachers.

Beezley argued that his unique teaching skills and his many authorizations entitled him to retain his employment, particularly since the district has expressed a desire to preserve the employment of the most competent individuals.

The district’s issuance of a preliminary layoff notice to Beezley was lawful under all the circumstances. Beezley was one of the three least senior high school social science teachers identified for layoff. High school social science was a particular kind of service subject to reduction under the governing board’s resolution. The district did not misidentify Beezley. Nor did Beezley establish that his seniority and credentials permitted him to bump into an existing position held by a more junior employee. Beezley did not establish that his position in the alternative education program shielded him from the layoff process.

#### *Ultimate Conclusions Regarding AUD’s Layoff*

38. AUD’s governing board resolved to reduce and discontinue particular kinds of services being provided by certificated employees for budgetary reasons. The governing board’s decision was not related to the competency or dedication of any of the employees whose services were proposed to be reduced and discontinued. The board’s determination that it was necessary to reduce and discontinue particular kinds of services was lawful, reasonable, and ultimately in the best interest of the district, its schools and its students.

The district’s administrative staff initiated and followed a systematic procedure for identifying those employees who were directly affected by the governing board’s reduction in force resolution. Adjustments were made to the seniority list where indicated until the day before the layoff proceeding. A careful evaluation was made to determine each employee’s

seniority date, credentials and authorizations, and qualifications in making determinations about what bumping rights, if any, an employee had. The evidence does not support the modification any employee's seniority date in the district's seniority list on the date decisions were made relating to layoffs.

The district's effort to skip more junior employees who held BCLAD authorizations over more senior employees who held CLAD authorizations and other valid English Language Learner authorizations (other than emergency authorizations) was improper and the preliminary layoff notices issued to the nine most senior employees who were improperly displaced as a result of this effort to skip the BCLAD holders should be withdrawn and the accusations against them should be dismissed. When this rescission is accomplished, no junior credentialed employee will be retained by the district to provide services which a more senior employee is certificated, competent and qualified to render.

## LEGAL CONCLUSIONS

### *Statutory Authority*

1. Education Code section 44944 provides in part:

“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 . . . the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . 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 . . . 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 . . .

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with . . . the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

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

. . .

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the

welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. . . .”

2. Education Code section 44955 provides in part:

“(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary . . . to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

. . .

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof . . .

. . .

(c) Notice of such termination of services shall be given before the 15th of May . . . and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws."

### *Jurisdiction*

3. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and other jurisdictional requirements contained in those sections were satisfied as to all respondent employees identified herein.

### *The Reduction of Particular Kinds of Services*

4. A school board's decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. Where a governing board determines to discontinue or reduce a particular kind of service, it is within the board's discretion to determine the amount by which it will reduce a particular kind of service as long as the district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.)

### *Competence*

5. The intent of the Education Code is to leave to a school board the discretion of determining whether in addition to possessing seniority an employee is also "certificated and competent" to be employed in a vacant position. The term "competent" in this regard relates to an individual's specific skills or qualifications including academic background, training, credentials, and experience, but does not include evidence related to on-the-job performance. (*Forker v. Board of Trustees* (1984) 160 Cal.App.3d 13, 18-19.) In addition to seniority, the

only limitation in placing a teacher in a vacant position is that the teacher selected be “certificated and competent” to render the service required by the vacant position. Among employees who meet this threshold limitation, there is no room in the statutory scheme for comparative evaluation. (*Martin v. Kentfield School Dist.* (1983) 35 Cal.3d 294, 299.) An employee holding a special credential or needed skill, if such credentials or competence are not shared by a more senior employee, may be retained though it results in termination of a senior employee. (*Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 655.)

### *Seniority, Bumping, and Skipping*

#### The Statutory Scheme

6. Education Code section 44955, the economic layoff statute, provides in subdivision (b), in part, as follows: “Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while . . . any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.”

