

BEFORE THE  
GOVERNING BOARD OF THE  
MOUNTAIN VALLEY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the District Statement of  
Reduction in Force of:

VEREE MADDEN,

Respondent.

OAH No. 2018040279

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Ed Washington, Office of Administrative Hearings, State of California, in Hayfork, California, on May 8, 2018.

Thomas E. Gauthier, Attorney at Law, represented the Mountain Valley Unified School District (District).

Lesley Beth Curtis, Attorney at Law, represented Veree Madden (respondent).

Evidence was received, the record was closed, and the matter was submitted for decision on May 8, 2018.

**FACTUAL FINDINGS**

*Jurisdiction*

1. Debbie Miller is the Superintendent of the District. The actions of Superintendent Miller, and those of the District's staff and Board of Trustees (Board), were taken solely in their official capacities.

2. Respondent is a certificated employee of the District.

3. On March 15, 2018, Superintendent Miller recommended that the Board reduce or discontinue particular kinds of services (PKS) no later than the beginning of the 2018-2019 school year in the amount of 2.0 full-time equivalent (FTE) positions. On the same date, the Board adopted Resolution No. 2017/18-34, titled "Resolution Reducing

Certain Certificated Services for the 2018-2019 School Year (Reduction in Employment of Certificated Employees, Layoff of Certificated Employee)” (Resolution).

4. The Resolution specifies that it will be necessary to reduce “2.0 FTE Multiple Subject (Elementary Teaching Services)” of the District and to decrease a corresponding number of certificated employees in the District not later than the beginning of the 2018-2019 school year. The Resolution also provides that the order of termination between employees who first rendered paid service on the same day shall be based on the tie breaking criteria set forth in Education Code section 44955 and the applicable collective bargaining agreement.<sup>1</sup> The Resolution further specifies that the Board has considered all positively assured attrition that has or is expected to occur prior to making its decision to decrease the number of certificated employees of the District to correspond with its reduction in PKS. The Resolution contains no skipping, bumping, or competency criteria.

5. The Board directed Superintendent Miller to determine which employees’ services will not be required for the 2018-2019 school year as a result of the reduction or elimination of PKS and send appropriate notices to all employees whose services would be terminated as a result of the Board’s action.

6. On March 15, 2018, Superintendent Miller served respondent and another certificated employee, Amanda Comaianni, with a document titled “Layoff Agreement.” Attached to the Layoff Agreement were a Notice of Participation form and a Request for Hearing form. The Layoff Agreement provided to respondent includes the following information:

Respondent is a certificated employee who waives and relinquishes all rights, including the right to a hearing, as specified in Education Code Sections 44949 et seq., 44955 et seq., and Government Code Section 11500 et seq.

The District and [respondent] have jointly agreed that there is cause pursuant to the applicable provisions of the Education Code including, but not limited to, Education Code Sections 44949 and 44955 to layoff [respondent] from his/her employment with the District, effective June 30, 2018.

The District and [respondent] have agreed that the District need not take the action specified in [the] Education Code including the action specified in Sections 44955 and 44959 in order to accomplish the layoff of [respondent] and that in lieu thereof, this Agreement is being signed.

NOW THEREFORE AND IN CONSIDERATION OF THE ABOVE,  
it is agreed and covenanted as follows:

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<sup>1</sup> Hereinafter, all statutory references are to the California Education Code unless otherwise specified.

[Respondent] is the proper subject of a layoff. [Respondent] waives and relinquishes his/her right to a hearing as provided by Education Code Sections 44949, et seq., 44955 et seq., and Government Code Sections 11500, et seq.

Cause exists to reduce the certificated staff of the District by [respondent] signing this agreement pursuant to the provisions of Education Code Sections 44955 and 44959 and Government Code Sections 11550, et seq.

[¶] . . . [¶]

Effective June 30, 2018, [respondent] shall be laid off from his/her employment and his/her employment shall cease. [Respondent] waives the right to receive a notice of nonreemployment pursuant to Education Code Section 44049 and 44955. No further action is required to implement the layoff of [respondent].

[¶] . . . [¶]

This agreement constitutes the notice required pursuant to Education Code Sections 44955 and 44949 that the services of [respondent] will not be required for the ensuing school year, 2018-2019. No further notice of layoff, notice of reemployment, or other notice is required to complete the layoff of [respondent].

