

BEFORE THE  
GOVERNING BOARD  
SAN JUAN UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force  
(Accusation) of:

OAH No. 2012080786

CERTIFICATED EMPLOYEES OF THE  
SAN JUAN UNIFIED SCHOOL DISTRICT  
IDENTIFIED IN ATTACHMENTS A AND  
B,

Respondents.

**PROPOSED DECISION**

Administrative Law Judge (ALJ) Ann Elizabeth Sari, Office of Administrative Hearings (OAH), State of California heard this matter in Carmichael, California, on April 9 and 10, 2013.

Linda Simlick, Attorney at Law, represented the San Juan Unified School District (District).

Michael McCallum, assisted by Paralegal Robin Thompson, represented all respondents except Martha Melendez-Quedras.

Martha Melendez-Quedras did not appear and was not represented at hearing.

Evidence was received, and the record was left open until April 30, 2013, for the receipt of written closing arguments and a declaration. On April 30, 2013, both briefs were filed. The District's Post-Hearing Brief and declaration were marked as Exhibit 32. Respondents' Closing Brief was marked as Exhibit Q. The record was closed and the matter was submitted on April 30, 2013.

## FACTUAL FINDINGS

### *Jurisdiction for Lay Offs*

1. The District has over 2,000 certificated employees and approximately 64 schools, including Adult Education Programs at Orange Grove and Sunrise Tech. Enrollment has been declining and projections available for 2013-2014 confirm that there will be reduced enrollment. The State and Federal budgets for educational funding are not yet established, but the Governor has proposed that all funding for adult education be transferred from school districts to community college programs. Uncertainties in State and Federal funding and the effect of the Sequestration Act caused the District to expect decreased funding in the 2013-2014 school year. In addition, the District's deficit spending this school year has been approximately \$3 million. The projected deficit spending in the 2013-2014 school year would be approximately \$10 million.

2. These fiscal concerns caused Paul Oropallo, District Director of Certificated Personnel, Human Resources, with the approval of Glynn Thomson, Superintendent of Schools, to make a written recommendation to the Governing Board of the District (Governing Board) for the reduction or discontinuation of particular kinds of services (PKS), in order to reduce expenses for the 2013-14 school year. Mr. Oropallo recommended that the District eliminate 63.50 full-time equivalent (FTE) certificated positions in the K-12 program and 20.42 FTE certificated positions in the Adult Education Programs.

3. On February 26, 2013, the Governing Board adopted Resolution No. 2636, authorizing the reduction or elimination of particular kinds of services in the K-12 schools and adopting "competency criteria." The Resolution directed the Superintendent, or his or her designee, to send notices that their services would not be required for the 2013-2014 school year to the appropriate number of certificated employees necessary to effectuate the reduction of the certificated staff in an amount equal to 63.50 FTE positions.

4. On February 26, 2013, the Governing Board also adopted Resolution No. 2637, specifying criteria to be used in determining the order of termination of certificated employees with the same District seniority (tiebreaker criteria).

5. On February 26, 2013, the Governing Board also adopted Resolution No. 2639, authorizing the reduction or elimination of PKS in the Adult Education Program and adopting "competency criteria." The Resolution directed the Superintendent, or his or her designee, to send notices that their services would not be required for the 2013-2014 school year to the appropriate number of certificated employees necessary to effectuate the reduction of the certificated staff in an amount equal to 20.42 FTE positions.

6. On March 7, 2013, Annette Buckmaster, Assistant Superintendent, Human Resources caused to be served on all affected employees, including all respondents, written Preliminary Notice of Recommendation That Service Will Not Be Required (Preliminary Notice). Each Preliminary Notice recited that it had been recommended to the Governing

Board that respondent's services would not be required for the ensuing school year due to a reduction or discontinuation of PKS. The notices set forth the reasons for the recommendation, as required by Education Code sections 44949 and 44955. The notices provided respondents with information and deadlines for requesting a hearing and included blank Request for Hearing forms. All of the respondents in this action filed timely Requests for Hearing.

7. On March 20, 2013, Paul Oropallo, filed an Accusation against the 40 certificated employees who had requested a hearing. The Accusation was served on March 20, 2013. Pursuant to a Stipulation between the District and counsel for the represented respondents, respondents' counsel filed one Notice of Defense on behalf of all respondents, except Martha Melendes-Quedras. Thereafter, the matter was set for hearing. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955.