Essentially this language provides “bumping” rights for senior certificated and competent employees, and “skipping” authority to retain junior employees who are certificated and competent to render services which more senior employees are not. Subdivision (d)(1) of section 44955 provides an exception to subdivision (b) where a district demonstrates specific need for personnel to teach a specific course of study and that a junior certificated employee has special training and experience necessary to teach that course that the senior certificated employee does not possess. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 134-135.) School districts have broad discretion in defining positions within the district and establishing requirements for employment. This discretion encompasses determining the training and experience necessary for particular positions. Similarly, school districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.)

#### Bumping

7. The district has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.*, *supra.* at 136-137.)

#### Skipping

8. Subdivision (d)(1) of section 44955 expressly allows a district to demonstrate its specific “needs” and there is nothing in the statute that requires such needs to be evidenced by formal, written policies, course or job descriptions, or program requirements. (*Bledsoe v. Biggs Unified School Dist.*, *supra.* at 138.)

## *Seniority*

9. Education Code section 44845 provides that seniority is determined by the date a certificated employee “first rendered paid service in a probationary position.”

*Information Filed with AUSD after March 15, 2010*

10. A school district must issue and serve preliminary layoff notices no later than March 15. Before then, a district must consider all information on file that assists the district in making assignments and reassignments based on seniority and qualifications. After March 15, the district has no authority to issue a layoff notice to an employee who has become junior by reason of another employee’s filing of proof of additional qualifications. Thus, a credential filed with a district after March 15 cannot be the basis for bumping. (*Degener v. Governing Board* (1977) 67 Cal.App.3d 689, 698.)

## *Substitute and Temporary Service*

11. Under Education Code section 44917, governing boards must “classify as substitute employees those persons employed in positions requiring certification qualifications, to fill positions of regularly employed persons absent from service.” Under Education Code section 44953, substitute employees may be dismissed at any time at the pleasure of the board. As noted in *California Teachers Ass’n v. Vallejo City Unified School Dist.* (2007) 149 Cal.App.4th 135, 144-145 and *Balen v. Peralta Junior College District* (1974) 11 Cal.3d 821, 826, substitute and temporary teachers fill the short range needs of a school district and may be summarily released.

In specific situations, an employee’s position in something other than a probationary position may be credited retroactively as probationary employment. Thus, a certificated employee working in a temporary position as a long-term replacement teacher under Education Code section 44920 or in a categorically funded position under Education Code section 44909 may accrue credit toward permanent status under certain circumstances described in Education Code sections 44909, 44917, 44918 or 44920.

The Education Code recognizes two distinct types of substitute teachers: long-term substitute teachers and day-to-day substitute teachers. Education Code section 44918 makes this distinction:

“(a) Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year.

(b) Any such employee shall be reemployed for the following school year to fill any vacant positions in the school district unless the employee has been released pursuant to subdivision (b) of Section 44954.

(c) If an employee was released pursuant to subdivision (b) of Section 44954 and has nevertheless been retained as a temporary or substitute employee by the district for two consecutive years and that employee has served for at least 75 percent of the number of days the regular schools of the district were maintained in each school year and has performed the duties normally required of a certificated employee of the school district, that employee shall receive first priority if the district fills a vacant position, at the grade level at which the employee served during either of the two years, for the subsequent school year. In the case of a departmentalized program, the employee shall have taught in the subject matter in which the vacant position occurs.

(d) Those employees classified as substitutes, and who are employed to serve in an on-call status to replace absent regular employees on a day-to-day basis shall not be entitled to the benefits of this section.

(e) Permanent and probationary employees subjected to a reduction in force pursuant to Section 44955 shall, during the period of preferred right to reappointment, have prior rights to any vacant position in which they are qualified to serve superior to those rights hereunder afforded to temporary and substitute personnel who have become probationary employees pursuant to this section.

(f) This section shall not apply to any school district in which the average daily attendance is in excess of 400,000.”