The District is willing to enter into this layoff agreement if and only if it is signed by [respondent] and delivered to the District office on or before March 15, 2018. If this layoff agreement is not signed by [respondent] and delivered to the District office on or before March 15, 2018, then this Agreement shall never become effective, the offer to enter into this agreement shall be deemed withdrawn, and by signing of this Agreement by the employee after the aforesaid date shall be ineffective, null, void and of no force or affects, unless the Agreement is also signed by the Superintendent or Board of Trustees of the District after the aforesaid date.

This Agreement may be unilaterally withdrawn and terminated by the District at any time before June 30 of the 2017-2018 school year. The District shall provide at least five (5) days written notice to [respondent] if the District terminates or withdraws this Agreement. In such event [respondent] will not

be laid off and will continue to be employed by the District for the succeeding school year.

(Capitalization in original.)

7. Respondent accepted the Layoff Agreement, but refused to sign the document. On March 15, 2018, respondent submitted a Notice of Participation form to the District, which specified that she was requesting a hearing and objected to “the District Statement of Reduction in Force,” on the grounds that it does not state acts or omissions that form a basis for action and that it is so indefinite or uncertain that she cannot prepare a defense. Ms. Comaianni did not provide the District with a Notice of Participation or Request for Hearing. The District intends to layoff Ms. Comaianni at the close of the current school year.

8. By way of a letter dated March 23, 2018, the District sent respondent a “clarifying letter” to “reiterate the substance of the [Layoff Agreement]” respondent received on March 15, 2018. Copies of Sections 44949 and 44955, the Resolution, and a District Statement of Reduction in Force, dated March 23, 2018, were included as attachments to the clarifying letter. The letter includes the following information:

The [Board] recommended that you be given notice that your services will be terminated at the close of the current school year pursuant to Education Code sections 44949 and 44955. The reasons for this action are set forth in the attached Resolution adopted by the [Board] on March 15, 2018.

9. On March 27, 2018, respondent submitted a second Notice of Participation to the District, in which she requested a hearing to present her defense to the charges in the District Statement of Reduction in Force. On May 2, 2018, respondent served the District with an Amended Notice of Participation in which she included the following additional objections:

- a. to all skipping of an employee with the same date of hire not noticed for layoff, Megan Rourke;
- b. to the District utilizing a lottery system only to conduct tie-breaking for purposes of seniority between respondent and another employee with the same date of hire;
- c. that the District, through attrition and layoff, has already lost two multiple subject teachers and therefore, under the Resolution, has no need to layoff respondent;
- d. that the District is illegally attempting to reduce services below a mandated level since with the loss of three multiple subject teachers it will not have enough multiple subject

teachers remaining to teach Transitional Kindergarten, Kindergarten, First or Second grades;

- e. that the District is illegally failing to follow the mandate in Education Code section 44955 to, “make assignments and reassignments so as to avoid layoff.” The District is posting an open English position. The District has a teacher currently teaching in a multiple subject position who taught English during the 2016-2017 school year (last year). The law mandates that the District reassign this individual back to English, thereby opening a multiple subject position and avoiding the layoff of respondent.

*Testimony of Superintendent Miller*

10. Superintendent Miller is the Superintendent and Principal of Mountain Valley Unified School District. She is also the Principal of Hayfork High School, which is a necessary small high school.<sup>2</sup> She is responsible for the personnel decisions of the District and made the recommendation to the Board to layoff respondent. Superintendent Miller holds a multiple subject teaching credential and an administrative services credential and has a bachelor’s degree in liberal studies.

11. Superintendent Miller has been a school administrator for 13 years. Prior to working for the District, she was a high school principal in Siskiyou County. She has also worked as an elementary school principal for Paradise Unified School District, and as an alternative education principal for Gridley Unified School District. Superintendent Miller is familiar with teacher credentialing and assignment matters as a component of her job duties, experience. She has also received training in those areas through the Association of California School Administrators.

12. The District is in Trinity County and is comprised of three sites: a K-8 elementary school, a 9-12 necessary small high school, a 9-12 continuation school, along with an After School Program and a Pre-K School Readiness Program. The District has approximately 255 students as of 2017-2018 school year. There are 36 classified employees.