#### *Implementation of Lay Off Process*

8. In anticipation of the layoff, and in order to determine which employees would be affected by the reductions in FTEs, the District updated its seniority list. On November 15, 2012, the District sent to each certificated employee a letter requesting the employee review the credential information, status and seniority date included in the letter and directing the employee to return the letter with any corrections by December 7, 2012, or Human Resources would assume that the information provided therein was correct.

9. The Human Resources Department verified and incorporated any new or changed information received on the returned letters into its computer records and generated seniority lists organized by seniority date and alphabetically by last name of the teacher. A separate list was created for Adult Education certificated employees.

10. The District made the seniority lists, contained in large binders, available for viewing in the lobby of Human Resources at the District Office. A copy was also provided to the San Juan Teachers Association so that certificated employees could view the lists at its office. The lists, arranged both by seniority and by alphabetical order, were available for employees to inspect as of February 28, 2013. All certificated employees were advised in an email that the information contained in the binders would be "used to determine who receives potential layoff notices."

11. Deann Carlson, Analyst, Human Resources, and Human Resources staff determined which employees should receive Preliminary Notices by first identifying those individuals who rendered any service in which the Board had authorized reduction. Ms. Carlson took into account all known attrition in determining the number of FTEs remaining for reduction and the affected individuals. After these individuals were identified, the least senior individuals providing each reduced service were identified, up to the number required to meet the FTE reduced. The credentials of these least senior individuals were reviewed to determine whether the individual had rights to displace (bump) a junior employee. Ms. Carlson then applied the Board's "competency criteria" in determining whether a senior

employee was “competent” to bump into a position held by a junior employee. As a result of these exercises, bumping charts were created identifying those persons initially affected by the FTE reductions, and those persons affected by being bumped by a senior employee. Preliminary Notices were given to these individuals pursuant to the Board’s directives.

#### FTE Reductions- K-12

12. Exhibit A to Resolution No. 2636 and 2637, provides for the reduction or elimination of the following PKS in the K-12 program:

Administrators, Central Office Support	<u>FTEs</u>
Coordinator, Parent Involvement	1.00
<u>Subtotal</u>	<u>1.00</u>

K-12 Certificated, Non-Administrative Positions	<u>FTEs</u>
Agriculture	0.34
Art	2.56
Auto 1/Auto Tech II	0.00
AVID	0.67
Careers with Children	1.00
Child Development/Early Childhood Development	0.67
Computers/Computer Technology	1.27
Drama	0.40
Driver’s Ed	0.20
Engineering Technology	0.17
English	7.96
English Learner Instructional Specialist	0.30
Foods/Nutrition	1.33
French	1.40
Freshman Academy-Engineering	0.16
German	0.33
Health	1.00
Japanese	0.40
Math	5.03
Metal Technology I	0.00
Multiple Subject/Self Contained	16.34
Music	3.68
Nurse	0.10
Physical Education	2.41
Science: Biology/Life	3.68
Science: Chemistry	0.20
Science: Integrated	1.00
Site Resource Elem/Title 1 Coach	0.66
Site Resource Elem/Title 1 Intervention Teacher	2.10

Social Science	4.78
Spanish	1.95
Wood Technology I/Wood Technology II	0.40
<u>Subtotal</u>	<u>62.50</u>
<b>TOTAL:</b>	<b>63.50</b>

*FTE Reductions-Adult Education Program*

13. Exhibit A to Resolutions No. 2638 and 2639 provides for the reduction or elimination of the following PKS in the Adult Education Program:

Administrators, Schools	<u>FTEs</u>
Principal - Adult Education	<u>2.00</u>
<u>Subtotal</u>	<u>2.00</u>
Adult Education Certificated, Non-Administrative Positions	<u>FTEs</u>
Counselor	1.00
Teacher – Orange Grove	7.50
Teacher - Sunrise	9.92
<u>Subtotal</u>	<u>18.42</u>
<b>TOTAL:</b>	<b>20.42</b>

*Competency Criteria for K-12*

14. Board Resolution number 2636 provides in paragraphs 4 and 5:

4. Teachers are deemed to be “certificated and competent” to teach any Regional Occupational Program (ROP)/Career Technical Education (CTE) class if the teacher meets BOTH criteria listed below.
  - a. Holds a valid credential issued by the State of California which is associated with the course (s) been taught, and
  - b. Has taught the course (s) for at least one semester in the current school year or any of the five preceding school years.
5. Teachers are deemed to be “certificated and competent” to teach any class that is not a Regional Occupational Program (ROP)/Career Technical Education (CTE) class if the teacher meets EITHER criteria listed below.
  - a. Holds a valid credential issued by the State of California which is associated with the course (s) been taught, AND, for course(s)

identified by NCLB (ESEA) as core curriculum, is NCLB (ESEA) qualified to teach the course(s), or

- b. If there is no credential issued by the State of California associated with the course (s) being taught, has taught the specific course (s) for least one semester in the current school year or any of the five preceding school years.

#### Competency Criteria for Adult Education Program

15. Board Resolution number 2638 provides in paragraph 4:

- 4. Teachers are deemed to be “certificated and competence” to teach any class in the Adult Education program if the teacher meets EITHER criteria listed below.
  - a. Holds a valid credential issued by the State of California which is associated with the course (s) been taught, or
  - b. If there is no credential issued by the State of California associated with the course (s) been taught, has taught the specific course (s) for at least one semester in the current school year or any of the five preceding school years.

#### *Respondents Remaining in Action*

16. Prior to the layoff hearing, the District rescinded layoff notices for, and agreed to restore:

Kari Uno for 1.00 FTE  
Alice Fellos for 1.00 FTE

During the layoff hearing, the District agreed to restore:

Garrett Lane for 0.60 FTE out of .80 FTE  
Matt Sumpter for 0.20 FTE out of .80 FTE

17. At hearing, the District waived its objection to Lindsey Wing’s untimely Request for Hearing. Consequently, Ms. Wing is a respondent in this action.

18. Diana Moorman failed to file a timely Request for Hearing. Accordingly, she waived her right to a hearing and is therefore not a respondent in this action.

19. Attachment A to this Proposed Decision lists the respondents remaining in this action who are assigned to K-12 schools. Attachment B lists the respondents remaining in this action who are assigned to Adult Education schools.

### *Respondents' Challenges*

#### *Bumping from Adult Education to K-12 Program*

20. All of the certificated employees in the Adult Education Program received Preliminary Notices. The entire program was eliminated in the FTE reductions, due to the Governor's proposal that school districts no longer be funded for Adult Education Programs and that those programs be transferred to the auspices of Community College Districts.

21. Three Adult Education teachers argue that they have the credentials and seniority to bump into the K-12 program: Marta Kinney (seniority date 03/22/1978); Elizabeth Friend (seniority date 06/18/1990) and L. Lynn Starks (seniority date 08/26/1990). Ms. Friend holds a Multiple Subjects credential and a Single Subject credential in Art. Ms. Starks holds Single Subject credentials in Art and in English. Ms. Stark and Ms. Friend are Highly Qualified in their Multiple Subject credentials. Ms. Kinney holds a Multiple Subject credential and a Specialist Learning Handicap credential, a Special Education credential. She is not Highly Qualified in her Multiple Subject credential, but, if she taught in the K-12 program, she would probably be able to teach under her Specialist Learning Handicap credential. All three, if they taught in the K-12 program, would be able to teach K-12 courses that do not require a specific credential (e.g., Independent Study) depending on whether the Board's competency criteria for these courses is upheld.

22. The District maintains that the Adult Education respondents have no legal right to bump into the District's K-12 program. Education Code<sup>1</sup> section 44929.25 states in pertinent part:

When a teacher of classes for adults serves sufficient probationary time as provided in Sections 44929.20 to 44929.23, inclusive, and Section 44908 to be eligible for election to permanent classification in that district, his or her tenure shall be for the service equivalent to the average number of hours per week that he or she has served during his or her probationary years. In no case shall the employee be classified as permanent for more than one full-time assignment...

[¶]...[¶]

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

Notwithstanding any other provision to the contrary, any person who is employed to teach adults for not more than 60 percent of the hours per week considered a full-time assignment for permanent employees having comparable duties shall be classified as a temporary employee, and shall not become a probationary employee under the provisions of Section 44954.

