

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

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL  
EMPLOYED BY THE NATOMAS  
UNIFIED SCHOOL DISTRICT,

Respondents.

OAH No. 2011020722

**PROPOSED DECISION**

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on April 7 and April 25, 2011.

James Scot Yarnell, Attorney at Law, of Atkinson, Andelson, Loya, Ruud & Romo, represented the Natomas Unified School District.

Respondents are identified in Exhibit A, a copy of which is attached hereto and incorporated herein.

Respondents were represented as follows:

■ James Weaver appeared and represented himself.

■ The following respondents did not appear and were not represented by counsel:

Amber Allison  
Debra Ginocchio  
Julie Hanson  
Wendy Heu  
Allyson Kirby  
Raymond Kirkland  
Paul Sanchez  
Ye Wang

District counsel stipulated that these respondents timely filed Requests for Hearing and Notices of Defense and the District would not challenge their inclusion as respondents in this proceeding.

■ Carolyn Langenkamp, Attorney at Law, of Langenkamp & Curtis, LLP, represented the remaining respondents.

Evidence was received, the hearing was closed, and the matter was submitted for decision on April 25, 2011.

## FINDINGS

1. Bobbi Plough is the Superintendent of the Natomas Unified School District (District). The actions of Superintendent Plough and the actions of the District Board of Trustees (Board), were taken in their official capacities.

2. The District serves kindergarten through twelfth grade students and has 12 sites: two high schools, one middle school, eight elementary schools and one continuation high school.

3. The District is facing a severe budget deficit for the 2011-2012 school year. Because of the projected budget deficit, the Superintendent recommended to the Board that it was necessary to reduce or discontinue 56.06 full time equivalent (FTE) certificated services no later than the beginning of the 2011-2012 school year. In making his recommendation, the Superintendent took into account all positively assured attrition, including two resignations which had been submitted to the District.

4. On March 9, 2011, the Board adopted Resolution No. 11-04 (Amended), (Resolution) which reduced and/or discontinued the following particular kinds of certificated services (PKS) no later than the beginning of the 2011-2012 school year:

### *Preschool*

Preschool Teacher	.66	FTE
Lead Preschool Teacher	1.0	FTE

### *Elementary Teaching Services*

Multiple Subject Service	27.0	FTE
Physical Education	1.0	FTE

*Secondary Teaching Services*

Physical Education	1.0	FTE
Visual Arts	1.0	FTE
Biology	3.6	FTE
Life Science	1.0	FTE
Social Science	5.2	FTE
English/Language Arts	5.6	FTE
Math	5.0	FTE
Spanish	2.0	FTE
AFJROTC	2.0	FTE
<b>TOTAL</b>	<b>56.06</b>	<b>FTE</b>

5. The Board further determined that it was necessary by reason of the reduction and/or discontinuance (reduction) of services to decrease the number of permanent and/or probationary certificated employees at the close of the 2010-2011 school year by a corresponding number of FTE positions and directed the Superintendent or her designee to proceed accordingly by notifying the appropriate employees to implement the Board's determination.

6. On March 11, 2011, the District served the affected employees with a written notice, pursuant to Education Code sections 44949 and 44955, that their services would not be required for the next school year (Preliminary Notice). Each Preliminary Notice set forth the reasons for the recommendation. The Preliminary Notice attached and incorporated the Resolution by reference, which listed the services to be reduced, resulting in a proposed reduction in the certificated staff by 56.06 FTE positions.

7. Respondents timely filed Requests for Hearing to determine if there is cause for not reemploying them for the next school year.

8. The Superintendent made and filed Accusations against respondents. The Accusations were timely served on respondents and respondents timely filed Notices of Defense.

*Implementation of Layoff*

9. After the Resolution passed and prior to serving the Preliminary Notices, the Superintendent directed District consultant Charlotte Caldwell and District staff, Kay Baker, to identify persons occupying the positions affected by the 56.06 FTE PKS reduction. The District maintains a seniority list which includes the teachers' credentials and authorizations, first dates of paid service and current assignments. District staff posted the seniority list and updated the list with new information provided by the teachers.

10. Caldwell and Baker reviewed the updated seniority list and identified the least senior persons occupying the positions affected by the PKS reduction (affected employees). In instances where affected employees had the same first date of hire, Caldwell and Baker utilized the “tie-breaking criteria” set forth in the Resolution to break the ties.

11. Caldwell and Baker then determined whether each of the affected employees held a credential that would authorize him/her to move (bump) into a position held by a junior employee. In instances where an affected employee did hold a credential authorizing him/her to bump into a position held by a junior employee, Caldwell and Baker employed the “competency criteria” set forth in the Resolution to determine whether the affected employee was also “competent” to bump into the position.

### *Challenges to the Tie-breaking Criteria*

12. Many respondents challenge the fairness of the District’s tie-breaking criteria. Additionally, some respondents challenge the manner in which the tie-breaking criteria was applied to them.

13. The Board adopted the following tie-breaking criteria:

That as between employees who first rendered paid service on the same date, the order of termination and rehire shall be based solely on the needs of the District and the students thereof as determined by the point system described herein. This system shall be applied only where the implementation of layoffs or rehire actually impacts two or more employees with the same first date of paid service and is applied only to those employees. In the case of each tie, points shall be granted to each affected employee based upon all the following criteria:

- a. Possession of a currently valid preliminary or California teaching credential - *1 point*;
- b. Possession of multiple valid preliminary or California teaching credentials - *1 point*;
- c. Greater total years of service, as defined by Education Code section 44908, with any California public school district - *1 point*;
- d. Possession of one or more English Language Learner certifications (*e.g.*, LDS, CLAD, SB 1969, SB 395, BCC, BCLAD) or other EL qualifying credential - *1 point*;

- e. Possession of one or more post graduate degree(s)  
- *1 point*;
- f. Possession of an undergraduate major or minor in:  
math, science, special education - *1 point*;
- g. In any case where a tie results after calculating the cumulative points for each the above criteria, then the tie shall be broken by ranking the tied employees from lowest to highest according to the last four digits of their social security number, with the lower number deemed less senior than the next higher number.