*Centinela Valley Secondary Teachers Assn. v. Centinela Valley Union High Sch. Dist.* (1974) 37 Cal.App.3d 35 considered the case of a substitute teacher who provided a full year’s substitute teaching service for two different teachers at the same school. The case involved the application of a nearly identical predecessor statute (Education Code section 13336.5) to Education Code section 44918. In reaching its conclusion, the court held:

“In this context we are of the opinion that the statute in question and in particular the phrase ‘who teaches . . . any class or classes which would have been taught by one person absent from service . . .’ was intended to apply to the situation where a substitute teacher replaces one and the same permanent teacher for an entire school year regardless of particular class assignments. Stated another way, the statute only applies when a substitute fills a vacancy in teacher complement of one year duration, created by the absence of one permanent teacher and does not apply to a one year vacancy which results from the aggregate of several teachers being absent for shorter periods. This interpretation preserves administrative discretion while affording fair treatment of substitutes and thus achieves what we presume to be the overall objective of the statute.” (*Ibid.*, at page 44.)

## *Estoppel*

12. Promissory estoppel is a doctrine which employs equitable principles to satisfy the requirement that consideration must be given in exchange for the promise sought to be enforced. A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. To be binding, the promise must be clear and unambiguous. (*Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4th 1550, 1566.) The elements of a promissory estoppel claim are: (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) the reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance.” (*US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 901.)

Promissory estoppel is based on a promise; equitable estoppel is based on misrepresentation of an existing fact. The doctrine of equitable estoppel is based on the theory that a party who by his declarations or conduct misleads another to his prejudice should be estopped from obtaining the benefits of his misconduct. The required elements for an equitable estoppel are: (1) the party to be estopped must be apprised of the facts; (2) the party to be estopped must intend his or her conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) the other party must rely upon the conduct to his or her injury. It is well settled that the estoppel doctrine is applicable to government entities where justice and right require it. (*Cotta v. City and County of San Francisco, supra*, at 1566-1567.)

No respondent established reasonable reliance sufficient to invoke either the doctrine of promissory estoppel or equitable estoppel.

## *Cause Exists to Give Notice to Certain Employees*

13. As a result of the governing board’s lawful reduction of particular kinds of service being provided by certificated employees, cause exists under the Education Code for the district to give notice to those respondents who are identified hereafter that their employment will be terminated at the close of the current school year and that their services will not be needed by the district for the 2010-2011 school year.

## *Determination*

14. The charges set forth in the accusation were sustained by a preponderance of the evidence and related to the welfare of the Alvord Unified School District and the students thereof. AUSD’s administrative staff made assignments and reassignments under Resolution No. 28 in such a manner that the most senior employees were retained to render services which their seniority and qualifications entitled them to render, except as otherwise noted herein. No employee with less seniority than any respondent will be retained to render a service which any respondent is certificated, competent and qualified to render.



This determination is based on all factual findings and on all legal conclusions.

## RECOMMENDATIONS

It is recommended that the preliminary layoff notices issued to Stephanie Bradley, Jessica Cassese, Brianna Chavez-Monroe, Amanda Davis, Deserae Devlin, Jennifer Doiron, Deborah Griffin, Guy Harrell, Yvette Haskins, Jill Heinz, Faith Johnson, Samuel Jones III, Christine Ledesma, Endelia Medina, Monica Meurer, Tonya Miller, Paul Oeser III, Audrey Popoff, Heidi Powers, Sara Rodriguez, Danielle Romain, Lilia Roney, Michael Sanchez, Kelli Seibert, Everton Souza, Julie Stanfield, Tiffany Star Ferreira, Cara Sweeney, Nadia Templeton, Rachel Thurman, Andrea Viniguerra, Teresa Wilson, and Hugh Jackman Wood be rescinded and that the accusations filed against them be dismissed.

It is recommended that the governing board give notice to the remaining respondents who were served with preliminary layoff notices that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2010-2011 school year:

Dated: May 4, 2010.

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JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings