

BEFORE THE
GOVERNING BOARD
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
COUNTY OF SACRAMENTO
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE SACRAMENTO
CITY UNIFIED SCHOOL DISTRICT,

OAH No. 2010020831

Respondents.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on April 26 through 30, 2010, in Sacramento, California.

Karen M. Rezendes, Dulcinea A. Grantham, Jane Harrington and Leah J. Won, Attorneys at Law, of Lozano Smith, represented the Sacramento City Unified School District (District).

Margaret Geddes and Christina Y. Medina, Attorneys at Law, of Beeson, Tayer and Bodine, APC, represented respondents identified in Attachment A attached hereto and incorporated herein by reference.

Respondents Javier Cervantes and Tony Marine were not represented by counsel and appeared on their own behalf.

Evidence was received, closing oral argument was considered and the record was closed. The case was submitted for decision on April 30, 2010.

FACTUAL FINDINGS

1. The District is a large urban school district that provides services to approximately 48,000 students at 85 school sites in and surrounding the City of Sacramento. The District employs approximately 2,300 certificated employees.

2. Jonathan P. Raymond is the Superintendent of the District. Carol Mignone Stephen is the District's Associate Superintendent, Human Resource Services. The actions of Mr. Raymond and Ms. Mignone Stephen, and the actions of the District Governing Board, were taken in their official capacities.

3. The District has experienced declining enrollment, increasing costs, as well as projected funding cuts from the State, leading to budget cuts of more than \$100 million over the past seven years. It is now facing a \$30.6 million deficit for school year 2010-2011. The District must make difficult fiscal decisions in order to remain solvent, and to receive a positive budget certification. The Associate Superintendent noted that if this current deficit is not addressed, the District will receive a negative certification from the Sacramento County Office of Education, placing the District at risk of being placed into receivership, and having to make even deeper cuts next year. The Associate Superintendent and her staff met and developed proposals for programs and services to be reduced and/or eliminated to address the anticipated budget deficit.

4. The Associate Superintendent presented her findings and alternative recommendations to the Board at its regular meeting on March 4, 2010, along with a proposed resolution specifying criteria to be used to determine the order of termination of certificated employees with equal seniority (Resolution #2600 – tie-breaking criteria) and criteria for deviation from terminating a certificated employee in order of seniority (Resolution #2601 – skipping criteria). As a result of the District's current financial situation, the Board determined that it must reduce particular kinds of services throughout the organization.

5. On March 4, 2010, the Associate Superintendent recommended to the Board that particular kinds of services being offered by the District be discontinued or reduced. The Associate Superintendent stated the reasons for the recommendation. The Board approved the recommendations and, following the adoption of the Resolution set forth below, directed the Superintendent or designee to implement the recommendations. The Board also charged the Superintendent and his staff to identify an equivalent number of certificated personnel and give those certificated employees notice in writing of the Superintendent's recommendation that their services would not be required for the ensuing school year. The recommendation of certificated personnel to be identified for layoff from employment with the District was not related to their skills or performance as teachers.

6. In response to the Associate Superintendent's recommendation above, the Board adopted Resolution #2599 on March 4, 2010. The Board resolved that the District needs to reduce or eliminate particular kinds of services as recommended by the Associate

Superintendent and, accordingly, it was resolved that it is necessary to terminate the employment of an equivalent number of certificated employees of the District due to the reductions. Resolution #2599 authorized the Superintendent or designee to take action to reduce or discontinue the following particular kinds of services for the 2009-10 school year:

<u>Particular Kind of Service (PKS)</u>	<u>Full-Time Equivalent (FTE)</u>
Elementary Class Size Reduction Teachers	91.0
Counselors	26.0
Psychologists	4.6
Sub Total:	<u>144.0 FTE</u>
Counselors	18.6
ROTC	1.0
Industrial Arts	2.0
Computers	1.0
Middle School Core	11.0
Art	3.0
Children's Center	3.0
English	24.6
Spanish	3.0
Health	1.0
Home Economics	1.0
Elementary Teachers	84.0
PE	4.0
Resource Teacher	38.0
ROP	2.0
Psychologists	2.2
Social Science	10.0
Social Worker	7.0
Program Specialists	10.0
Sub Total:	<u>226.4 FTE</u>
Adult Education Teachers	82.0 FTE
TOTAL	430.0 FTE

The proposed reductions total 430.0 FTE, with an equivalent number of certificated positions.

7. Resolution #2601 specified skipping criteria where there was a specific need within the District for certificated employees qualified to serve the needs of K-12 students with respect to the following programs, services and qualifications:

- A. Individuals fully credentialed to serve in special education assignments;
- B. Individuals fully credentialed to serve in classes requiring Bilingual Cross-Cultural Language and Development (BCLAD) certification;
- C. Individuals who have been trained in the Waldorf-method of teaching;
- D. Individuals fully-credentialed to serve in secondary physical science, chemistry, biology, physics, and/or earth science assignments;
- E. Individuals fully-credentialed to serve in secondary math, algebra, geometry, trigonometry and/or calculus assignments;
- F. Individuals who have two or more years of experience teaching and/or specialized training in a home or hospital setting.

The Board noted a special need to retain certificated employees who possess these qualifications, regardless of seniority, pursuant to Education Code section 44955, subdivision (d).

8. At the same meeting, the Board also adopted Resolution #2600. This Resolution set forth criteria for breaking ties when two or more certificated employees with the same first day of paid service were facing potential layoff. The Board listed categories for consideration, and assigned weights to each category, as follows: Category I – Professional Preparation, including each single subject, multiple subject or service credential (3 points each), each supplemental or subject matter authorization (1 point per authorization), each limited assignment permit (1/2 point per permit), doctorate degree (1 point), masters degree (1/2 point each), and National Board certification (1 point); and Category II – certificated experience under contract with the District not reflected by the employee’s date of hire (e.g., an employee who may have resigned and was later rehired by the District) (1 point for each year of service). Each category of criteria was to be applied independently, with criteria in Category I constituting a first level tiebreaker, and so on. In case of ties continuing through listed criteria, Category III – Lottery, was to be used to break such ties.

9. The services set forth in Resolution #2599 are “particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. There was no evidence that the Board’s decision to reduce or discontinue these particular kinds of services was arbitrary or capricious. The reduction or elimination of the particular kinds of services set forth in Resolution #2599 constituted a proper exercise of the Board’s discretion, within the meaning of Education Code section 44955.

10. On March 11, 2010, the District served via certified mail a written preliminary notice that advised permanent and probationary certificated employees, pursuant to Education Code sections 44949 and 44955, that their services would not be required for the next school year. The preliminary notices were served on 733 certificated permanent and/or probationary employees of the District. Each written notice set forth the reasons for the recommendation and noted that the Board had adopted Resolution #2599, which was attached to the preliminary notice. Of the 733 employees served a preliminary notice, 401 certificated employees timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

11. On March 4, 2010, the Board adopted Resolution #2010-D, in which the Board resolved pursuant to Education Code section 44954 to release or nonreelect 122 certificated employees identified as temporary. Of those employees designated as temporary, 104 were hired either directly into categorically funded programs or to fill in for permanent certificated employees serving in categorically funded programs pursuant to Education Code section 44909. These 104 certificated employees each received a Notice of Termination/Layoff for Certificated Temporary Employees, which was served by certified mail on March 11, 2010 (dual notice). This precautionary or dual notice notified the recipients that they had been released as temporary employees by the District; however, if the recipient disputed his or her temporary employment status, he or she was being given notice of layoff pursuant to Education Code sections 44949 and 44955, and could request a hearing to determine if there was cause for not reemploying him or her for the 2010-11 school year.

12. On March 4, 2010, the Board adopted Resolution #2010-B for possible release/reassignment of certificated administrative employees. A list of all certificated management/administrative employees was attached to Resolution #2010-B; all of these administrative employees received a Notice of Possible Release/Reassignment, which was served by certified mail on March 5, 2010. At hearing, 55 certificated administrators were identified as having possible return rights to a classroom teaching position. Some administrators were notified that their credential(s) and seniority did not qualify them for a classroom teaching position, and they were given preliminary notices of layoff pursuant to Education Code sections 44949 and 44955.

13. The Associate Superintendent made and filed Accusations against each of the certificated employees of the District who timely requested a hearing after receipt of the preliminary notice or double notice. It was not disputed that the Accusations, with required accompanying documents and blank Notices of Defense, as well as Notices of Hearing, were timely served on these certificated employees. The District prepared a 14-page "2010 Summary Layoff Data" that provided an accounting for all certificated employees who received a notice of layoff or precautionary notice of layoff. (Attachment B) This summary also accounts for certificated employees who timely requested a hearing, and filed notices of defense.

14. Of the 733 District employees served with a notice of recommendation that services will be terminated, 401 requested a hearing. Notices of defense were filed by, or on behalf of, 419 District employees. The parties stipulated that, with two exceptions, certificated employees represented by attorneys Margaret Geddes and Christina Medina were properly and timely served with a Notice of Layoff, and timely requested a hearing. They further stipulated that these certificated employees were properly and timely served an Accusation, Statement to Respondent, Notice of Defense, Notice of Hearing and relevant statutes; and that these certificated employees submitted a timely Notice of Defense. Other certificated employees who failed to file a request for hearing and/or a Notice of Defense, except those specifically discussed below, have waived their right to a hearing, and may be laid off by the District.

Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955.

Individual Service Issues

15. Erik R. Beckett appeared at the hearing. He did not receive the preliminary notice packet by March 15. The packet was mailed to his former address, and returned unopened to the District. Mr. Beckett moved in January 2010. On February 12, 2010, he completed and returned a change of address form to the District indicating his new address. This information was faxed to the District at that time. The District confirmed this information, and rescinded the layoff notice to Mr. Beckett.

Juan Perez received the preliminary notice packet after March 15. The envelope was postmarked April 23, 2010. The District rescinded the layoff notice to Mr. Perez.

James Downing appeared at hearing. Ms. Geddes noted that he had inadvertently not been included with Mr. Beckett and Mr. Perez as individuals excepted from the stipulation relating to service. (See Finding 14.) The preliminary notice packet was sent by the District to Mr. Downing's correct mailing address. It was postmarked March 12, 2010, and delivered on March 17, 2010. A "James Wilson" signed for the packet, and the "addressee" box was checked next to this name. Mr. Downing avers that he did not receive this packet and that he does not go by, and does not know anyone named James Wilson. Mr. Downing resides with other relatives. Mr. Downing went to the post office and was advised that the certified mail article number was either invalid, or the number was not from the same grouping (sequence) used by the District for other District notices.

The District noted that the packet was sent to the correct address, as indicated by the official stamp of the United States Postal Service. Mr. Downing does not contest this. He only objects to the signature of the individual signing for the packet not being his name. Mr. Downing acknowledged attending meetings with the labor relations organization, along with other teachers in the District, and having a request for hearing and notice of defense filed on his behalf. He has suffered no prejudice, even if he did not sign for the preliminary layoff notice packet. It does appear that the packet was sent to his correct address. Under

Education Code section 44955, subdivision (d), “[a]ny notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.” The District has complied with its service obligation to Mr. Downing by sending the packet to his correct address. He is a proper respondent in these proceedings.

Rescissions

16. Prior to or at the time of hearing, the District rescinded the preliminary notices of layoff to 526 certificated employees. The names of these employees are set forth in Attachment B, under the column “Layoff Notice Rescinded.”

As noted in Finding 11, the District identified employees who were hired either directly into categorically funded programs or to fill in for permanent certificated employees serving in categorically funded programs pursuant to Education Code section 44909.¹ The District classified them as temporary employees, and served them with the double notice of release/nonreelection as temporary employees, with a right to request a hearing to challenge their status as temporary employees. The District also issued precautionary notices to certain certificated employees in adult education programs. The adult education precautionary notices were sent because it had yet to be determined whether certain employees would have served 60 percent of the hours of a regular assignment, or 75 percent of the school year.²

¹ Education Code section 44909 states:

The governing board of any school district may employ persons possessing an appropriate credential as certificated employees in programs and projects to perform services conducted under contract with public or private agencies, or categorically funded projects which are not required by federal or state statutes. The terms and conditions under which such persons are employed shall be mutually agreed upon by the employee and the governing board and such agreement shall be reduced to writing. Service pursuant to this section shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee unless (1) such person has served pursuant to this section for at least 75 percent of the number of days the regular schools of the district by which he is employed are maintained and (2) such person is subsequently employed as a probationary employee in a position requiring certification qualifications. Such persons may be employed for periods which are less than a full school year and may be terminated at the expiration of the contract or specially funded project without regard to other requirements of this code respecting the termination of probationary or permanent employees other than Section 44918.

Whenever any certificated employee in the regular educational program is assigned to a categorically funded project not required by federal or state statute and the district employs an additional credentialed person to replace that certificated employee, the replacement certificated employee shall be subject to the provisions of Section 44918.

This section shall not be construed to apply to any regularly credentialed employee who has been employed in the regular educational programs of the school district as a probationary employee before being subsequently assigned to any one of these programs.

² Education Code section 44929.25, relating to adult class teachers, provides:

At hearing, the District rescinded all of the precautionary layoff notices that it had issued. However, the District noted that the temporary release notices issued to these same employees are still in effect. Given the District's rescission of the precautionary layoff notices, no issues in these proceedings remain for these employees.