14. Some respondents maintain that supplemental authorizations should be considered as additional credentials under criteria b. That criteria allows an additional point for “possession of multiple valid preliminary or clear California teaching credentials.” This argument is not persuasive. The evidence is persuasive that the Board did not consider supplemental authorizations as “valid preliminary or clear teaching credentials” and that the Board intended to ascribe one point to each certificated employee who held more than one teaching credential.

15. Some respondents maintain that tie-breaking criteria c (Greater total years of service, as defined by Education Code section 44908, with any California public school district - *1 point*) should be applied to each set of employees who have tied amongst themselves, after application of criteria a and b. The District maintains that criteria c should be applied to all of the employees with the same date of paid service, with the result that the one employee who has the greatest years of service be accorded the point. The District’s interpretation appears more in keeping with the language of the resolution. Moreover, the technique respondents suggest for applying criteria c would be unworkable. For instance, the biology tie-breaker (Findings 24-27) has five persons tied after application of criteria a and b. If criteria c is applied to them, it will give Keith Millward one point. Respondents suggest that after criteria c is applied to the five, it should then be applied to the four who remained tied. The application of criteria c would continue with each remaining set of tied respondents. However, the end result would be that each respondent except one would have one point awarded under criteria c, which would make application of this criteria futile in breaking the tie.

16. Respondents also challenge application of tie-breaking criteria g. This is the final tie-breaking criteria and provides: “In any case where a tie results after calculating the cumulative points for each of the above criteria, then the tie shall be broken by ranking the tied employees from lowest to highest according to the last four digits of their social security number, with the lower number deemed less senior than the next higher number.” This final tie-breaking criteria has no relation to the Board’s stated objective that “the order of termination and rehire shall be based solely on the needs of the District and the students

thereof..." This criteria is unrelated to the needs to the District, and is designed solely to break any final ties which remain after the District's needs are addressed through application of the six preceding criteria. There is nothing improper about use of final tie-breaking criteria that ranks employees through application of chance. Indeed, after application of six criteria, which are clearly related to the needs of the District, it is reasonable to put a stop to the ranking process by using a technique that does not discriminate among employees and ranks them by chance. Accordingly, final tie-breaking criteria such as flipping coins and drawing numbers have been employed to break final ties.

17. However, there is nothing random about consideration of any part of an employee's social security number to break ties. These numbers are assigned to individuals, are fixed and are not ordinarily subject to change. The individual goes into a tie-breaking process with a pre-determined outcome (those with higher last four digits will always be ranked higher than those with lower last four digits). For example, as set forth below in Finding 24, Daniel Motherspaw's last four social security numerbs begin with 2. It is predictable that he will be ranked lower than many other employees, whose numbers start with 3, 4, 5, 6 or 7. It is pre-determined that in any groups of employees, his chances of being ranked senior are less than those of these other employees.

18. A random process has no pre-determined outcome and, if repeated, the outcomes have no discernible pattern. Here, Daniel Motherspaw, and all other employees, know at the outset of application of criteria g where they will fall in the ranking process. If the "random" ranking process is repeated, it will yield identical results on each trial. Accordingly, application of criteria g is not a random selection process. Because criteria g is not related to the District needs and is not random, it may not be used as a tie-breaking criteria to rank seniority.

19. The effects of the application of criteria g on employees in the four groups in which tie-breaking criteria were employed (Visual Arts, Math, Multiple Subjects and Biology) are discussed below.

20. *Effects on respondents-8/6/08 seniority date Math Tie-Breaker:* The only respondent who is affected by the application of the math tie-breaking criteria is Jenna Boller. Jenna Boller had the lowest seniority rank in the math tie-breaker, after application of tie-breaking criteria a through f. After a teacher who was omitted from the math tie-breaking, David Sanchez, was included during the hearing, Jenna Boller still had the lowest seniority rank. Accordingly, she was not tied with anyone and Social Security numbers were not used in determining her rank.

21. Additionally, Caldwell testified that in researching the addition of David Sanchez to the math tie-breaking criteria during the hearing, she discovered that Jenna Boller is actually a probationary, not a permanent employee. The 2010-2011 school year is her first year of service under a preliminary credential. Previously, she worked under an internship credential. Accordingly, the District maintains that Jenna Boller has the lowest seniority among the four individuals subject to the math tie-breaking criteria.

22. The evidence is persuasive that Jenna Boller is the least senior of the math teachers whose seniority date was tied at 8/6/08, and criteria g had no effect on her seniority ranking.

23. *Effects on respondents-8/8/07 seniority date Visual Arts Tie-Breaker:* The Resolution authorized a 1.0 FTE reduction in visual arts. Respondent Dave Contreras and non-respondent Kyle Pederson were the least senior certificated employees assigned to teach visual arts. They shared a seniority date of 8/8/07. The tie-breaking criteria were applied to them and after application of tie-breaking criteria a through f, Kyle Peterson had 3 points and Dave Contreras had 2 points. Accordingly, there was no need to further break the tie by employing Social Security numbers. The evidence is persuasive that Dave Contreras was the least senior of the visual arts teachers whose seniority date was tied at 8/8/07, and criteria g had no effect on his seniority ranking.

24. *Effects on respondents-8/17/05 seniority date Biology Tie-Breaker:* The Resolution authorized a 3.6 FTE reduction in biology. There were five certificated employees assigned to teach biology who shared the seniority date of 8/17/05. Tie-breaking criteria were applied among these employees. Respondents Daniel Motherspaw and Michael Moyer, and non-respondent Oliver Weiss were tied with 3 points each after application of criteria a through f. The District applied criteria g and determined that Michael Moyer had the most seniority with a last four digit Social Security number starting with 4, followed by Oliver Weiss, with a number starting with 3 and followed by Daniel Motherspaw, with a number starting with 2.

25. Michael Moyer was noticed for a 1.0 FTE elimination of his biology services, Daniel Motherspaw was noticed for a 1.0 FTE elimination of his biology services and Oliver Weiss was noticed for a .2 FTE reduction in his biology services. (Oliver Weiss was only teaching .2 FTE in biology. He was also teaching .6 FTE in chemistry and .2 in earth science).

26. Being most senior according to the tie-breaking criteria, Michael Moyer then bumped into .80 FTE held by junior teachers (Timothy Brozs .20 APEX (a computerized self-taught program), Margaret Carder .20 APEX, Chris Castro .20 Mash, and Oliver Weiss .20 earth science) and was laid off .20 FTE. Daniel Motherspaw was laid off 1.0 FTE.

27. In sum, Michael Moyer, Daniel Motherspaw and Oliver Weiss were all affected by the reduction in 3.60 FTE in Biology. However, if the Social Security number had not been applied as directed in criteria g, making Michael Moyer most senior of the three, Daniel Motherspaw or Oliver Weiss would have had an equal chance of being deemed most senior and bumping into the .80 FTE of the junior positions Michael Moyer bumped into. Oliver Weiss is not a respondent. Accordingly, Daniel Motherspaw is entitled to a rescission of .80 FTE due to the application of tie-breaking criteria g. However, as set forth

in Findings 66 and 67 (Motherspaw) and 68 through 70 (Moyer), both Motherspaw and Moyer are each entitled to 1.0 FTE rescissions because they may bump junior teachers.<sup>1</sup>

28. *Effects on respondents-7/6/05 seniority date Multiple Subject Service Tie-Breaker:* The Resolution authorized a 27.0 FTE reduction in elementary teaching services. There were five certificated employees assigned to deliver elementary teaching services who shared the seniority date of 7/6/05. The tie-breaking criteria were applied among these employees. Respondent Melissa Young and non-respondents Anthony Thomas and Colleen Farris were tied with two points each after application of criteria a through f. Accordingly, the District applied criteria g and determined that Melissa Young had the least seniority because the last four digits of her Social Security number were the lowest. However, Colleen Farris, Anthony Thomas and Melissa Young were not laid off as part of the 27.0 FTE reduction in elementary teaching services.

29. Rather, Melissa Young, having emerged as the least senior multiple subject teacher after the tie-breaker, was bumped by senior teacher Christine Smith (# 251)<sup>2</sup>, who had been subject to layoff due to the 1.0 FTE lead preschool teacher. If a random tie-breaker had been used rather than Social Security numbers, Melissa Young may not have been the least senior among Anthony Thomas and Colleen Farris and may not have been bumped by Christine Smith. It appears as if Colleen Farris and Anthony Thomas were not bumped out of their positions and were not noticed for layoff.

30. Melissa Young would have had an equal chance of being deemed more senior and not being bumped by Christine Smith if her Social Security number had not been applied as directed in criteria g. Accordingly, Melissa Young is entitled to a rescission of 1.00 FTE due to the application of tie-breaking criteria g.

#### *General Challenges to the Competency Criteria*

31. The Board adopted the following “competency” criteria:

That “competency” for the purposes of Education Code section 44955 shall be determined solely upon current possession of a preliminary or clear credential for the subject matter or grade level to which the employee will be assigned at the beginning of the 2011-2012 school year *and at least one (1) year of experience within the preceding five (5) years teaching the subject matter at the applicable elementary, middle or high school level.* Further, that due to the specific need of the district to hire and retain only highly qualified teachers in academic subject areas, “competency” shall require (highly qualified)

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<sup>1</sup> Moyer also argued that he should have been most senior in the biology tie-breaking ranking because he holds two credentials. This argument was not considered, as his other arguments were more persuasive and result in a 1.0 FTE rescission.

<sup>2</sup> At times, the employee seniority number will be included for ease of reference.



current confirmation of qualifications of academic subject competency, or verifiable eligibility for competency if not previously reviewed by the District, in all subjects of a proposed assignment, including assignments teaching multiple academic subjects and assignments in secondary alternative schools, in accordance with the NCLB. (*Italics added.*)

32. Many respondents maintain that they are being laid off while junior teachers are being retained to teach classes which respondents are credentialed and competent to teach. These respondents argue that the “1 year in 5, at same level and subject” competency criteria the District has adopted improperly prevents them from bumping these junior teachers.

33. In *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, the court interpreted Education Code section 87743<sup>3</sup>, the community college analog to Education Code section 44955. The court explained:

As is easily surmisable from a brief reading of the section, a district is statutorily authorized to reduce teaching staff and is required to proceed according to seniority principles. “The statute specifically protects tenure rights and seniority. Layoffs must begin with the most recently hired. Furthermore, tenured employees who are competent and properly credentialed must be reassigned to replace junior employees. Thus, section 87743 gives 'bumping privileges' to qualified, senior employees, even if their specific post has been eliminated.”(citing case) These bumping privileges allow a senior teacher whose teaching services are being terminated to move into the teaching position of a junior teacher whose services the senior teacher is certificated and competent to perform, thus necessitating the layoff of the junior teacher and protecting seniority rights. Yet these bumping rights are not absolute even for a teacher with substantial seniority who is facing layoff. The section specifically requires the senior, regular employee to be “certificated and competent” to render the service otherwise being rendered by a junior member of the teaching staff.” (*Id.* at pp. 563-564.)