23. Section 44929.26, provides in part that:

Nothing in Sections 44929.20 to 44929.23, inclusive, shall be construed to give permanent classification to a person in the adult school who is already classified as a permanent employee in the day school. In case a teacher obtains permanent classification in the evening school and later is eligible for the same classification in the day school by reason of having served the probationary period therein, he or she shall be given his or her choice as to which he or she shall take.

Notwithstanding any other provision to the contrary, service in the evening school shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee in the day school, except service in the evening school rendered by a person rendering services in the day school who is directed or specifically requested by the school district to render services in the evening school either in addition to, or instead of, rendering service in the day school. Service in the day school shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee in the evening school

24. Sections 44929.25 and 419 9.26 create very different rules for acquiring tenure and determining seniority in Adult Education schools than regular district schools. Further, section 44929.26 does not permit service in the evening school (Adult Education) to be included in determining tenure and seniority in the day school (regular programs). Section 44929.26 prohibits teachers from holding permanent status in both Adult Education and regular district programs simultaneously. There was no evidence that any of the Adult Education teachers were eligible to choose between permanent status in the Adult Education program and the regular District school program, as provided by section 44929.26. There was no evidence that any Adult Education teacher had “obtained permanent classification in the evening school and was later eligible for the same classification in the day school by reason of having served the probationary period in the day school.”

25. Accordingly, the Education Code does not permit Adult Education teachers to displace teachers in regular District schools.



*Competency Criteria For Bumping into Positions Where There Is Not a Specific Credential Required*

26. Competency Criteria 5 b provides:

Teachers are deemed to be “certificated and competent” to teach any class that is not a Regional Occupational Program (ROP)/Career Technical Education (CTE) class if the teacher meets EITHER criteria listed below.

- b. If there is no credential issued by the State of California associated with the course (s) being taught, has taught the specific course (s) for at least one semester in the current school year or any of the five preceding school years.

27. There are several respondents who have the seniority to bump into classes which do not require a specific credential and are being taught by junior employees. These courses are:

Course

Athletic Director	.20 FTE
Student Government	.40 FTE
Advancepath	1.00 FTE
On Site	.60 FTE
Site Resource-Elementary IB Coordinator	.20 FTE
Student Activity Director	.40 FTE
Student Government	.20 FTE
AVID II	.40 FTE
Student Government	.40 FTE
Study Hall	.20 FTE
Student Government	.40 FTE
Student Leadership	.20 FTE
Student Activity Director	20 FTE

AVID Sr. Sem.	.20 FTE
AVID I	.20 FTE
TOTAL FTE	5.20 FTE

28. Respondents argue that the competency criteria the District established to bump into positions where no specific credential is required are not reasonable and are invalid. The District argues that the competency criteria are appropriate and are neither arbitrary nor capricious and have a rational and reasonable relationship to the skills and qualification to teach those particular subjects at issue.

29. At hearing, the District presented no evidence that it was necessary for any properly credentialed teacher to have particular experience to teach in any of the courses that did not require a specific credential. Evidence was that some training may be required to teach AVID, but that training was brief and could be acquired prior to the school year. It is not probable that a teacher would not be competent to teach many of these courses, (e.g. Study Hall, Student Government, Student Leadership and Student Activity Director) without having taught it before. Moreover, the competency criteria for these courses was established, not because it was necessary to have prior experience in the course in order to teach it competently, but because these courses are mostly partial FTE courses and it is logistically difficult for the District to bump full time teachers into these partial FTEs. Ms. Carlson testified: "In the past years, before we established competency criteria, teachers were bumping into AVID, Study Hall, Activities Director etc. ... what we found was there is not a full-time assignment for all of those classes and we ended up retaining a teacher that has no assignment..." Ms. Carlson's testimony was supported by the fact that the competency criteria at issue applied only to non-specific credential courses. It did not apply to bumping into courses that required a specific credential.

30. In *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, the court interpreted Education Code section 87743, 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.)

31. 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 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.)

32. 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.)

33. 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.)

34. 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)

35. 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.

36. 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 competency criteria of teaching in ten years related to the skills and qualifications to teach. 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>2</sup>

37. In contrast to the reasonable competency criteria in *Duax*, here the Board established “competency” criteria which do not relate to the skills and qualifications to teach, but which are designed to make the layoff process easier to implement. 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).

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<sup>2</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.

Accordingly, the competency criteria in Board Resolution number 2636 section 5 b is invalid and must be disregarded in considering whether individual respondents should be permitted to bump junior teachers.

38. In the event the competency criteria at issue were found invalid, the District prepared a bumping list for senior respondents into the courses identified in Finding 27. The bumping list is set forth on Exhibit 31 page 2<sup>3</sup>, implementation of which results in the following:

Masako Thomas- restored .40 FTE

Kristen Price-restored .30 FTE

Elisha Webb restored .31 FTE

Bert Cooper restored 1.00 FTE

Sarah Locke restored 1.00 FTE

*Classification of Jonathan Perry*

39. Jonathan Perry maintains that the District incorrectly classified him as a probationary employee, rather than a permanent employee. As a permanent employee, Mr. Perry would be senior to any teacher who received a preliminary notice due to the reduction in English services. Mr. Perry argued that the District should have considered the time he spent as a student teacher as part of his probationary period, thereby giving him two years of probationary service, and making him a permanent employee at the commencement of the 2012-2013 school year. However, the evidence is clear that Mr. Perry was not an employee with the District from July 1, 2010, through February 15, 2011, except for a short period of time spent as a day to day substitute. Mr. Perry acknowledged that during this period he did not receive pay from the District other than some pay for substitute service and that he was student teaching to fulfill requirements for his credential program. There is no contract of employment during that period. The District's payroll records for Mr. Perry during the time in question confirm that he did not receive any payment for services. Mr. Perry did not accrue two years of paid employment with the District prior to the 2012-2013 school year and thus his classification as a probationary employee is correct and he was properly identified for layoff.

*FTE of Jeffrey Macklem*

40. The District classified Jeffrey Macklem as a .80 FTE and laid him off for .80 FTE. He maintains that he is in reality a 1.00 FTE employee, and should therefore be

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<sup>3</sup> Garrett Lane was restored .60 FTE of the .80 FTE On-Site course pursuant to stipulation at hearing. However, the fact that he was restored by stipulation does not affect the rights of employees senior to him to bump into this .60 FTE.

retained .20 FTE. The evidence established that Mr. Macklem signed a probationary employment written contract for the 2012 -2013 school year at “100%.” The services were to begin on August 15, 2012 and he was assigned to a .80 position at Barrett Middle School, from 08/15/12 through 12/01/12. He was then assigned to a 1.0 FTE position at Bella Vista High School, starting on 12/02/12 through 01/06/13. He was not given a temporary contract for this .20 FTE increase. Starting on 01/07/13, Mr. Macklem had his position again reduced to .80 FTE. The District seniority book listing for Mr. Macklem, indicates that this reduction to .80 FTE only lasted until 01/15/13, when Mr. Macklem was again returned to a full-time (1.0 FTE) position. However, Ms. Carlson testified that this increase to a 1.0 FTE position on 01/15/13 was in error, and that the District subsequently notified him on February 28, 2013 of its mistake. Thus, at the time the bumping analysis was conducted, the District records indicated that Mr. Macklem was only a .80 FTE employee, and he was only assigned to teach classes which totaled .80 FTE.

41. Mr. Macklem taught in a 1.0 FTE position for only a month in the 2012 -2013 school year. The evidence established that at all other times he was aware that he was hired for a .80 FTE position and he taught in a .80 FTE position. For the one month in which he covered a 1.0 FTE position of another teacher, he received a bump in pay, acknowledging in an email dated February 28 2013 letter that “I expected a little increase since I was 1.0 for a while.” The evidence is conclusive that the District erred in initially issuing the contract for 100% and when entering data on a staffing listing, where district employees indicated that Mr. Macklem was a 1.0 FTE, when he was teaching .80 FTE. This error did not prejudice Mr. Macklem in any way and he cannot seek here to benefit from a clerical error.