Method of Effectuating the Reduction in Services/Identifying Affected Employees

17. The Board's Resolutions delegated to the Superintendent and his designees the authority to implement the reduction and elimination of the listed particular kinds of services, to identify and determine which District employees would be affected by the reductions and to draft and serve the preliminary notices upon those identified employees. The Associate Superintendent and District analyst Janet Fong gained experience in previous years analyzing the District's master seniority list and effectuating District reductions in force. They were provided with copies of the Resolutions in this case for reference, and obtained the master seniority list for the District in two formats, by alphabetical order and by inverse seniority order. They were also able to obtain "sublists," which were lists of certificated employees in a particular PKS or certificated job class, such as middle school teachers, high school teachers, or school social workers. In addition, they had access to the District's ESCAPE computerized data system, which contained information about certificated employees such as education, advanced degrees, status as full or part-time employees, assignment information and credentials.

Respondents take strong issue with the District's seniority list and the difficulty that individual respondents experienced when they attempted to obtain or track information. For example, the seniority list generated by the District did not include certificated employees who were on leave of absence, substitute teachers, per diem employees, inactive teachers or teachers in temporary positions. This information was tracked on the District's ESCAPE database, but it was not readily accessible to certificated employees. Unfortunately, this made it very difficult for respondents to determine why certain individuals received layoff notices and others did not. Other respondents seeking to review their own personnel files in the weeks preceding the hearing were unable to do so, making it very hard for them to obtain documents to support individual challenges to seniority dates or other matters.

¶ . . . ¶

Notwithstanding any other provisions 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."

Education Code section 44954 provides that governing boards of school districts may release temporary employees requiring certification qualifications under the following circumstances: "(a) At the pleasures of the board prior to serving during one school year at least 75 percent of the number of days the regular schools of the district are maintained."

18. The District concedes that its seniority list was “cumbersome.” The District’s computer program has its limitations. It did not allow for generation of the more comprehensive seniority list that would readily provide the information/comparisons sought by respondents. However, the computer system was used in tandem with other available information. For example, Ms. Fong indicated that for every teacher subject to layoff a number of steps were followed to insure that seniority rights were protected, credentialing information was accurate and there was compliance with relevant provisions of the Education Code. In each case, Ms. Fong checked both the District’s ESCAPE system and the Commission on Teacher Credentialing (CTC) website for credentialing information for purposes of skipping, bumping and tie-breaking. For each PKS group Ms. Fong pulled separate reports detailing seniority dates, credentials and master schedules. She confirmed credentials with the CTC website to insure that she had updated credentialing information. She contacted principals and site administrators to verify assignments, or to ask other questions. Multiple checks and audits were in place. Although the District’s seniority list was in less than an ideal format, it does appear that the other steps taken by District staff to obtain accurate and relevant information compensated for the deficiencies noted by respondents.

Verification of Seniority Date and Employment Status

19. Tenure is the relationship between a teacher and the District which gives the teacher greater job security.

Seniority is the relationship between the teachers within a school district. Among the teachers credentialed to provide a given service, greater seniority in the District gives a greater legal entitlement to a position. (See *Ferner v. Harris* (1975) 45 Cal.App.3d 363.)

Seniority date is defined as the date upon which an employee first rendered paid service in a probationary position. (Ed. Code, § 44845.)

20. Employees were given the opportunity to correct and verify their seniority dates. In January and February 2010, the District’s Human Resources Services sent verification forms to all site and department administrators of the District. This comprised a list of all certificated employees at each site or department; verification statements for each certificated employee, for distribution to the named employee; and a proof of service, to be signed and returned when all employees had received and returned their Employee Information Verification Statements to the site or department administrator. The deadline for submission of the completed verifications sheets was February 19, 2010.

The Employee Information Verification Statement for each employee listed the employee’s name; seniority date; classification (first year probationary, second year probationary, or permanent); school assignment; position (e.g. elementary teacher, high school, nurse); and credential (including issue date, expiration date, and “subjects authorized”). The Employee Information Verification Statement stated, in part:

Please verify the information shown on Employee Information Report 298b regarding your seniority date, credential, address, and phone number, and make any corrections as needed. Attach a copy of your credential(s) to Employee Information Report 298b and this form to correct or update our records.

Please return the Employee Information Report 298b and this form to your site, School Office Manager, or department administrator so that the entire school or department staff can be returned in a single envelope to Human Resources Services, Box 770, no later than February 19, 2010.

I certify the information shown on Employee Information Report 298b is true and accurate. [Underlining in original.]

The Verification Statement contained a line for the employee to sign and date, certifying the truth of the information provided.

The District reasonably relied upon the verifications provided by certificated employees in updating the District's seniority list, which it used to determine the order of layoff.

Seniority Dates for Adult Education Teachers

21. The District's entire Adult Education program is being eliminated. This means that adjustments to seniority dates or employment status will not impact layoff decisions. However, such adjustments will guide and impact District reemployment decisions. Counsel for the District and respondents agreed that the District needs additional time to investigate contentions made by certain adult education teachers relating to their seniority dates. Six adult education teachers made a record at hearing of their individual contentions regarding seniority. These individuals included Regina Brooks, Gwendolyn Decker, Ernestina Madriles, Barbara Pattow-Vigil, Mary Selseleh and Ernest Stringfellow.

The District is committed to working outside these proceedings to confirm or not confirm information provided by these adult education teachers regarding their District seniority dates, and making the appropriate adjustments as needed.

Issues Raised by School Social Workers

22. Many District school social workers have been hired year to year as temporary employees. They were not given probationary or permanent status. For example, Christina Borgman is currently working under her sixth temporary contract with the District as a school social worker assigned to four different sites. Ms. Borgman began working with the District on January 25, 2005. She was advised that she remains a temporary employee because funding sources for her position have changed from year to year. She and four other

school social workers have raised fairness issues regarding this situation.³ They point to two other school social workers in their same program who have been granted probationary or permanent status. Ms. Borgman and others complain that they were released as categorically funded employees while two others hired after them were hired into permanent or probationary school social worker positions. At hearing, the District and respondents stipulated that it would be more appropriate to confer outside this process, and not have this issue resolved here. The District wishes to make its decision process regarding school social worker positions as transparent as possible. The District noted that there was no opportunity during these proceedings to articulate to respondents legitimate reasons for its decisions.

23. District school social workers testified that they believe program funding for various social worker positions has not ceased. Ellen Sorkin has worked as a school social worker with the District since August 26, 2002. She works in the foster youth services program and is assigned to different school sites. Ms. Sorkin noted that the foster youth services program receives no school district funding. Foster youth (age 16+) are entitled to services through an Independent Living Program (ILP) contract between the County of Sacramento and the District. Ms. Sorkin explained that the ILP contract has been renewed every year since she has been with the District. She noted that the District has been designated a “core” district, meaning that funding for this and other programs is just a matter of completing paperwork and reapplying for funds. Similarly, Ms. Borgman made reference to other funding sources which she noted were available to fund school social workers including the McKinney-Vento Homeless Assistance Act, MediCal and Title 1.

The Associate Superintendent explained that the Legislature recently enacted laws allowing school districts greater discretion in the use of categorical funds. Specifically, Tier 3 funding for programs such as adult education may now be “swept” into the general fund and used to balance the District’s budget in its regular K-12 programs. Here, the District eliminated its entire adult education program, and now plans to transfer categorical program funds previously used in the adult education program into its general fund. It is not clear to what degree this has occurred, or which categorical program funds were actually swept into the general fund. In this respect the funding situation is somewhat confusing. Still, no reliable evidence was offered to establish that funding for school social worker positions will continue for school year 2010-2011. The decision to reduce and/or eliminate school social worker positions was not an abuse of the discretion placed in the District’s governing board.

Issues Raised by School Counselors/School Psychologists

24. The District is eliminating all counseling positions for next year. The Associate Superintendent indicated that the District will insure that mandated services will continue to be fulfilled. No specific plan for providing mandated services has yet been formulated, but it may include the rehiring of counselors. A school district is authorized to eliminate a particular kind of service even though the service continues to be performed or provided in a different manner. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76

³ The four other school social workers include: Danielle Martin, Mirna Perez, Kelly Thompson and Heather Wagers.

Cal.App.3d 796, 812; *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 177.) The fact that the district does not yet have a plan specifying how counselors' duties will be performed the following year does not mean the district's elimination of the positions is arbitrary or capricious. It is presumed, absent evidence to the contrary, that the District will comply with its legally mandated obligations. (Evid. Code, § 664; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689, 696.) In this case, the evidence did not establish that the District would not be able to provide all mandated services for next year.

25. District school psychologists assigned to special education complain that they were bumped by senior school psychologists, notwithstanding the fact that they hold special education credentials. These include school psychologists Emily Ochoa, Llecenia Navarro and Brandi Schlegel. They believe that they should be skipped pursuant to Resolution # 2601 as "[i]ndividuals fully credentialed to serve in special education assignments." The District explained that psychologists assigned to special education assignments require only PPS credentials, and for that reason counselors holding special education credentials were not skipped. In contrast, certificated employees holding special education credentials who were not counselors were skipped regardless of their assignment. The District's decision not to skip counselors holding special education credentials was proper.

Reassignment of District Administrators

26. After the Board adopted Resolution #2010-B, the Associate Superintendent gave Janet Fong a list of 55 certificated administrative employees with possible return rights to classroom teaching positions. Ms. Fong calculated the seniority of administrators using the District's ESCAPE computerized data system, and personnel records. She determined which administrators could be reassigned to classroom teaching positions. Twenty-three (23) certificated employees were displaced by reassigned administrators; 15 of these employees are respondents in this case. Administrators were also placed into four vacant positions. There was perhaps one issue regarding whether the reassignment of an individual administrator was appropriate, and/or whether the administrator being reassigned was certificated and competent to take the reassignment made. However, respondents generally assert that the reassignments of administrators and consequent bumping of certificated employees were simply not authorized in this case.

Respondents contend that because District administrators were not included in the PKS reductions, the layoff of displaced certificated employee would not be authorized or "necessary" under Education Code section 44955. The District's governing board acted pursuant to Education Code section 44951 in releasing the administrators.⁴ This section

⁴ Education Code section 44951 provides: "Unless a certificated employee holding a position requiring an administrative or supervisory credential is sent written notice deposited in the United States registered mail with postage prepaid and addressed to his or her last known address by March 15 that he or she may be released from his or her position for the following school year, or unless the signature of the employee is obtained by March 15 on the written notice that he or she may be released from his or her position for the following year, he or she shall be continued in the position. The provisions of this section do not apply to a certificated employee who holds a written

allows for the release of certificated employees in administrative positions provided that a district complies with specific notice provisions and deadlines. This section does not afford a right to hearing under section 44949 or other provisions of the Education Code. By its own terms, section 44951 operates independent of section 44955, and does not apply “to the termination of employment pursuant to Section 44955.” (Ed. Code, § 44951.)

27. The District erred in not including the administrators as part of the PKS resolution. Had it done so, Education Code section 44955 would have authorized the District’s Governing Board to make assignments and reassignments in such a manner that administrators were retained to render any service which their seniority and qualifications entitle them to render. (Ed. Code, § 44955, subd. (c).) It also would have authorized administrators to bump into junior positions for which they were certificated and competent to render service. (Ed. Code, § 44955, subd. (b).)

The District’s procedural error is found to be nonsubstantive. In fact, the District’s Governing Board issued its PKS resolution (Resolution #2599) and Resolution of Release and Reassignment of Certificated Administrators (Resolution #2010-B) the very same evening. The meeting was presumably open. The process was transparent. The number of administrators who were released was a matter of public record. The list of administrators with possible return rights to classroom positions was immediately incorporated into the section 44955 layoff process, and specifically included in the bumping analysis. The actions of the District strongly suggest that the administrators were intended to be included in the section 44955 layoff process, notwithstanding the District governing board’s resolution to release administrators under section 44951.

28. For all these reasons, the District’s failure to provide notice to administrators under Education Code section 44955, and the District’s failure to include administrators under its PKS resolution, are viewed as nonsubstantive errors. Education Code section 44949, subdivision (c)(3) instructs: “Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors.” Here, there was no showing of prejudice occasioned by the District’s failure to specifically include the administrators in the PKS resolution. Respondent’s contention that administrators have no authority to bump into junior positions for which they are certificated and competent to render service is therefore overruled.

Over-noticing

29. The District engaged in over-noticing. For example, where the PKS resolution called for elimination of Art 3.0 FTE, art teachers occupying 3.70 positions were noticed.

contract with an expiration date beyond the current school year, or to a certificated employee holding a position that is funded for less than a school year, or to a certificated employee assigned to an acting position whose continuing right to hold this position depends on being selected from an eligible list established for the position, or to the termination of employment pursuant to Section 44955.”

Where the PKS resolution called for elimination of 24.6 FTE English, English teachers occupying 26.0 positions were noticed. The Associate Superintendent explained that this was intentional. The District issued additional notices to account for uncertainty over application of tiebreak criteria, partial FTE reductions, administrators bumping into teaching positions, and assignments/reassignments into partial positions. The converse was also true with respect to under-noticing. For example, because the District swept categorical funds into the K-6 teaching program, the District was able to rescind a significant number of notices. Thus, while the PKS resolution called for elimination of 175 FTE elementary school teachers, only 40 elementary school teachers actually received notice. The District also explained why some partial FTE reductions were rounded up. Many teachers were not assigned to positions held by junior teachers, especially at the secondary level, where the junior teacher was teaching multiple subjects and the senior teacher's credentials did not allow for teaching in all the subject areas.

The District provided a reasonable explanation for its practice of over-noticing. It was not unreasonable for the District to round up partial FTE reductions where it determined not to split full time positions held by junior teachers. It is "within the scope of a school district's discretion ... to define a position as full time if the district concludes that the assignment cannot be as well performed on a part-time basis....So long as the determination is reasonable and made in good faith, neither section 44955 nor any other provision of the Education Code precludes a school district from defining a position, or 'service,' as full time." (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, 343-344.)

Attrition

30. The District considered resignations, retirements, dismissals and non-reelections of certificated employees as part of the layoff process. The District identified 63 FTE positions based upon attrition over the 2009-2010 school year. However, the attrition list dates back to June 30, 2009, and many of the positions were filled during the same school year. At this time, there are only 12 retirements that are true vacancies, and that impact the layoff calculation. The District is committed to its stated goal of rescinding as many notices as possible. It intends to consider post-March 15, 2010 attrition, though not required to do so. The District has satisfied its obligation to take attrition into account.

Skipping

31. Economic layoffs are generally to be carried out on the basis of seniority. A teacher with more seniority typically has greater rights to retain employment than a junior teacher. A senior teacher whose position is discontinued has the right to a position held by a junior teacher if the senior teacher is properly credentialed and competent. That displacement of a junior teacher is known as "bumping." In general, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers if the senior teacher has both the credentials and competence to occupy such positions.

The seniority rule is not absolute, and a junior teacher with a needed credential or skills may be retained even if a more senior teacher is terminated. Such “skipping” is recognized by statute and appellate law. (See Ed. Code, § 44955, subd. (d)(1); *Santa Clara Federation of Teachers, Local 2393 v. Governing Board of the Santa Clara Unified School District* (1981) 116 Cal.App.3d 831).

In order to depart from a seniority-based economic layoff, Education Code section 44955, subdivision (d)(1), requires the District to “demonstrate a specific need for personnel to teach a specific course or course of study... and that the certificated employee [to be skipped] has special training and experience necessary to teach that course or course of study...which others with more seniority do not possess.”

32. Resolution #2601 proposed to retain individuals fully credentialed to serve in special education assignments, and individuals fully credentialed to serve in classes requiring Bilingual Cross-Cultural Language and Development (BCLAD) certification. Respondents do not contest the skipping of these two classes of employees.

Home and Hospital Skip

33. Paulette Meeks is the Health Services Director for the District. There are three credentialed teachers who work as teachers on special assignment in the health services department, as home and hospital teachers at U.C. Davis Medical Center, Sutter Memorial Hospital, and Sutter Psychiatric Hospital. According to Ms. Meeks, the home and hospital teacher at Sutter Hospital must provide educational services to students of various ages, many of whom come from outside of the District for treatment. The home and hospital teacher must be prepared to respond rapidly to changing circumstances, and able to manage medically fragile and potentially dangerous students.

Sharon Rickert is the only certificated employee who was skipped under this particular provision. Ms. Rickert’s District seniority date is September 2, 2008. She holds a multiple subject teaching credential. She is currently employed as the home and hospital teacher at Sutter Psychiatric. Prior to her employment as a teacher, she was an office clerk in the health services department for approximately 10 years. Ms. Rickert was hired into the position of home and hospital teacher based on her response to interview questions, experience, and qualifications/credentials. Ms. Meeks did not participate in the interview process that led to the hiring of Ms. Rickert.

Ms. Meeks is familiar with Ms. Rickert’s abilities and qualifications. In the 2009 layoff proceedings she described Ms. Rickert as “level headed” and “astute,” and as having “sound judgment.” Ms. Meeks commented on Ms. Rickert’s ability to deal with parents and students in a reassuring manner; she has observed Ms. Rickert deal with medication issues, and stated that she “knows the appropriate questions to ask.”

34. Home and hospital teaching was not a service that was reduced as part of the District’s PKS reduction. Ms. Rickert was not served with a notice of layoff. The District

“skipped” Ms. Rickert based upon “a specific need for personnel to teach a specific course” (i.e., the home and hospital program), and its belief that Ms. Rickert “has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.” (Ed. Code § 44955, subd. (d)(1).) Ms. Meeks noted that Ms. Rickert has received training in managing aggressive behaviors, CPR, HIPAA, restraining children and puppet therapy. District personnel did not attempt to ascertain whether any certificated employee with a multiple subject credential slated to be laid off had the training and experience necessary to serve as a home and hospital teacher.

35. Education Code section 44865 provides, in pertinent part:

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:

(a) Home teacher.

[REDACTED]...[REDACTED]

(c) Hospital classes.

[REDACTED]...[REDACTED]

36. The District established that Ms. Rickert possesses “special fitness to perform” the duties of home and hospital teacher, based on her experience and temperament.

Bledsoe v. Biggs Unified School District (2008) 170 Cal.App.4th 127 is instructive. The court in *Bledsoe* addressed the issue of special fitness to perform under Education Code section 44865, as it related to bumping and skipping under Education Code section 44955. In that case, the court held that Mr. Bledsoe fell within the pool of qualified teachers available under the terms of the statute if he consented to the assignment. Thus, he was deemed “certificated and competent” to render the service under Education Code section 44955, subdivision (b).⁵ However, the court further stated, that “[s]uch conclusion does not, however, end our inquiry. [REDACTED] Subdivision (d)(1) of section 44955 expressly allows a district to demonstrate its specific ‘needs’ and there is nothing in the statute that requires such needs

⁵ Education Code section 44955, subdivision (b), states, in pertinent part: “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.”

to be evidenced by formal, written policies, course or job descriptions, or program requirements.” (*Id.* at pp. 137-138.)

The court permitted testimony from the superintendent of the Biggs Unified School District concerning the specific need for teachers with special qualifications for its community day school. However, the court also held that, “[i]n order to retain a certificated employee under section 44955, subdivision (d)(1), ... a district must not only establish a specific need for personnel to teach a specific course of study, but establish the certificated employee it proposes to retain ‘has special training and experience necessary to teach that course or course of study or to provide those services[.]’ (§ 44955, subd. (d)(1).)” (*Id.* at p. 138.)

37. Here, the District made a sufficient showing that Ms. Rickert has special fitness to perform the duties of a home and hospital teacher at Sutter Psychiatric Hospital. Respondents provided no evidence that any certificated employee noticed for layoff with a multiple subject credential, and with greater seniority than Ms. Rickert, possessed the special training and experience necessary to serve as a home and hospital teacher at Sutter Psychiatric.

Because no other employees were skipped under this provision, it is unnecessary to determine whether the District met its burden of establishing a “specific need for personnel to teach a specific course or course of study” at Sutter Memorial Hospital and U.C. Davis Medical Center.