34. In *Duax*, a teacher noticed for layoff, Wesley Sanderson, had been employed at Bakersfield College as a clinical psychologist for the preceding 25 years. The district was discontinuing psychologist services for the 1981-1982 school year. The district planned to retain a junior teacher to teach psychology as an academic subject the ensuing school year. The board had adopted competency standards that required one year's full-time teaching in the subject area within the last ten years. Sanderson had not taught since 1960, and the

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<sup>3</sup> All statutory references are to the California Education Code unless otherwise indicated.

district considered him not competent to teach psychology. Thus, he was deemed not competent to bump a junior teacher being retained to teach psychology. (*Id.* at p. 564.)

35. The *Duax* court stated that the meaning of “certificated and competent” was a “watershed inquiry.” The court turned to the board of trustee’s resolution defining the meaning of competence. That resolution stated: “In determining that no employee shall be terminated while a less senior employee is retained to render a service which the more senior employee is both certificated and competent to render, this Board directs the Chancellor to apply as a standard of competence that an employee have had experience rendering a service or teaching in a specific subject area equal to a total of one year’s full-time assignment in that service or subject area since January of 1971.” The court framed the “crucial inquiry” as: “...was the standard of competence adopted by the board reasonable and valid?” (*Id.* at pp. 564-565.)

36. The court found: “... [t]he statute envisions and the cases mandate that in the event of a layoff under section 87743 based on discontinuance of the services being provided by a senior member of the staff, the governing board must determine whether the senior employee is competent to perform services being performed by a junior employee. In this case, the governing board established a standard of competency that required one year’s full-time teaching in the subject area within the last ten years, a standard clearly relating to skills and qualifications to teach...” The court found the standard set forth in the resolution was “reasonable and valid” “[S]ince teaching is the primary and premier function of the community college and since the job description for instructors in the board policy manual emphasizes teaching skills, development of course material, interaction with students, knowledge of student abilities, and evaluation of student work... The mandate is that the governing board establish a standard of competency that relates to the skills and qualifications of the teacher. That standard was established by resolution of the governing board, and *since it requires only one year of teaching in the last ten, not one in the last two or three, we are not persuaded that it too narrowly defines competency.*” (Italics added.) (*Id.* at pp. 566-567.)

37. The *Duax* court also reviewed case law and concluded: “Hence, from these authorities *we conclude that a board’s definition of competency is reasonable when it considers the skills and qualifications of the teacher threatened with layoff.*” (Italics added.) (*Id.* at p. 56)

38. What we take away from *Duax* is that in making bumping decisions:

- (1) It is the board’s duty to consider the skills and qualifications of the senior teachers subject to layoff in order to 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.
- (2) The governing board may set standards of competency.

(3) Standards of competency must be reasonable and valid.

(4) Standards of competency are reasonable and valid if they relate to the skills and qualifications of the teacher threatened with layoff.

39. Under the facts of *Duax*, a district could reasonably establish competency criteria that prevented a teacher who had not taught at all in ten years from bumping a junior teacher. The *Duax* court found that the competence criteria of teaching in ten years related to the skills and qualifications to teach. The court rejected the argument that this criteria was too narrow. But, the *Duax* court did not give districts the authority to impose any competency criteria they deemed appropriate. Clearly, allowing districts to establish any competency criteria they see fit would defeat the statutory scheme of section 44955 and allow district's to ignore seniority in making assignments and reassignments.<sup>4</sup>

40. In contrast to the competency criteria in *Duax*, here the board established very narrow criteria for competency. In order to bump a junior certificated employee who is being retained to teach a subject, the senior employee must not only be credentialed to teach the subject, but must have taught the subject matter for at least one year in the previous five years and at the same level (elementary, middle or high school). The issue is whether this competency criteria relates to the skills and qualifications to teach, and therefore is reasonable and valid.

41. The District maintains that its competency criteria are reasonable and valid. The District Superintendent testified that the District entered into the "program improvement" category with the Department of Education this year and it is necessary that student achievement improve in the ensuing school year. She testified that one year of instruction in a subject in the last five, and at the same level, is important to meeting student needs. "Teaching experience relates to achievement in that the specific needs of each level and the instructional strategies and skills of the teacher have an effect on achievement."

42. The rationale the District provides for imposing its competency criteria appears to be that those who have taught a course in the last five years to the same level students are better qualified to improve student achievement. There is no evidence to support this theory. Also, there is no evidence that teachers who have not taught a particular subject to the same level in five years have ineffective teaching skills and strategies and will

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<sup>4</sup> *Bledsoe vs. Biggs Unified School District* (2008) 170 CA 4<sup>th</sup> 127 is not applicable here. It does not hold that districts may adopt certain competency criteria to prevent senior teachers from bumping into junior positions. In *Bledsoe*, there was no challenge to the competency criteria at issue: teaching within an alternative education environment. The issues were whether a respondent met the competency criteria, which he did, and whether the district could employ section 44955 subdivision (d), to skip the junior teacher. The decision concluded the District had met its burden to establish the exception provided by section 44955 subdivision (d), to "skip" junior employees.

negatively effect achievement. These competency criteria are significantly narrower than the criteria applied in *Duax*. These criteria do not consider the skills and qualifications of the senior teacher threatened with layoff. These criteria may be convenient in administering a lay off, but they arbitrarily prevent senior teachers from bumping junior teachers in violation of section 44955, subdivisions (b) and (c).

43. The competency criteria the District employed violates the letter and the spirit of section 44955. A district may not defeat the very clear intent of this legislation to retain senior teachers in the event of layoffs, by defining competency in a narrow manner and declaring those senior teachers who do not meet the criteria incompetent to teach in their areas of credentialing. Accordingly, the “one year in five at same level and subject” competency criteria are disregarded in considering whether individual respondents should be permitted to bump junior teachers.

#### *Individual Challenges to Application of Competency Criteria*

44. The respondents adversely affected by the competency criteria have been teaching a subject, and, because of the resolution reducing their services, wish to exercise their rights to displace junior employees. The junior employees are either: (1) teaching the same subject, but at a different level; or (2) teaching a different subject that the senior teacher is certificated to teach, either at the same or a different level. When the competency criteria was applied to the senior teachers, they were deemed not competent to bump the junior teachers, despite having current teaching experience in excess of the teaching experience of the junior teacher.

45. *Lydiana Alfaro* (#349) has a seniority date of 8/2/06. She holds a Multiple Subject credential and a Supplemental Authorization in art. She also has a Master’s degree in bilingual education. She was laid off pursuant to the 27.0 FTE reduction in multiple subjects. She maintains that she can bump *Dino Gay* (#362), and *Andrea Reyes* (#388), who hold Single Subject credentials in art and are being retained to teach art at Inverness High School (IHS). *Lydiana Alfaro* also maintains that she can bump into the English language development (ELD) classes taught by *Stephanie Turner* (#355). *Stephanie Turner* holds a Single Subject credential in English and teaches ELD at *Natomas Middle School* (NMS). The District did not permit her to bump into any of these positions because she had not taught art or ELD in high school in the last five years.

46. Even if the competency criteria were not applied, *Lydiana Alfaro* does not meet the Board’s certification requirement to bump junior employees: “current possession of a preliminary or clear credential for the subject matter or grade level.” *Lydiana Alfaro* has a Supplemental Authorization in art which accompanies her Multiple Subject credential. Under this credential, she is only authorized to teach departmentalized classes in art in grades 9 and below.<sup>5</sup> She is seeking to bump junior teachers who hold Single Subject art

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<sup>5</sup> According to the Commission on Teacher Credentialing, supplementary authorizations are subjects added to multiple subject, single subject, and other teaching

credentials and are authorized to teach art in high school. Although the District is employing some teachers with Supplemental Authorizations, rather than Single Subject credentials to teach some courses, this is not the case with the junior art teachers Lydiana Alfaro is seeking to bump. Lydiana Alfaro is also seeking to bump a teacher with a Single Subject English credential teaching ELD. Although she has a bilingual background and a Master's degree in bilingual education, she does not hold an English Single Subject or even a Supplemental Authorization in English. The District may reasonably require that one seeking to bump a junior language teacher hold a credential for the subject matter. No junior teacher is being retained to teach a course which Lydiana Alfaro is credentialed and competent to teach.

47. *Adam Beasley* (#314) has a seniority date of 8/8/05. He holds a Single Subject social science credential and a Single Subject Spanish credential, which he obtained this year. He was laid off pursuant to the 5.20 FTE reduction in social science, which he is teaching in middle school. He maintains that he can bump Spanish teachers with less seniority who are being retained to teach Spanish at the high school and middle school levels. He did not identify junior teachers teaching Spanish at the middle school. Those junior teachers teaching Spanish at high schools are:

Maria Atherley (#317) Single Subject Spanish – teaching at IHS

Margarita Gonzales (#338) Multiple Subject; Supplemental Authorization  
Introductory Spanish – teaching Spanish at IHS

Norma Bettancort (#398) Single Subject Spanish; Multiple Subject – teaching  
Spanish at IHS

Delia Santamaria (#415) Single Subject Spanish - teaching .60 Spanish and .40 ELD  
at NHS

The District applied the competency criteria and found Adam Beasley not competent to teach Spanish, because he had not taught Spanish in the last five years. Adam Beasley is certificated and competent to teach the Spanish classes that the above four junior teachers are being retained to teach. Therefore, his lay off notice must be rescinded.

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credentials. The authorizations are based on 20 semester units or 10 upper division or graduate units in the subject. Single subject credentials with supplemental authorizations allow teaching as follows: If the supplemental authorization is in an introductory subject, the holder is authorized to teach only the subject matter content typically included for that subject in curriculum guidelines and textbooks for study in grades 9 and below. If the supplemental authorization is in a specific subject(s) the holder is authorized to teach the specific subject at any grade level, preschool through 12, and in classes organized primarily for adults. If a supplemental authorization accompanies the multiple subject credential the holder is authorized to teach departmentalized classes related to the supplementary authorization in grades 9 and below.

48. *Jenna Boller* (#428) has a seniority date of 8/6/08. She holds a Single Subject credential in math and teaches at NHS. She was laid off pursuant to the 5.0 FTE reduction in math. There is no junior employee being retained to teach mathematics. No junior teacher is being retained to teach a course which Jenna Boller is credentialed and competent to teach.

49. *Margaret Carder* (#416) has a seniority date of 10/29/07. She holds a Multiple Subject credential and a Single Subject in English, social science and mathematics. She is teaching .80 English language development (ELD) and .20 Apex (on line individual instruction) at NHS. She was laid off .20 FTE from Apex, because she was bumped by Michael Moyer. She was noticed for the remaining .80 FTE because of the possibility she would be bumped by senior teachers out of .80 ELD. She maintains that she should be able to bump junior math teachers, Nicole Ostaggi (#418), Bradlee Crockett (#430) and Dave Sanchez (#435).<sup>6</sup>

50. The District did not deem Margaret Carder competent to bump these junior teachers because she had not taught high school math in the last five years, although she taught math in the eighth grade in 2008 and 2009, taught algebra in adult education classes, and currently teaches a high school curriculum. As there are three junior teachers being retained to teach math in high school and Margaret Carder is certificated and competent to teach math in high school, her layoff notice must be rescinded.

51. *Rebecca Cyr* (#402) has a seniority date of 8/8/07. She holds a Single Subject credential in English with a supplementary authorization in introductory music and a Multiple Subject credential with subject matter authorizations in music and English. She currently teaches 7th and 8th grade language arts at Natomas Elementary School (NES) and is being laid off 1.0 FTE pursuant to the resolution reduction of 5.60 in secondary teaching services English. She maintains that she can bump Margaret Carder (#416) out of .80 FTE of ELD or Shawn Hines (#432), who has a Single Subject credential in music, for 1.0 FTE music at the high school.

52. Rebecca Cyr testified that she taught music at the high school last year and that she has taught music in the Natomas school district some portion of every school year for the last five years. Rebecca Cyr's music credentials are supplementary authorizations. The supplementary authorization in introductory music accompanying her English credential allows her to teach only the subject matter content typically included for music in curriculum guidelines and textbooks for study in grades 9 and below. The Supplemental Authorization accompanying her Multiple Subject credential authorizes her to teach departmentalized classes related to music in grades 9 and below. (see FN5) She is not certificated to teach music in grades 10 through 12 and may not bump Shawn Hines out of his high school music

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<sup>6</sup> Margaret Carder also argued that she could not be laid off from her .20 FTE Apex and .80 ELD position because she has skills and experience not possessed by other teachers and cannot be bumped. This argument has no merit. Teachers have no legal right to claim that they must be "skipped." Only the District has the right to "skip" teachers.

classes. Additionally, she does not meet the Board's criteria for "current possession of a preliminary or clear credential for the subject matter or grade level."

53. Rebecca Cyr is certificated and competent to bump into the .80 ELD position held by Margaret Carder. However, Heather King (#329) (seniority date 7/1/07) is senior to Rebecca Cyr and may bump Margaret Carder. (Findings 62-63). There is no junior teacher being retained whom Rebecca Cyr is certificated and competent to displace.

54. *Jason Everhart* (#377) has a seniority date of 8/28/06. He holds a Single Subject credential in English and teaches at NHS. He is being laid off 1.0 FTE pursuant to the resolution reduction of 5.60 in secondary teaching services, English. He maintains that he can bump into the high school drama/stagecraft and leadership classes taught by Michael Olavarri (#385) who holds a preliminary single subject in foundational level mathematics and social science and a supplemental authorization in drama/theater. He testified that his English credential authorizes him to teach drama and that all credentials can teach leadership. He maintains that he can also bump Kimberly Jacobson-Sanchez (#395) who holds a Multiple Subject credential and teaches ELD at the middle school. Although he has never taught at the middle school, he testified that his credential "allows me to go down to the 7th grade."

55. The District maintains that Jason Everhart is not competent to bump into Michael Olavarri's position because he has not taught drama, and he has not taught ELD at the elementary level, so he cannot displace Kimberly Jacobson-Sanchez. The District presented no evidence as to why a credentialed English teacher teaching in a high school is not certificated to teach drama, stagecraft or leadership in the high school.<sup>7</sup> Accordingly, Jason Everhart could displace Michael Olavarri and his 1.0 FTE must be rescinded. It is not necessary to address his claim that he could also have bumped Kimberly Jacobson-Sanchez.

56. *Mara Harvey* (#343) has a seniority date of 9/2/05. She holds a Single Subject in social science, with a supplemental authorization in introductory English and teaches at NHS. She is being laid off 1.0 FTE pursuant to the resolution reduction of 5.20 in social science. She maintains that she can bump into the middle school language arts classes being taught by three junior teachers (Cameron Holden (#365), Justin Vorhauer (#369) and Sara Thorn (# 376)). Justin Vorhauer and Cameron Holden each hold Single Subject credentials in English. Sara Thorn, like Mara Harvey, holds a social science credential with a supplemental authorization in introductory English. Sara Thorn teaches 9th grade English. The District determined that Mara Harvey cannot bump these junior teachers because she has not taught English in the last five years or taught English in the middle school.

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<sup>7</sup> The District also conceded that it did not skip any certificated employees because of a district need and thus cannot argue that Michael Olavarri should have been skipped because he holds a supplemental authorization in drama/theater.

57. Mara Harvey testified that she was hired by the District in 2005 as a middle school English teacher. She served in that capacity for the fall semester and the District asked her to transfer to a high school social studies position. Every year she has worked for the District she has taught an ELL course.

58. Mara Harvey is senior to Sara Thorn and has the same credentials. Therefore, the fact that Mara Harvey holds an authorization in English, not a credential in English should not preclude her from bumping pursuant to the certification language of the resolution. Mara Harvey can bump into the position held by Sara Thorn and her layoff notice must be rescinded.

59. *Tiffanie Lau* (#375) has a seniority date of 8/23/06. She holds a Multiple Subject with an English authorization and a BCLAD. She has a master's degree in bilingual education and is authorized for ELD in grades 12 and below. She teaches second grade. She is being laid off 1.0 FTE pursuant to the resolution reduction of 27.0 FTE in elementary teaching services. She maintains that she can bump into the .80 FTE English language development class taught by Margaret Carder (#416), who holds a Single Subject English and Multiple Subject with a CLAD, and teaches in the high school. Tiffanie Lau's supplemental authorization in English enables her to teach English in kindergarten through ninth grade. Accordingly, she may not bump into the English-language development class taught by Margaret Carder in the high school. Moreover, Heather King (#329) is senior to Tiffanie Lau and bumps Margaret Carder (Findings 62-64).

60. Tiffanie Lau maintains that she can bump into the middle school language arts classes being taught by Sara Thorn (# 376). However, Mara Harvey (#343) is senior to Tiffanie Lau and may bump Sara Thorn (Findings 56-58).

61. Tiffanie Lau also maintains that she can bump into the middle school English language development class being taught by Kimberly Jacobson-Sanchez (#395), who has a Multiple Subject credential with an ELA. Tiffanie Lau's credentials permit her to teach the middle school English language development class being taught by Kimberly Jacobson-Sanchez. Accordingly, Tiffanie Lau may bump into the position occupied by Kimberly Jacobson-Sanchez. Tiffanie Lau's layoff notice must be rescinded.