#### *Bump of Joseph Pallen*

42. Joseph Pallen holds a Single Subject credential in Chemistry and is currently teaching a class in ninth grade Integrated Science totaling .33 FTE. He is junior to Vicki Orton who bumped into this assignment. Vicki Orton holds a Single Subject credential in Life Science and is Highly Qualified in Biological Science. Mr. Pallen maintains that Ms. Orton cannot bump into his assignment because she does not have the appropriate credentials to teach ninth grade Integrated Science. He also maintains that the ninth grade Integrated Science course is divided into two distinct semester classes: a physical science class (taught by Mr. Pallen) and a biological class (taught by another teacher who is credentialed in Biological Science). Because there is no biological science component in the Integrated Science class taught by Mr. Pallen, he maintains he should not be bumped out of this class by a teacher who is only highly qualified in Biological Science. The issues are whether the holder of a Single Subject credential in Life Science is certificated to teach ninth grade Integrated Science and whether the holder of a Single Subject credential in Life Science who is highly qualified in Biological Science can teach the physical science portion of this divided Integrated Science class.

43. Is clear from the Administrators Assignment Manual (published by the California Commission on Teacher Credentialing) that Integrated Science may be taught by

teachers who hold Single Subject credentials in Life Science. Accordingly, Ms. Orton is certificated to teach Integrated Science.

44. There is no authority for Mr. Pallen's position that one may not teach the physical science component of Integrated Science unless one is Highly Qualified in a subject other than Biological Science.

*Carrie Probasco's Bump by Julie Finney*

45. Julie Finney was identified as a teacher subject to layoff under the PKS reduction in English. Ms. Finney teaches three periods of ELD 1 Support (English Language Development) at the middle school level. She bumped Carrie Probasco. Ms. Probasco maintains that Ms. Finney should not have been identified as a teacher subject to layoff in English, because Ms. Finney taught ELD in the ELIS (English Language Instructional Services) program. Because ELD is involved with instructing students so that they become competent in the English Language, it is much more akin to ELIS than it is to the PKS of English, even though someone with an English credential is authorized to perform ELD services. If Ms. Finney had not been improperly identified as subject to layoff under the English reduction, Ms. Probasco claims she would not have been bumped for .60 of her 1.00 FTE as a Multiple Subject teacher.

46. The District acknowledged that all of the teachers affected for the English PKS reduction were teaching English except Ms. Finney, who was teaching ELD 1 Support for three periods. Ms. Finney was included in the English reductions because ELD support is primarily English intervention. ELD was not listed separately under the PKS reductions, because it is essentially English instruction in reading intervention which happens in a class and can be taught with an English or Multiple Subject credential. Ms. Finney is teaching primarily reading intervention under her Multiple Subject credential. The District maintained that ELD should not be classified as akin to ELIS, because ELIS is a service, not a class or a course, so ELD cannot be included under that service category.

47. The issue is whether the PKS reductions should properly have identified ELD for reduction, rather than subsuming ELD under the English service reduction. The evidence is persuasive that the District considered ELD instruction to be English instruction at the time of the Board's Resolution to reduce PKS. Accordingly, it was not necessary to create a separate ELD service for reduction. Moreover, the evidence was persuasive that if Ms. Finney had not been subject to layoff under the English reductions, a senior English teacher would have bumped into her position and Ms. Finney would have bumped Ms. Probasco.

*Carrie Probasco's Ability To Bump Rachel Schottky*

48. The Board Resolution reduces Computers/Computer Technology by 1.27 FTE. When identifying those who taught computers/computer technology, the District did not select Lawrence Williams, believing from the title of his position "Travel Prop Teacher" that he taught core subjects. He testified persuasively that he teaches elementary school students

the rudiments of using a computer and computer software. He also provides technological support to teachers. Mr. Williams is junior to Christine Sinclair who was selected by the District for the Computers/Computer Technology reduction in the amount of .40 FTE. Christine Sinclair bumped .40 FTE into the position held by Rachel Schottky, a first grade teacher whose seniority date is 08/15/12, making her junior to Ms. Probasco.

49. Ms. Probasco maintains that this bumping chain would not have occurred if Mr. Williams was properly identified for layoff. Ms. Sinclair would not have been identified and would not have bumped into Ms. Schottky's position. But, Ms. Schottky is not a party to this proceeding, and it appears that Ms. Probasco was not directly affected by this error.

50. Ms. Probasco seems to be arguing that the .40 FTE that Ms. Sinclair bumped from Ms. Schottky should be given to Ms. Probasco, because Ms. Schottky's position would have been available for Ms. Probasco to bump into, had it not been improperly bumped into by Ms. Sinclair. Ms. Probasco points out that she is the most senior Multiple Subject teacher subject to lay-off and that .40 FTE should have been available for her.

51. However, had Mr. Williams (seniority date 3/7/08) been identified for layoff rather than Ms. Sinclair, he would have bumped the junior Ms. Schottky. Ms. Probasco's, seniority date is 8/18/10. She is junior to Mr. Williams and she would not have been able to bump into the .40FTE taught by Ms. Schottky.

52. Ms. Probasco maintains that even if the result would have been the same had the District conducted the bumping analysis as they should have, the District "should not now be allowed to belatedly redo that bumping analysis at the hearing to come up with the result it desires." The real issue however is whether Ms. Probasco is now entitled to a percentage of an FTE that she had no entitlement to when the bumping process was conducted. She seeks to take advantage of an error in the bumping process which did not affect her and would not have affected her if correctly done. She has no standing to do this. Additionally, there is no phantom .40FTE up for grabs here that the most senior Multiple Subject holder would be entitled to and, most importantly, there is no one junior to Ms. Probasco being retained to perform a service for which she is competent and credentialed to perform.

## LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955. All notices and other jurisdictional requirements of those sections have been met.

2. Cause exists for the reduction or discontinuation of the particular kinds of services identified in Board Resolutions 2636, 2637, 2638 and 2639 at the end of the 2012-2013 school year, pursuant to Education Code sections 44949 and 44955.



3. The services identified in the Governing Board Resolution are particular kinds of services that can be reduced under Education Code section 44955. The Governing Board's decision to reduce the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

4. The reduction of the particular kinds of services and the resultant reduction in certificated positions were done for the welfare of the District and the pupils. The decision was made because of factors affecting the District's budget for the ensuing school year.

5. By reason of the facts set forth in Findings 20 through 38, the Preliminary Layoff notices sent to the respondents identified below and in Finding 38, must be rescinded to the extent necessary to restore the FTE identified:

Masako Thomas- restored .40 FTE

Kristen Price-restored .30 FTE

Elisha Webb restored .31 FTE

Bert Cooper restored 1.00 FTE

Sarah Locke restored 1.00 FTE

6. By reason of the facts set forth in Finding 16, the Preliminary Layoff notices sent to the respondents identified below and in Finding 16, must be rescinded to the extent necessary to restore the FTE identified:

Kari Uno restored 1.00 FTE

Alice Fellos restored 1.00 FTE

Garrett Lane restored 0.60 FTE out of .80 FTE.

Matt Sumpter restored 0.20 FTE out of .80 FTE.

7. As set forth in the Factual Findings no employees junior to the remaining respondents are being retained to perform services that these respondents are certificated and competent to render.

## RECOMMENDATIONS

The Preliminary Layoff notices sent to respondents identified in Legal Conclusions 5 and 6 shall be rescinded to the extent necessary to restore the FTE identified in Legal Conclusions 5 and 6.

Final Notice shall be given to the remaining respondents that their services shall not be required for the 2013-2014 school year.

Dated: May 3, 2013

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ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings

## **ATTACHMENT A TO PROPOSED DECISION**

### **RESPONDENTS - K-12**

Aston, Lillian  
Barnes, Ashley  
Buschmann, Carissa  
Carlson, Kathryn  
Cooper, Bert  
Faltermier, Shannon  
Gutierrez, Alexander  
Hadzi-Antich, Diana  
Hansen, Bruce  
Hilton, Victoria  
Lane, Garrett  
Locke, Sarah  
Lyndaker, Kelly  
Macklem, Jeffrey  
Melendez-Quadros, Martha  
Nixon, Stephen  
Orton, Vicki  
Pallen, Joseph  
Pefley, Nicole  
Perry, Jonathan  
Price, Kirsten  
Pritchett, Meadow  
Probasco, Carrie  
Seley, Jennifer  
Steppig, Heather  
Sumpter, Matthew  
Thomas, Masako  
Vazquez Verduzco, David  
Vojnovic, Ellen  
Webb, Elisha  
Wells, Brandon  
Wing, Lindsey

## **ATTACHMENT B TO PROPOSED DECISION**

### **RESPONDENTS-ADULT EDUCATION**

Brewer, Thomas  
Caldwell, John  
Friend, Elizabeth  
Kinney, Marta  
Mc Elhinney, Carol  
Michell, Dominika  
Moorman, Diana  
Starks, L. Lynn