Waldorf Skip

38. The Associate Superintendent spoke with the principals at the District’s two Waldorf Methods Schools – John Morse (K-8) and George Washington Carver High School. She determined that, based on her conversations with the principals, the District had specific needs for teachers with specialized training and experience to teach at these two schools. Approximately ten teachers were skipped based upon their current assignments as Waldorf teachers. The Associate Superintendent assumed that they all had specialized training and experience in the Waldorf methods of instruction. However, she acknowledged that last year individuals were rehired into certificated positions at the Waldorf schools regardless of their training in the Waldorf methods of instruction. The District has suggested that absent evidence that its governing board acted arbitrarily or capriciously in its decision to identify the Waldorf program as requiring specialized training and skills, the skip of teachers in this program should be upheld. (Evid. Code, §§ 660, 664.)

The District has the burden under Education Code section 44955 to establish a specific need for personnel to teach a specific course of study, and to further establish that the certificated employees it proposes to retain have special training and experience necessary to teach that course or course of study or to provide those services. (*Bledsoe v. Biggs Unified School District*, *supra*, 170 Cal.App.4th at p. 138.) The District must present evidence upon which findings can be made that the District has specific need for teachers in

the Waldorf program with specialized training and experience. This evidentiary burden cannot be satisfied by merely presuming that an “official duty has been regularly performed” by the District’s governing board. (Evid. Code, § 664.) Nor can it be satisfied by the testimony of the Associate Superintendent that she had conversations with principals, after which she determined it was appropriate to skip such employees. Absent a greater showing by the District in this case, the skip of Waldorf teachers must be disallowed.

39. The District should confirm the number of Waldorf teachers who were skipped in these proceedings. It must then identify a corresponding number of teachers who are next most senior and subject to layoff, and who possess credentials that would allow them to be assigned to the elementary and secondary Waldorf programs. If necessary, the District may conduct interviews with teachers who are interested in serving in these positions, and shall retain the most senior teachers who are able to establish their experience and training, so long as they have more seniority than the certificated employees currently serving in these positions.

Secondary Math and Science Skip

40. Respondents noted that the Associate Superintendent confirmed that the District is fully staffed in both secondary science and math, and that there was therefore no showing that this particular skip is necessary. The Associate Superintendent indicated that individuals in this category were skipped regardless of their current assignment.

The District’s decision to skip teachers holding secondary science and math credentials was proper, but only to the extent that skipped teachers are assigned, or will be assigned next school year, into positions requiring these credentials. If individuals were skipped who are not now, and will not be teaching a specific course or course of study requiring secondary science or math credentials, such skipping should be disallowed. It was not otherwise an abuse of the District governing board’s discretion to skip individuals holding these credentials.

Adult Education

41. Resolution #2599 identified 82.0 FTE reductions in adult education teachers, essentially eliminating the District’s adult education program.

The adult education program maintains a separate seniority list from the K-12 program. Per the Collective Bargaining Agreement (CBA) between the District and the Sacramento City Teachers Association (SCTA), a teacher cannot have permanent status in both the adult education program and the K-12 program. The District maintains its adult education program separate from its K-12 program. There are separate seniority lists for the two programs, due in part to the different methods by which permanent status is achieved in each program under the Education Code.

In addition, the CBA between the District and SCTA addresses Hourly Adult Education Teachers (CBA, section 5.12.10), and specifies that “Employees with permanent status in the K-12 program of the District who become eligible for permanent status in adult education shall at the time of becoming eligible for permanent status in adult education elect as to whether they shall have permanent status in the K-12 program or in the adult education program. Permanent status may not be attained in both programs.” (CBA, section 5.12.10.2.7.)

42. The CBA is consistent with Education Code section 44929.26, which provides that an employee who obtains permanent classification in the evening program and later becomes eligible for permanent classification in the day school, “he or she shall be given his or her choice as to which he or she shall take.” Furthermore, service in one program 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 other program, unless the district has directed or specifically requested that the employee provide service in the other program.

Reassignment of Adult Education Teachers to K-12 Program

43. In last year’s layoff proceedings, respondents contended that there were certificated employees noticed for layoff from the District’s K-12 program who were certificated and competent to teach adult education, and that they were therefore entitled to be reassigned to the adult education program because they had greater seniority with the District than adult education teachers who did not receive layoff notices. Respondents contend in these proceedings that the converse is also true – certificated employees noticed for layoff from the District’s adult education program who are certificated and competent to teach in the District’s K-12 program, are entitled to be reassigned to the K-12 program where they have greater seniority with the District than K-12 teachers who did not receive layoff notices. This year appears to be a mirror image of last year’s layoff proceedings regarding adult education teachers, and the reasoning and conclusions set forth in Judge Catherine Frink’s 2009 decision rejecting respondent’s contentions apply equally as well here.

44. As noted in Finding 41, the District maintains separate seniority lists for teachers in adult school and in the regular education program. The adult education teachers are now seeking to “cross-bump” from one list to the other. Although Education Code section 44955 does not draw a distinction between teachers in the two programs, that distinction is made elsewhere in the Education Code. Thus “service in the evening school [adult 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 [regular education program].” (Ed. Code, § 44926.26.) Since the adult school and regular educational program are not interchangeable for purposes of counting service in one program toward permanent status in the other, it follows that a teacher in one program should not be able to assert seniority rights over a teacher in the other. Employees in one program should not be allowed to bump into positions in the other.

The practice of maintaining separate District seniority lists for the two programs is longstanding. For example, Garry E. Klein is a teacher whose hire date with the District was

October 23, 1986. He gained permanent status as a teacher in the regular K-12 program. He is now an adult education teacher assigned to Fremont School. His District seniority date is January 26, 1998, reflecting the time that his assignment changed, and when he became a permanent employee in the adult education program, approximately 12 years after he began employment with the District.

45. Education Code section 44865, subdivision (b), provides that an individual teaching in the K-12 program may be assigned to teach classes organized primarily for adults “only with the consent of the teacher,” further supporting the separation between the two programs. Mr. Klein and other adult education teachers have indicated their agreement to being reassigned to the K-12 program if asked. What is problematic, however, is the fact of having two separate District seniority lists. Seniority defines the relationship of teachers to each other, and teachers with greater seniority generally have more secure rights to employment. When, as here, employees must choose between attaining permanent status in either the Adult Education program or the K-12 program, the seniority attained in one program cannot be transferred from one program to the other. Respondents suggest that provisions regarding permanency in one program or the other relate only to attaining tenure. Assuming this is correct the District has still had a longstanding practice of maintaining separate seniority lists for the two programs. Under these circumstances, bumping between the two programs cannot be countenanced. There must be a single District seniority date for all purposes, and such simply does not exist here.

For all these reasons, certificated employees in the Adult Education program are not entitled to displace teachers in the K-12 program, because they have no seniority in the K-12 program. The claims of respondents Garry Klein and other adult education teachers to positions in the District’s regular K-12 program are therefore rejected.