62. *Heather King* (#392) has a seniority date of 7/1/07. She holds a Single Subject in English with a CLAD and teaches language arts at NMS. She is being laid off 1.0 FTE pursuant to the resolution reduction of 5.60 in secondary teaching services, English. She maintains that she can bump into the middle school English language development class being taught by Kimberly Jacobson-Sanchez (#395), who has a Multiple Subject credential with an ELA. She maintains that she can also bump into the .80 FTE English language development class taught by Margaret Carder (#416), who holds a Single Subject English and Multiple Subject with a CLAD, and teaches in the high school.



63. The District maintains that Heather King could not bump into Kimberly Jacobson-Sanchez's position, because Kimberly Jacobson-Sanchez teaches English language learners with her ELA. Heather King testified persuasively that she teaches an EL course to English language learners and that her class is the same as the class Kimberly Jacobson-Sanchez teaches, although Kimberly Jacobson-Sanchez has more English language learners in her class. Heather King also testified persuasively that she taught in the high school in the last five years. Accordingly, even under the District's competency criteria, Heather King is competent to bump into Kimberly Jacobson-Sanchez's or Margaret Carder's positions. However, as noted in Findings 59-61, Tiffanie Lau (#375) has seniority over Heather King and may bump into the position occupied by Kimberly Jacobson-Sanchez. Heather King may bump into the .80 FTE position held by Margaret Carder, and Heather King's lay off notice must be rescinded .80 FTE.

64. *Alysa McMurray* (#309) has a seniority date of 8/3/05. She holds a Single Subject in physical education with a supplementary authorization in introductory science and an ELA. She teaches physical education at NMS. She is being laid off 1.0 FTE pursuant to the resolution reduction of 1.0 FTE secondary teaching services-physical education. She maintains that four less senior teachers are being retained to teach science:

Shannon Brinkley (#381), holds a Multiple Subject credential with English and science authorizations K-9, and is teaching science at NMS.

Keith Millward (# 326) holds a Single Subject in physical education, with an authorization in biology, and is teaching biology at the high school level.

Geri Ayoade (#386) holds a Multiple Subject credential, with an authorization in science K-9 and a single subject art credential. He teaches .80 FTE science and .20 FTE language arts at the elementary level.

Lundon Jackson (#417) holds a Single Subject in health science and teaches .60 science and .20 health and .20 APEX at the high school level.

65. The District maintains that Alysa McMurray has not taught science in the last five years and therefore is not competent to bump into these positions. With her introductory science authorization limited to K-9, Alysa McMurray can bump only Shannon Brinkley at her 1.0 FTE or Geri Ayoade, at his .80 FTE in science. Accordingly, Alysa McMurray may bump Shannon Brinkley, and Alysa McMurray's lay off notice must be rescinded.<sup>8</sup>

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<sup>8</sup> Alysa McMurray also maintains that she should not be laid off from her PE position because she is the only female PE teacher, and because, based on the competency criteria, there would be no one teaching PE at the high school level who could fill her position. These arguments are not appropriate challenges to a District lay off proceeding. Additionally, the District may assign and reassign senior PE teachers to the high school level, irrespective of the competency criteria at issue herein, and may make accommodations for locker room monitoring.

66. *Daniel Motherspaw* (#328) has a seniority date of 8/17/05. He holds a Single Subject credential in science and teaches at the high school level. He was laid off 1.0 FTE due to the 3.6 FTE reduction in secondary teaching services, biology. However pursuant to Findings 16 through 19 and 24 through 27, his layoff notice must be rescinded .80 FTE, due to application of tie-breaking criteria g.

67. *Daniel Motherspaw* maintains that he can bump Shannon Brinkley, Geri Ayoade and Landon Jackson (identified in Finding 64) as well as Manju Chatkara (#358). Manju Chatkara has a Single Subject credential in science: biological sciences and teaches science at NMS. Daniel Motherspaw has identical credentials as Manju Chatkara and may bump into this 1.0 FTE position. He is entitled to a 1.0 FTE rescission of his lay off notice.

68. *Michael Moyer* (#329) has a seniority date of 8/17/05. He holds a Single Subject credential in English and science: biological sciences and teaches at the high school level. He was laid off 1.0 FTE due to the 3.6 FTE reduction secondary teaching services, biology. However pursuant to Findings 16 through 19 and 24 through 27, his layoff notice must be rescinded .80 FTE, due to application of tie-breaking criteria g.

69. *Michael Moyer* maintains that he can bump junior science and biology teachers Shannon Brinkley, Geri Ayoade and Landon Jackson (identified in Finding 64) as well as Manju Chatkara (#358). He also maintains that he can bump teachers who are teaching English: Christy Pitts (#331) who has the same seniority date as he; Cameron Holden (#365) Single Subject English, teaching language arts at NMS; Justin Vorhauer (#369) Single Subject English, teaching language arts at NMS; and Sara Thorn (#376) Single Subject social science, authorization in introductory English – teaching English curriculum at 9th grade only.

70. *Michael Moyer* may bump into the position held by the most junior of the teachers identified in Finding 69, Justin Vorhauer. Accordingly, he is entitled to a 1.0 FTE rescission of his lay off notice.

71. *Sandra Asimos* (#397) was laid off 1.0 FTE due to the 1.0 FTE reduction in elementary teaching services, physical education. She does not maintain that junior teachers are being retained whom she is certificated and competent to bump. Rather, she maintains that District personnel had told her that she was required to obtain a CLAD, or she would lose her job. She objects that the District is retaining senior physical education teachers who she believes do not have a CLAD: Terren Stark (#164), who does have a CLAD and George Tressa (#276) who has an ELA. Sandra Asimos's contentions are without merit.