13. Over the last several years, the District has been “running deficit spending” by intentionally maintaining overstaffing of two teachers at its elementary school, to allow them to provide intervention services. They funded the overstaffing with 1.5 million dollars the District maintained in reserves. Around December 2016, the District discovered mold in two of their schools and spent all of their reserves to address mold damage. In November 2017, the District passed a bond to allow it to obtain sufficient funding to prevent any layoffs due to the loss of reserves. However, that bond “is caught up in litigation,” and the District

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<sup>2</sup> The parties stipulated on the record that Hayfork High School is a necessary small high school, as defined in Section 42285, and within the meaning of Section 44865.

cannot rely on the bond to fund services for the 2018-2019 school year. As a result, the District anticipated \$315,000 in budget cuts for the upcoming school year. Unless the District reduces its multiple subject elementary teaching services by 2.0 FTE, it will not have enough resources to meet its obligations.

14. The District maintains a seniority list of certificated employees. The seniority list was prepared and is maintained by Superintendent Miller's administrative assistant as part of her regular duties. The seniority list is based on the most current information maintained in the certificated employees' personnel files. The list is updated every time a personnel change occurs. Every time the seniority list is updated it is posted at the District and also provided to the California Teachers Association. The District's seniority list was admitted into evidence over respondent's objection pursuant to Evidence Code section 1280.<sup>3</sup>

15. The seniority list reflects that both respondent, and another certificated employee, Megan Rourke, have seniority dates of August 11, 2011. The seniority list reflects that respondent and Megan Rourke each hold a multiple subject teaching credential, and that Megan Rourke also holds a reading certificate. The District was not aware of either respondent or Megan Rourke holding any other credentials as of March 15, 2018.

16. Except for Ms. Comaianni, there are five other District certificated employees with less seniority than respondent. Three of those employees are assigned to Hayfork High School: Bert Dyer, who teaches Special Education at .6503 FTE; Mike Miller, who teaches Social Sciences at 1 FTE; and Michael Blackwell, who teaches Math at 1 FTE. Dyer, Miller, and Blackwell each have seniority dates of August 17, 2015. One of the five District certificated employees with less seniority than respondent, Timbre Beck, teaches English at Hayfork High School. Ms. Beck has been non re-elected, creating a 1 FTE teaching vacancy at Hayfork High School in English.

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<sup>3</sup> Evidence Code section 1280, provides as follows:

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies:

- (a) The writing was made by and within the scope of duty of a public employee.
- (b) The writing was made at or near the time of the act, condition, or event.
- (c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

17. Prior to serving respondent with notice of layoff, Superintendent Miller reviewed the credentials and experience of the five individuals on the seniority list with less seniority than respondent to determine if respondent could perform any of their assignments. She determined that respondent could not perform any of their assignments because each of those employees were either special education teachers, which requires a special credential, or single subject high school teachers, which requires a special single subject credential.

18. Although respondent and Megan Rourke have the same seniority date, Megan Rourke was not provided with a Layoff Agreement. The District retained Megan Rourke because she holds a reading credential, which she acquired in January 2016, and because she has experience providing reading intervention services for the District since August 2014.

19. Reading intervention is done in small groups, usually between one to eight students, and solely for readers below grade level. Megan Rourke provides reading intervention to first through third grade student in the mornings, and for students in grades four through eight in the afternoons. She assesses the students to identify inhibitors to reading and develops lesson programs for each student to address their needs. She then reassesses the students and develops new lesson programs, as needed. Megan Rourke spends her entire day performing reading intervention, which includes a portion of the day dedicated to reading intervention for English Learners. Megan Rourke's assignment will be virtually the same for the 2018-2019 school year. The reading certificate authorizes Megan Rourke to provide these services pursuant to California Code of Regulations, title 22, sections 80014 and 80014.1. Megan Rourke is the only certificated employee of the District who provides reading intervention services. No other teacher in the District possesses a reading certificate.

20. In 2014, the District determined reading intervention was needed to improve student success. The District evaluated the reading level of its eighth grade students and discovered that only 48 percent of its students were reading at or above grade level at the completion of the eighth grade. Currently, 64 percent of the District's students read at or above grade level at the completion of the eighth grade. Superintendent Miller believes this improvement is due solely to Megan Rourke's work in reading intervention.

21. A job description for the reading intervention position was admitted into evidence. The job title identifies the position as "Intervention Specialist/Support Teacher/Exploratory Wheel." The job description lists the following five "education and credential requirements" for the position:

- Valid California Multiple Subject Teaching Credential.
- English Learner Authorization or commitment to obtain.
- Experience in Title I or other project school.
- Experience using data management systems.
- Experience in assessment and diagnosis of reading and/or math.

22. Prior to serving respondent with the Layoff Agreement, Superintendent Miller reviewed these criteria to see if respondent met them. Superintendent Miller was not sure whether respondent met the education and credential requirements identified on the job description. However, she concluded that respondent was not qualified to perform reading intervention because respondent does not possess a reading certificate. She also preferred to retain Megan Rourke over respondent because she felt Megan Rourke was performing exceptionally with reading intervention. Superintendent Miller did not ask respondent if she met the experience requirements.

23. The District also attempted to begin a math intervention program for the first time, during the 2017-2018 school year. The math intervention services were provided by Margaret Rourke during a portion of each day, in addition to teaching Agriculture and Art courses daily. Margaret Rourke is the mother-in-law of Megan Rourke. She has a seniority date of September 3, 1996, and holds a multiple subject teaching credential and a cross-cultural certificate. The math intervention services will not continue during the 2018-2019 school year.

24. The Resolution does not list the math intervention services as a PKS to be reduced. The District did not list the elimination of math intervention services on the Resolution, because no credential was required to perform math intervention and because the person providing the math intervention services is a multi-subject teacher who will continue to work in 2018-2019 under her multiple subject credential.

25. Wendy Armagnac is also a certificated employee of the District who teaches a sixth grade class at Hayfork Elementary School. Ms. Armagnac previously taught English at the high school, but moved from high school English to teaching a sixth grade class in or around October 2016. Ms. Armagnac has a seniority date of August 20, 2007, and holds a multiple subject teaching credential, a single subject English credential, a cross-cultural certificate, and has a master's degree.

26. Prior to serving respondent with the Layoff Agreement, Superintendent Miller asked Ms. Armagnac if she would be willing to transfer into the open English position at the high school, to "open up" a multiple subject teaching position at the elementary school. Ms. Armagnac was not willing to return to her former position at the high school teaching English. Superintendent Miller testified that she is prohibited from involuntarily transferring Ms. Armagnac into the high school English position, because there is no basis to make any involuntary transfer pursuant to Section 6.11 of the District's Certificated Employee Contract.<sup>4</sup>

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<sup>4</sup> Section 6.11 of the District's Certificated Employee Contract provides:

An involuntary transfer shall not be made arbitrarily or capriciously. It may be made for the following reasons: A decrease in the number of pupils which requires a decrease in the number of unit members, class size considerations,



27. According to Superintendent Miller, the District plans to continue with the 2.0 FTE multiple subject teaching layoff. She has no concerns that the layoffs will prevent the District from having an appropriate number of credentialed staff to meet the it needs. The District will continue to meet all class size requirements. Most class sizes are approximately 20 students or less. There are currently no class sizes that exceed permissible class size limits. Based on the District's projections for the 2018-2019 school year, no class sizes will exceed class size limits and there are no mandated services that the District will not provide.

*Respondent's Testimony*

28. Respondent has worked for the District for seven years and teaches transitional kindergarten and kindergarten at the elementary school. She holds a bachelor's degree in liberal studies. Prior to working for the District, respondent taught preschool for several years and has also taught special education. She also taught in a Title I school providing reading instructions to students for an entire day, three days a week, while working for Janesville Union Elementary School District.

29. As a Title I instructor respondent completed assessments and curriculum planning for individual students. She would pull students out of their traditional classes and work with them in small groups to improve their reading skills, as part of a reading intervention program.

30. Respondent has also completed classwork or programs related to reading intervention. She has previously used a system called DIBELS, which stands for Dynamic Indicators of Basic Early Literacy Skills, to perform reading intervention. In part, DIBELS provides standardized methods for benchmark testing, assessment, and intervention. She was given brief instruction on DIBELS, which lasted "less than a day," and relied primarily on written manuals to utilize the system. There was no formalized DIBELS training program. She briefly used the DIBELS while working at the District during the 2011-2012 and 2012-2013 school years.

31. Although not reflected on the District's seniority list, respondent testified that in addition to possessing a multiple subject teaching credential, she also holds a site supervisor permit for early childhood education, and a Cross-cultural and Language Academic Development certificate, also known as a CLAD. The CLAD authorizes her to teach English Language Learners.

32. Respondent understood that the District was "planning to lay her off" when she was served with the Layoff Agreement. Prior to receiving the agreement, no one from the District asked respondent if she had any experience teaching at a Title I or other project

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elimination of program(s), decreased funding, change in school configuration or school closing. Such transfers will be subject to annual review, upon the request of the teacher.

schools, experience working with data management systems, or experience in the assessment and diagnosis of reading skills.

33. Respondent does not possess a reading certificate and has not taken any courses required to obtain the certification. She has never taught high school English and has never taught English in a single-subject setting. However, she would teach reading intervention if asked to by the District. She “probably would” teach at Hayfork High School if asked, because she loves teaching and does not want to stop teaching next year.

### *Discussion*

#### NOTICE OF LAYOFF

34. Respondent argued that the Layoff Agreement she received on March 15, 2018 does not meet the elements of Section 44949. Section 44949 provides that no later than March 15th, an employee subject to layoff shall be given written notice of the District’s intent to layoff the employee, shall inform the employee of the reasons therefore, and shall advise the employee of their right to hearing to determine if there is cause to layoff the employee. Respondent asserts that the Layoff Agreement is actually a settlement agreement, designed to reflect that the signor has effectively waived the rights specified in Sections 44949 and 44955, including the right to a hearing.

35. The Layoff Agreement was personally served on respondent along with a Notice of Participation form, and Request for Hearing form. The Layoff Agreement is written in the form of a settlement agreement. It offers, upon execution, certain benefits to the employee subject to layoff in exchange for the employee waiving certain rights provided under the Education Code, however respondent did not sign it or otherwise indicate that she agreed to its terms. Although phrased in the form of a joint agreement, the Layoff Agreement specifies “that there is cause pursuant to . . . Education Code Sections 44949 and 44955 to layoff [respondent] from [her] employment with the District, effective June 30, 2018.” Respondent’s right to a hearing is referenced in the document, but solely as a right she will waive upon execution. The Layoff Agreement does not specify the basis for the layoff. Respondent consulted with her union representative after receiving the Layoff Notice, and provided to the District signed Notice of Participation and Request for Hearing forms on the same day she received the Layoff Agreement.

36. Superintendent Miller testified that the Layoff Agreement was the same document that the District utilized years ago during a prior layoff. After the Layoff Agreement was served on respondent, she decided to send the clarifying letter because she learned from the District’s legal counsel that although the Layoff Agreement stated that respondent would be subject to layoff, the document “may not have contained all the new standard language” required by the Education Code.

37. Though the Layoff Agreement did not describe the basis for the layoff, it was sufficient to inform respondent that she was subject to layoff pursuant to Sections 44949 and

44955, and that she had the right to request a hearing to determine if there is cause for not reemploying her for the ensuing year. This is evident from the terms the Layoff Agreement and its attachments, and is also evident from respondent's actions. She submitted a signed Notice of Participation and Request for Hearing on the same day she received the Layoff Agreement. The subsequent clarifying letter provided the basis for the layoff, applicable Education Code sections, and the District Statement of Reduction in Force. There was no evidence at hearing that respondent was prejudiced by the apparent purpose or form of the Layoff Agreement. The errors in the District's Layoff Agreement are nonsubstantive procedural errors that did not prejudice respondent and cannot constitute cause to dismiss charges sustained by the evidence. (Ed. Code § 44949, subd. (c)(3).)