District’s Tiebreaker Criteria

46. The analysts applied the tiebreaker criteria set forth in Resolution #2600 based on past District practice. They were provided information in a spreadsheet format for each category of PKS in which the tiebreaking criteria needed to be applied. The analysts determined the order of seniority based on points awarded under the tiebreaking criteria. Where individual employees had the same number of points after application of all other criteria, the analysts conducted a lottery within each PKS category to determine which employee(s) would be subject to layoff. Tiebreak criteria were applied to Spanish and English teachers with a same date of hire.

The District acknowledged and corrected an error relating to application of tiebreak criteria to English teachers with a September 5, 2006 District seniority date. There was a tie between teachers Joanna Evans and Mary Luca which will be resolved through lottery.

ROTC

47. Resolution #2599 identified a 1.0 FTE reduction in ROTC. Ten respondents were noticed because it was initially unclear what type of ROTC service would be reduced. The District has since identified one basic military drill instructor position associated with a school closure. The District further determined that a commissioned officer cannot bump into a non-commissioned officer position. Based upon this information, Charles Love was identified as the commissioned ROTC officer to be noticed for layoff. The District has rescinded notices to the remaining ROTC teachers.

Individual Respondents

48. Diana L. Cerezo. Ms. Cerezo is an elementary school teacher. Her District seniority date is September 4, 2007. She was a “probationary one” first grade teacher during the 2007-2008 school year, and returned the following school year (2008-2009) as a “probationary two” kindergarten teacher. She was rehired this school year as a third grade teacher and reported to work on October 16, 2009. She suffered a stroke and went out on long term leave. Ms. Cerezo requested that her status be changed from probationary two to permanent. The District has agreed to change her status from probationary to permanent.

49. Joan M. Cochrane. Ms. Cochrane is a teacher at John H. Still Middle School. Her District seniority date is September 4, 2007. She was asked to take a writing course for English teachers when she was first hired. The course was given on August 21 and 22, 2007. Ms. Cochrane recalls that all English teachers were told to attend. She believes that she received salary schedule credit for attending this training program, but this was not reflected on her District personnel records where salary units for education were recorded. Ms. Cochrane has not provided adequate documentation to support adjustment of her District seniority date at this time.

50. Joan A. Liuzzi. Ms. Liuzzi is a counselor assigned to Albert Einstein Middle School. Her District seniority date is September 9, 2002. She holds two Pupil Personnel Services (PPS) credentials, only one of which was indicated on the District’s bump chart. She would like the chart to reflect the fact that she holds a separate PPS in social work. The District has agreed to make this change.

51. Garry Klein. Mr. Klein’s circumstances were referenced in Finding 44. He noted that when he was assigned to the adult education program, the District did not give him the option of choosing to have permanency in the adult education program, or in the K-12 program. From the time that Mr. Klein’s District seniority date was changed to January 26, 1998, he has had many opportunities to correct it if he believed that it should have instead related back to his earlier service in the District’s K-12 program, roughly 12 years before. Other contentions relating to his being able to cross-bump into the regular K-12 program were discussed in Findings 43 through 45.

52. Peter A. Budge. Mr. Budge is a kindergarten teacher at Elder Creek Elementary School. His District seniority date is August 1, 2006. He began service with the District on September 1, 2005, as a substitute teacher for two days. He then moved into a long term substitute position for a teacher on maternity leave, and avers that he remained in that assignment for the balance of the 2005-2006 school year. He did so under an emergency 30-day substitute teaching permit, valid for the period September 27, 2005 to October 1, 2006. Mr. Budge has provided documentation for substitute service for January, February, April and May 2006. He also indicated that he worked for the District from June 2005 through a Sacramento State University program, but he is not clear whether he held an intern certificate at that time.

Mr. Budge has not provided adequate documentation or otherwise demonstrated that he worked a consistent year of service (75 percent of the number of days the regular schools of the District were maintained) over the 2005-2006 school year for purposes of tacking an additional year to his seniority date under Education Code section 44918.⁶ The District has also opted not to count his service as a substitute teacher for purposes of tacking an additional year under Education Code section 44914, which relates to computation of service for classification as a permanent employee of the District.

53. Mirna I. Perez. Ms. Perez is a school social worker with the Integrated Community Program at McClaskey High School. Her District seniority date is November 16, 2006. She would like her seniority date to be changed to September 20, 2005. Ms. Perez is employed under a temporary contract with the District. (See Finding 22.) Because she has not worked as a probationary employee, she is not entitled to tacking under provisions of the Education Code.

54. Dennis K. Garrison. Mr. Garrison is an industrial arts teacher at Rosemont High School. His District seniority date is September 7, 2004. He holds a single subject teaching credential in industrial technology education (ITE). Teaching subjects falling under an ITE credential include automotive mechanics, carpentry, computer technology, construction, drafting, electricity, electronics, industrial crafts, industrial design, metals, millwork, photography, plastics, radio and television, technical science/power mechanics, welding and woods.

Mr. Garrison avers that he has identified no less than 50 teachers junior to him who are teaching subjects falling within his ITE credential, five of whom he specifically identified at hearing. The District has investigated his contentions and determined that all the teachers he referenced are working in split assignments. They each hold credentials that allow them to teach in the variety of subject areas to which they are assigned. Mr. Garrison does not

⁶ Education Code section 44918, subdivision (a) provides: "Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year."

hold the additional credentials that would allow him to bump into their positions. The District is not required to split a position in order for Mr. Garrison to be reassigned into a position for which he is credentialed to teach. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, 343-344.)

55. Tony Marine. Mr. Marine is a temporary certificated employee in the adult education program. He believes that he should be classified as a probationary employee based on his working in excess of 60 percent of the hours per week considered a full-time assignment for permanent employees having comparable duties. (Ed. Code, § 44929.25) The District intends to investigate further and work to ensure that he receives proper status.

56. Heather Edwards. Ms. Edwards is first year probationary high school teacher. Her District hire date is September 6, 2009. She would like this date to be changed to August 31, 2009, corresponding to her attendance at a new employee orientation, and for which she was paid \$37.00. The orientation was three hours. The pay was characterized as “classified” time. It does not appear that the amount paid to Ms. Edwards for her attendance at the orientation was related to a teacher salary. A certificated employee’s seniority begins with the date she “first rendered paid service in a probationary position.” (Ed. Code, § 44845.) Ms. Edwards has not established that she is entitled to an earlier seniority date by reason of her attending the August 31, 2009 orientation.

57. Lleceña Navarro. Ms. Navarro is a school psychologist. Her District seniority date is August 18, 2008. She worked the previous year as an intern and believes she should be given credit for that time. The District agreed. Ms. Navarro’s District seniority date has been changed to August 27, 2007.