72. *Richard Weaver* (#370) has a seniority date of 8/16/06. He holds a Single Subject credential in social science: business, with supplemental authorizations in computer concepts and applications. He teaches .20 social science and .80 technology at the high school level. He was laid off .20 FTE due to the 5.20 FTE reduction secondary teaching services, social sciences. He maintains that he can bump David Sanchez (#435) who was retained .20 social science, and who holds a Single Subject in foundational level math and

teaches at the high school level. He maintains that he can bump Collin Posley (#407); who holds a Single Subject in art and a designated subjects career technical education and teaches television ROP and audio recording at NHS. He maintains that he can bump Sara Thorn (#376) who holds a social science credential with a supplemental authorization in introductory English and teaches 9th grade English.

73. Richard Weaver may not bump Sara Thorn. As noted in Findings 56-58, Sara Thorn was bumped by Mara Harvey (#343) who is senior to Richard Weaver. Sara Thorn was also teaching 9th grade English with her supplemental authorization in English, not with a social science credential.

74. Richard Weaver may not bump Collin Posley. Collin Posley teaches under his art and vocation educational credentials, and Richard Weaver does not possess these credentials.

75. Richard Weaver points out that junior teachers retained a .20 APEX component to their teaching services, and that any certificated employee can teach APEX. Margaret Carder and Landon Jackson are two of those junior teachers. He also points out that Michael Moyer was able to bump a junior teacher, Margaret Carder, for the APEX component of her assignment. Therefore, he believes he may bump Landon Jackson (#417), .20 FTE for APEX. Landon Jackson holds a Single Subject in health science and teaches .60 science and .20 health and .20 APEX at the high school level.

76. Richard Weaver may bump .20 FTE of the APEX assignment of Landon Jackson. Accordingly his .20 FTE lay off notice must be rescinded.

#### *Other Arguments*

77. All other arguments of the parties not specifically addressed herein were considered and are rejected.

### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections were satisfied. Each respondent is presently a certificated probationary or permanent employee of the District.

2. The Board's decision to reduce or discontinue the particular kinds of services identified in Resolution No. 11-04 (Amended) was not arbitrary or capricious, but constituted a proper exercise of discretion.

3. The services identified in Resolution No. 11-04 (Amended) are particular kinds of services that could be reduced or discontinued under section 44955. Cause exists to

reduce the number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

4. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

5. Section 44955, provides in pertinent 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 by reason of any of these conditions 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 in the manner prescribed in Section 44949, and *services of such employees shall be terminated in the inverse of the order in which they were employed ...*

*... The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service*

*which their seniority and qualifications entitle them to render...*

(Emphasis added)

6. Cause does not exist under section 44955 to terminate the services of the following certificated employees because the District is retaining junior employees to provide services which these respondents are certificated and competent to render:

Daniel Motherspaw (Findings 27 and 67)

Michael Moyer (Findings 27 and 70)

Melissa Young (Finding 30)

Adam Beasely (Finding 47)

Margaret Carder (Finding 50)

Jason Everhart (Finding 55)

Mara Harvey (Finding 58)

Tiffanie Lau (Finding 61)

Heather King.80 rescission (Finding 63)

Alysa McMurray (Finding 65)

Richard Weaver .20 rescission (Finding 76)

7. The preliminary layoff notices issued to respondents identified in Legal Conclusion 6 must be rescinded.

8. Except as set forth in Legal Conclusions 6 and 7, no employee with less seniority than any respondent is being retained to render a service which any respondent is certificated and competent to render.

9. Except as set forth in Legal Conclusions 6 and 7, the Board may give respondents final notice before May 15, 2011, that their services will not be required for the 2011-2012 school year.

## ORDER

Except as set forth in Legal Conclusions 6 and 7, the Accusations served on respondents are sustained. Notices of layoff shall be rescinded as to the certificated employees listed in Legal Conclusion 6. Notices shall be given to the remaining respondents identified in attached Exhibit A that their services will not be required for the 2011-2012 school year because of the reduction or discontinuation of particular kinds of services. Notice shall be given to respondents in inverse order of seniority.

Dated: April 29, 2011.


  
ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings

EXHIBIT A

**NATOMAS UNIFIED SCHOOL DISTRICT**  
**LIST OF RESPONDENTS**

<b>Seniority</b>		
<b>#</b>	<b>Last Name</b>	<b>First Name</b>
349	Alfaro	Lydiana
337	Allison	Amber
397	Asimos	Sandra
318	Bains	Ranbir
314	Beasley	Adam
356	Bellisario	Brian
351	Bishop	Kristen
428	Boller	Jenna
320	Breckenridge	Brandon
446	Broz	Timothy
416	Carder	Margaret
401	Contreras	Dave
469	Coughlin	Karen
303	Crawford	Jill
444	Cuellar-Johnson	Maria
402	Cyr	Rebekah
361	Edgar	Amy
344	England	Susan
447	Eusebi	Jason
377	Everhart	Jason
448a	Farmer	Thomas
304	Ginocchio	Debra
339	Hanson	Julie
343	Harvey	Mara
380	Heu	Wendy
392	King	Heather
347	Kirby	Allyson
129	Kirkland	Raymond
<sup>9</sup> 433	<del>Kocher</del>	<del>Stephanie</del>
443	Kuy	Teang
375	Lau	Tiffanie

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<sup>9</sup> The District rescinded the Preliminary Notice to this respondent at hearing.

<sup>10</sup> 308	<del>McGowan</del>	<del>Caley</del>
309	McMurray	Alysa
315	Meyer	Christina
328	Motherspaw	Daniel
329	Moyer	Michael
310	Pryor	Stephanie
408	Sanchez	Paul
345	Saunders	Angela
341	Traughber	Ryan
452	Wang	Ye
313	Weaver	James
370	Weaver	Richard
300	Young	Melissa

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<sup>10</sup> The District rescinded the Preliminary Notice to this respondent at hearing.