38. Respondent also asserted that because the Resolution only specifies that District will be reducing or discontinuing two multiple subject positions, and fails to mention that the math intervention services provided by Margaret Rourke will not be provided the ensuing year, the Resolution fails to provide notice of all of the District's PKS to be reduced or discontinued. However, Margaret Rourke is a multiple subject teacher for the District not subject to layoff. She has more seniority than respondent and Ms. Comaianni. With the elimination of the math intervention services at the end of the 2017-18 school year, Margaret Rourke will be assigned to a different subject within multiple subject teaching. There is no basis to include Margaret Rourke's reassigned duties, within multiple subject teaching, in the Resolution. Accordingly, this omission does not render the Resolution invalid or fail to provide respondent with the notice she is entitled to under Sections 44949 and 44955.

#### SENIORITY AND SKIPPING

39. Respondent and Megan Rourke have the same seniority date. On February 27, 2014, they drew lots to determine which of them had seniority over the other, and respondent prevailed. Respondent asserted that by subjecting her to layoff while retaining Megan Rourke for the upcoming school year, the District violated either the tie breaking criteria specified in Section 44955 or failed to provide a basis to deviate from terminating certificated employees in order of seniority, specified in that same statute. Essentially respondent argued that because she has seniority over Megan Rourke, by the drawing of lots, she should be retained to teach the reading intervention program that Megan Rourke teaches. Although Respondent does not possess a reading certificate, she noted that the District allowed Megan Rourke to teach reading intervention for 17 months before she obtained a reading certificate, and that the job description for the position does not specify that a reading certificate is required.

40. However, Megan Rourke is providing reading intervention pursuant to a Reading and Literacy Added Authorization, as described in California Code of Regulations, title 22, sections 80014 and 80014.1. Those regulations authorize a holder of a reading certificate to provide reading intervention services to the grade levels authorized by their prerequisite teaching credential. The District did not ask respondent whether she was qualified to teach reading intervention, prior to serving her with the Layoff Agreement. However, respondent testified that although she has experience and areas specified in the

“experience and credential requirements” portion of the job description, she does not hold a reading certificate authorizing her to provide reading intervention services as described in the aforementioned regulations.

41. Moreover, Superintendent Miller testified persuasively that in 2014 the District identified a need to improve the reading abilities of many of its students, as only 48 percent of their eighth grade students were reading at or above grade level. There has been a 16 percent improvement since 2014 as a result of Megan Rourke’s intervention services. The District is allowed to deviate from completing certificated employee layoffs in order of seniority if it demonstrates a specific need for an employee to teach a specific course or course of study, and that employee has special training and experience to teach that course or course of study, which more senior employees do not possess. (Ed. Code, § 44955, subd. (d).) The case of *Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, cited by respondent, critically differs from the facts of this case. In that case, the Court determined that it was the school district’s duty to inquire whether Bledsoe, who was subject to layoff, would consent to being assigned to another school because he fell within a particular category of “qualified teachers available for assignment” pursuant to Section 44865. Section 44865 provides that possession of a “valid teaching credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing, based on a bachelor’s degree, student teaching, and special fitness to perform.” Here, unlike in Bledsoe, respondent is not among a qualified pool of teachers available for reassignment to reading intervention, because she does not possess a reading certificate authorizing her to provide those services for the District.

#### BUMPING INTO A NECESSARY SMALL HIGH SCHOOL

42. Hayfork High School is a necessary small high school. There are three certificated employees who work at the high school with less seniority than respondent, who are previously identified in Finding 16, above: Bert Dyer, Mike Miller, and Michael Blackwell. Each of these instructors have seniority dates of August 17, 2015. There is also a vacant 1 FTE English position at Hayfork High School. As specified above, Section 44865 provides that a District employee who has a valid teaching credential and special fitness to perform, shall deem the holder of that credential qualified for assignment as a teacher in necessary small high schools. Respondent possesses a valid teaching credential based on a bachelor’s degree, and therefore is qualified for assignment to teach at Hayfork High School.

43. The District argued that although Section 44865 qualifies certain teachers for assignment to necessary small high schools, it does not require that any reassignment of these qualified teachers occur, even with their consent while being subject to layoff. The District argued that the consensual assignment of qualified teachers to necessary small high schools is permitted under the Education Code, but is not required. The District also argued that it would be contrary to public policy to place teachers who are deemed qualified for assignment to a necessary small high school in certain high school settings, as it may result in preschool and kindergarten teachers potentially being assigned to teach advanced high school courses. The District’s arguments were not persuasive.

44. First, Section 44955, subdivision (c) provides that the governing board shall make assignments and reassignments in a manner that employees shall be retained to provide any service their seniority and qualifications entitle them to provide. The plain language of Section 44865 states that respondent is “deemed qualifying for assignment” to Hayfork High School, with her consent, because she meets the criteria specified in the statute and because Hayfork High School it is a necessary small high school. Respondent testified that she “probably would” teach at a high school level if asked because she enjoys teaching and wants to continue to do it.

45. The vacant teaching position Hayfork High School was open when respondent was noticed for layoff and respondent is qualified for assignment to the high school. It was the District’s obligation to ask respondent whether she would consent to an assignment at the high school prior to advising her that her services would be terminated at the close of the current school year due to a reduction or discontinuation of PKS. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 137.) The obligation to inquire as to respondent’s willingness to be reassigned to Hayfork High School is consistent with the Board Resolution, which specifies that in finding it necessary to decrease the number of certificated employees of the District, the Board “has considered all positively assured attrition which has occurred to date and which is expected to occur [including] all deaths, resignations, retirements and other permanent vacancies and leaves of absence in reducing the services.”

46. Although the District argued that respondent may not be competent to render the services she is deemed qualified to perform under Section 44865, it provided no criteria in the Resolution for determining whether a teacher is “certificated and competent” to bump into an assignment occupied by a less senior employee at any District school. The Resolution does specify that the Board determined PKS must be reduced or discontinued by “2.0 FTE Multiple Subject (Elementary Teaching Services).” However, the Resolution does not describe nor authorize the District to deviate from completing layoffs based strictly on seniority, when Section 44865 deems a certificated employee qualified for assignment at its necessary small high school.

47. For instance, the Resolution does not specify that the District may deviate from completing layoffs based on seniority due to a specific and legitimate need to ensure that its high school teaching positions are assigned to District employees who hold certain single subject teaching credentials. Even had the Resolution included such language, it would be contrary to Section 44865 considering the District’s high school is a necessary small high school. Section 44865 is designed to expand rather than restrict the authority of the Board to place willing individuals in job assignments outside the scope of their respective credentials.” (*California Teachers’ Association v. Governing Board of Central Union High School District* (1983) 141 Cal.App.3d 606, 615.) The District did not establish that the vacant English position, nor any other certificated position at its necessary small high school, requires any “special fitness to perform” that respondent does not possess.

48. The District cannot challenge respondent's competency to perform an assignment at a necessary small high school, as an alternative to layoff, without first defining what constitutes "certificated and competent to teach" or identifying a legitimate "special fitness to perform" in its Resolution. Consequently, the District must inquire whether respondent would consent to an assignment at Hayfork High School, where she is qualified for assignment. If respondent does not consent to an assignment at the high school, the notice of layoff shall remain in effect. If respondent consents to an assignment at the high school, the District shall rescind the notice given to respondent and assign her to the vacant teaching position at the high school or make other assignments and reassignments in a manner that will allow respondent to be retained to render any service her seniority and qualifications entitle her to provide.

#### INVERSE BUMPING

49. Because Ms. Armagnac currently teaches a sixth grade class at the elementary school and previously taught high school English, respondent argued that the District should reassign Ms. Armagnac to the vacant high school teaching position to create a multiple subject teaching vacancy within the district she could fill. This is frequently called "inverse bumping." As the court in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 568-569, explained, "inverse bumping" occurs when a senior employee is reassigned to a position held by a junior employee to open up a position for another employee. *Duax* held that the law does not contemplate "inverse bumping rights." Instead, a school district's obligations to make assignments and reassignments under the law is "limited to attempting to place an employee who would otherwise be terminated in a position being held by another employee with less seniority." (*Id.* at p. 569.)

50. Prior to serving respondent with the Layoff Notice, Superintendent Miller attempted to create a multiple subject teaching position at the elementary school, by asking Ms. Armagnac if she would voluntarily transfer to the vacant English position at the high school. Ms. Armagnac declined. Superintendent Miller made no attempt to involuntarily transfer Ms. Armagnac to the vacant high school position, and asserted that she believed she would violate the Certificated Employee Contract if she attempted to do so.

51. While the District has an affirmative obligation to reassign senior teachers who are losing their positions, it does not have the same obligation to reassign senior teachers who are not losing their positions in an effort to save junior teachers. In short, the District cannot be compelled to engage in inverse bumping and to reassign Ms. Armagnac to a position she does not desire in order to create an elementary school teaching position for respondent.

#### MANDATED SERVICES

52. Respondent argued that based on the District's anticipated teaching schedule for the 2018-2019 school year, the structure of its anticipated teaching schedule does not comply with what CTC permits for multiple subject teaching. She asserted that what appears

to be planned regrouping teaching structure, after her layoff, would not provide for the minimum required hours of kindergarten instruction pursuant to Section 46118, and therefore her layoff would result in services being reduced below mandated levels. However, Superintendent Miller testified that the anticipated Hayfork Elementary School Teaching Schedule for 2018-2019 had not been finalized as of the day of hearing. The Board was scheduled to meet the following day to determine how to structure its school schedules in light of the reduction of its workforce and in a manner that ensures services mandated by state or federal laws are maintained.

53. The evidence did not establish that the District will eliminate any mandated services by reducing or discontinuing the PKS specified in the Resolution. Any other assertions raised by the parties at hearing which are not addressed above are without merit.

### LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Sections 44949 and 44955. All notices and other jurisdictional requirements of Sections 44949 and 44955 were met.

2. 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.) The burden is on the District to demonstrate that the reduction or elimination of the particular kinds of services is reasonable and that the District carefully considered its needs before laying off any certificated employee. (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 807-808.)

3. The services identified in Resolution No. 2017/18-34 are particular kinds of services that may be reduced or discontinued pursuant to Sections 44949 and 44955. The description of services to be reduced, both in the Resolution and in the notice given respondent, adequately described particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838; see, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

4. Legal cause exists to reduce or eliminate 2.0 FTE of particular kinds of services offered by the District as set forth in the Factual Findings. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the District’s schools and pupils within the meaning of Section 44949.

5. Section 44955, subdivision (c), in part, provides as follows:

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

6. Section 44865 provides:

A valid teaching credential issued by the State Board or the Commission on Teacher Credentialing, based on a bachelor's degree, student teaching, and special fitness to perform, shall be deemed qualifying for assignment as a teacher in the following assignments, provided that the assignment of a teacher to a position for which qualifications are prescribed by this section shall be made only with the consent of the teacher:

[¶] . . . [¶]

(d) Necessary small high schools.

7. Respondent is deemed qualified for assignment to Hayfork High School, a high school within the District, because it is a necessary small high school and respondent meets the qualifications for specified in Section 44865. The high school has one vacant full time teaching position and three teaching positions held by employees with less seniority than respondent. Prior to serving respondent with the documents that constituted her notice of layoff, the District failed to provide respondent with the opportunity to consent to teach at the high school as provided by law. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 137.) The District also failed to provide any competency criteria in the Resolution to determine whether respondent was competent to "bump" into any assignment of a more junior employee of the District. Consequently, the District has failed to make assignments and reassignments in a manner that employees shall be retained to render any services their seniority and qualifications entitle them to perform, as provided in Section 44955, subdivision (c).

8. As set forth in Factual Findings 42 through 48, and Legal Conclusion 7, because the District did not establish compliance with Section 44955, subdivision (c), when it failed to inquire whether respondent would consent to an assignment at the high school, and when it failed to include competency criteria for the purpose of "bumping" less senior




employees at the high school, the Layoff Agreement and clarifying letter that constituted notice of layoff served on respondent must be rescinded, if respondent consents to assignment at the District's necessary small high school.

### RECOMMENDATION

Cause exists for the reduction of 2.0 full-time equivalent certificated positions at the end of the 2017-2018 school year.

As set forth in Legal Conclusion 8, if respondent consents to assignment at the District's necessary small high school, the District shall rescind the layoff notice given to her. The District shall provide respondent with a reasonable amount of time, but no less than 48 hours, to provide said consent.

DATED: May 25, 2018

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ED WASHINGTON  
Administrative Law Judge  
Office of Administrative Hearings