58. Laura Villegas. Ms. Villegas is an elementary school teacher. Her District seniority date is January 18, 2007. She believes it should be September 30, 2006, her date of hire with the District. She worked as a long-term substitute with the District between September 30, 2006, and January 17, 2007. The teacher for whom she was substituting resigned, and Ms. Villegas entered a contract to continue as a teacher in that same assignment. Ms. Villegas has not demonstrated that she worked a year of service (75 percent of the number of days the regular schools of the District were maintained) over the school year prior to January 18, 2007, for purposes of tacking an additional year to her seniority date under Education Code section 44918.

59. Tammy Y. Abdo. Ms. Abdo is a first-year probationary teacher at Luther Burbank High School. Her District seniority date is September 15, 2009. Her District hire date is September 19, 2008, when she began working as a long-term substitute teacher. The District agreed to credit her with one year service and change her seniority date to September 15, 2008.

60. Evelyn Sandoval. Ms. Sandoval is a school psychologist. Her District seniority date is August 20, 2007. Ms. Sandoval is bilingual and bi-literate. She would like the District to consider this in any tiebreak affecting her. The District identified BCLAD for

purposes of skipping certificated employees, but has not included bilingual skills as part of the tiebreak criteria for this layoff. It may consider doing so in the future.

61. Elaine V. Bruce. Ms. Bruce is an adult education teacher. Her District seniority date is July 1, 2007. Ms. Bruce teaches in the nursing program for certified nurse assistants (CNA) and licensed vocational nurses (LVN). She provided credentialing information which the District has promised to incorporate into, and update her District records. Ms. Bruce detailed reasons why the District should not discontinue its CNA and LVN instructional programs, including the fact that the District will have to refund tuition amounts already paid by students enrolled in the program.

62. Joel C. Sutton. Mr. Sutton is an adult education teacher. His District seniority date is July 1, 2009. He would like the District's bump chart to reflect both his seniority date and the credential he holds in hospitality, tourism and recreation. The District has promised to do so.

Welfare of the District and Its Students

63. Other than that set forth particularly above, the Superintendent's designees correctly identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, unless skipped, as set forth above.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code 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, supra*, 76 Cal.App.3d at pp. 807-808.)

3. Legal cause exists to reduce or eliminate 430.0 FTE of particular kinds of services offered by the District as set forth in detail in the Factual Findings. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils, within the meaning of Education Code section 44949.

4. Cause exists to retain teachers who are fully-credentialed to serve in special education assignments, and teachers who are fully credentialed to serve in classes requiring BCLAD certification, as set forth in Resolution #2601, regardless of seniority. (Finding 32.)

Cause also exists to retain teachers who are fully-credentialed to serve in secondary math and science assignments, but only to the extent that retained (skipped) teachers are assigned, or will be assigned next school year, into positions requiring these credentials. (Finding 40.)

5. Cause exists to retain Sharon Rickert as a home and hospital teacher at Sutter Psychiatric per Resolution #2601, providing that individuals who have specialized training in a home or hospital setting may be skipped. (Finding 33.)

6. The District has not demonstrated a specific need for teachers with specialized training and experience to teach at its two Waldorf Methods Schools, and therefore the application of skipping criteria to teachers currently in the Waldorf program is disallowed. (Findings 38 and 39.) As set forth in Finding 39, the District shall rescind the layoff notices to a corresponding number of certificated employees who are next most senior and subject to layoff, and who possess credentials that would otherwise allow them to be assigned to the elementary and secondary Waldorf programs.

7. As set forth in Finding 16, the preliminary notices of layoff issued to 526 certificated employees are rescinded. The names of these teachers are set forth in Attachment B, under the column “Layoff Notice Rescinded.” The District rescinded all of the precautionary notices that it had issued. However, the temporary release notices issued to employees receiving dual notices remain in effect.

8. As set forth in Finding 21, the District is committed to working outside these proceedings to confirm information provided by adult education teacher regarding their District seniority dates, and making appropriate adjustments as needed. Similarly, the parties agreed to address fairness issues raised by school social workers outside these proceedings. (Finding 22.)

9. The District erred in not including administrators as part of the PKS resolution and section 44955 layoff process. The District’s governing board issued a separate resolution under Education Code section 44951 authorizing release and reassignment of certificated administrators. A list of 55 certificated administrators with possible return rights to classroom teaching positions was subsequently included and incorporated into the District’s section 44955 layoff process. The process was open and transparent. The failure to include administrators in the PKS resolution was a nonsubstantive procedural error. (See Ed. Code, § 44949, subd. (c)(3).) Because there was no prejudice to respondents, the error does not constitute cause for rescinding notices relating to respondents being displaced by reassigned administrators. (Findings 26 through 28.)

10. The District engaged in over-noticing. The matters set forth in Finding 29 were considered. After consideration of the District's need to account for administrators bumping into positions, application of tiebreak criteria, rescinded notices, positively assured attrition, and assignments/reassignments into partial positions, the number of layoff notices issued by the District was neither unreasonable nor an abuse of its discretion. The District has provided a reasonable explanation and accounting for its practice of over-noticing in this case.

11. Certificated employees in the Adult Education program are not entitled to displace teachers in the K-12 program, because they have no seniority in the K-12 program. (See Findings 43 through 45.)

12. As set forth in Findings 57 and 59, the District will make corrections to seniority dates for Llecenia Navarro and Tammy Y. Abdo. It will also change the individual employment status for Diana Cerezo from probationary to permanent. (Finding 48.) Finally, the District will update its personnel records to include credentialing and other information brought to its attention by Joan A. Liuzzi, Elaine V. Bruce and Joel C. Sutton. (Findings 50, 61 and 62.)

13. The District applied bumping rules with some consistency, and generally allowed bumping based upon the more senior employee holding a credential or authorization to teach the assignment of the less senior teacher. The District articulated the rationale for its bumping rules.

14. The District was required to exercise tiebreak criteria with respect to Spanish and English teachers. Corrections were made to account for earlier error relating to application of tiebreak to English teachers with a September 5, 2006 seniority date. (Finding 46.)

15. Cause exists for the reduction of the particular kinds of services and for the reduction of full-time equivalent certificated positions at the end of the 2009-2010 school year pursuant to Education Code sections 44949 and 44955. Other than the foregoing, no employee with less seniority than any respondent is being retained to render a service which any respondent is certificated and competent to render. Except as set forth above, the District's Governing Board may give final notice to remaining respondents whose preliminary notices have not been rescinded before May 15, 2010, that their services will not be required for the ensuing school year, 2010-2011.

RECOMMENDATION

Cause exists for the reduction of 430.0 full-time equivalent certificated positions at the end of the 2009-2010 school year. After making the adjustments set forth in the Factual Findings and Legal Conclusions, notice shall be given to remaining respondents that their services will be reduced or will not be required for the ensuing school year, 2010-2011, because of the reduction and discontinuance of particular kinds of services. Notice shall be given in inverse order of seniority.

DATED: May 6, 2010

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings