

BEFORE THE
GOVERNING BOARD OF
THE LOMA PRIETA JOINT UNION SCHOOL DISTRICT

<p>In the Matter of the Accusation Against:</p> <p>ANTHONY ARIAS, LYNELL HANCK, MICHELE IGNOFFO, ANNA KENT, PADDY O'REGAN, KATHERINE RAY, DEBRA SHOEMATE, and KARREN ZOOK,</p> <p style="text-align:center">Respondents.</p>	<p>OAH No. N 2006030493</p>
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PROPOSED DECISION

On April 19, 2006, in Los Gatos, California, within the facilities of the Loma Prieta Joint Union School District, at 23800 Summit Road, Los Gatos, Santa Clara County, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter.

Patricia P. White, Attorney at Law, of Littler Mendelson, 50 West San Fernando Street, 14th Floor, San Jose, California 95113-2431, represented Superintendent Henry Castaniada.

Christopher Schumb, Attorney at Law, 10 Almaden Boulevard, Suite 1250, San Jose, California 95113, represented respondents Anthony Arias, Lynell Hanck, Paddy O'Regan, and Michele Ignoffo.

Neither Respondent Anna Kent, nor Respondent Katherine Ray, nor Respondent Karren Zook appeared at the proceeding, nor did they appoint a representative to appear on their respective interests. By those individuals' refusal or failure to appear, notwithstanding proper service upon them of the Accusation and Notice of Hearing, the hearing concluded against those three respondents as a default proceeding under Government Code section 11520.

The record was held open to afford opportunities to lawyers for the parties to file written closing arguments. On April 26, 2006, OAH received Closing Argument on behalf of the Superintendent, which was marked as Exhibit "11." Also, on April 26, 2006, OAH received written argument for Respondents Anthony Arias, Lynell Hanck, Paddy O'Regan, and Michele Ignoffo that was titled "Respondents' Closing Brief," which was marked as Exhibit "D."

On April 26, 2006, the parties were deemed to have submitted the matter and the record closed.

FACTUAL FINDINGS

1. On March 24, 2006, in his official capacity, Henry Castaniada, Superintendent (the Superintendent), Loma Prieta Joint Union School District (the District), made and filed the Accusation regarding respondents Anthony Arias, Lynell Hanck, Paddy O'Regan, Michele Ignoffo, Anna Kent, Katherine Ray, Debra Shoemate and Karren Zook (respondents).

2. Respondents are fully credentialed and certificated employees of the District. The District recognizes the designation for each respondent as that of permanent teacher.

3. On or before March 8, 2006, the Superintendent presented the District's Board of Trustees a recommendation that the District give notice that particular kinds of services (PKS), then offered through the District, be reduced or eliminated by the District for the ensuing school year (2006-2007).

4. On March 8, 2006, the District's Governing Board unanimously adopted Resolution number 06-XII. The resolution recites that, pursuant to Education Code section 44955, it has become necessary for the District to reduce and/or to eliminate, no later than the beginning of the 2006-2007 school year, particular kinds of services in the form of 6.0 full time equivalent (FTE) certificated positions as follows:

5.0	FTE	Kindergarten to 5 th Grade Elementary Teaching positions;
0.4	FTE	Spanish Language Teaching Position; and
0.6	FTE	Science Teaching Position.

5. By individual letters, dated March 9, 2006, the District's Superintendent dispatched preliminary notices¹ to a number of FTE position holders, including each respondent, that the District's Board of Trustees had an intention to reduce or to eliminate the particular service provided by each person who received the notice. Hence, due to the prospective elimination or reduction of the particular kind of service now rendered to the District, each of the respondents learned the District would not reemploy the named individuals in the certificated positions each had worked over the past school year.

Also the letter, dated March 9, 2006, which had attached to it the Board's resolution and other pertinent documents, conveyed to each respondent that no certificated employee of the District having less seniority than each respective

¹ "Notice of Recommendation that Services Shall Be Reduced or Discontinued."

respondent would be retained for the 2006-2007 school year to render a service that each respondent was credentialed and competent to render to students under the District's competency criteria.

6. The written preliminary notice to respondents from the Superintendent set out legally sufficient reasons of the District's Board's intent to eliminate the course as taught by respondents.

7. Respondents each timely requested in writing a hearing to determine whether or not cause exists for not reemploying each respondent for the ensuing school year.

8. The Superintendent timely served upon each respondent the Accusation, dated March 21, 2005, and related documents. Each respondent filed a timely notice of defense.

9. All pre-hearing jurisdictional requirements were met.

10. At the hearing of this matter, the Superintendent withdrew the Accusation as filed against Respondent Debra Shoemate.

By its withdrawal of the Accusation, the District will retain the services of Debra Shoemate.

11. Henry J. Castaniada, in his capacity as the Superintendent, appeared at the hearing. He provided credible and persuasive evidence.

The prospective elimination of particular kinds of services for the 2006-2007 school year directly results from a prospective shortfall in money for the District's budget. Also, the prospective elimination of particular kinds of service is due to the declining pupil census for the district for the ensuing school year. In order to partially aid the District in crafting a reasonable budget for the ensuing school year, the District's Superintendent recommended that certain certificated positions be eliminated due to lack of funds as well as lack of teachers' work within District schools.

12. The Superintendent further established that on learning that the District was required to initiate lay-off proceedings for teacher employees of the District, the Superintendent, with his staff, took steps to develop the District's seniority list for the District's teachers.

13. On March 9, 2005, the Superintendent caused to be personally placed in the mail all notices to affected permanent teachers that their services would not be needed by the District for the next school year.

Respondents' Contentions

14. Respondents contend the District's action is procedurally defective and improper insofar as the prospective layoff of the subject credentialed employees does not fully account for seniority of those persons in light of the District's retention of credentialed employees who are junior in time, or equal in time, relative to the service by Respondents.

Respondents contend that because the Governing Board's resolution did not specify that the proposed teacher layoff was due, in part, to declining attendance by pupils and because testimony from the Superintendent did indicate that the PKS lay-off proceeding was due to, in part, to declining enrollment of pupils, that respondents were not afforded proper notice of such basis for the layoff. Hence, respondents aver sufficient notice was not afforded them to develop a defense to the superintendent's testimony regarding declining pupil enrollment so that the entire layoff proceeding should be dismissed.

Respondent Anthony Arias contends that the District promulgated criteria, which included holding a CLAD certificate, in order to define competency of teachers in determining seniority, but the District erred in executing the criteria regarding competency when the Superintendent authorized another teacher to bump Respondent Arias from a social science teaching position even though the other teacher does not hold a CLAD certificate.

Respondent Michele Ignoffo contends that since August 1998, when she first rendered paid service to the District, personnel within the District's Office of the Manager of Administrative Services have possessed a copy of a multiple subject teaching credential for her in addition to a single subject science teaching credential. She contends that District's personnel erred when they concluded Respondent Ignoffo had failed to deliver to the school district a copy of a valid multiple subject credential before March 15, 2006. Respondent Ignoffo further contends that that the District had ample notice that she possessed not only a multiple subject teaching credential but also a CLAD, both of which should have been reported on the District's seniority list. Hence, Respondent Ignoffo avers the District erred when it did not provide her with status on the seniority list that would enable the District to retain her services for the ensuing school year in light of the fact the District has determine to reemploy another teacher, with a multiple subject credential, with the same date hire as Respondent Ignoffo, but who lacks a CLAD certificate.

Respondent Lynell Hanck contends that the District erred in setting out on the seniority list for credentialed employees her first day of paid service. Respondent Hanck avers that she should occupy on the seniority list the same date of hire as two teachers who began the provision of services to the District in August 2001.

Except for Respondent Ignoffo, respondents contentions are without merit and are not persuasive, or supported by the evidence.

Individual Respondents

Anthony Arias

15. Respondent Anthony Arias (Respondent Arias) has a first date of paid service as a probationary-one teacher of August 20, 2003. He now holds a preliminary single subject credential in social science. Respondent Arias occupies the penultimate position on the District's Certificated [Employee] Seniority List (seniority list) because only Karen Geyer is junior to him. But Karen Geyer, whose hire date was August 29, 2005, is being retained by the District for ensuing school year in that she holds a Professional Clear Clinical or Rehabilitative Services Language Speech and Hearing credential, which is a service that is being retained by the Board's Resolution number 06-XII.

The teaching service, namely social science, provided by Respondent Arias is not a service that is being reduced or eliminated by the subject board resolution. Rather, Respondent Arias is subject to an exercise of bumping rights by Christie Sanden (Ms. Sanden), whose fourth grade classroom teaching position is being eliminated by Resolution number 06-XII. Ms. Sanden, whose first date of paid service to the District was August 30, 1987, occupies ranking number 18 on the District's seniority list. Ms. Sanden holds a Multiple Subject Credential with a Social Science Authorization that expires on June 1, 2007.

16. On March 8, 2006, the Board promulgated Resolution number 06-X that for the purpose of adopting a definition of competence for the purpose of making determinations regarding which employees are certificated and competent to render a service during the reduction in force or during reappointment from layoff. The Board resolution prescribed the Board's determination that "*competence to provide a particular kind of service is defined as possession of a current valid credential and CLAD certification.*" (Emphasis added.) Ms. Sanden does not possess a CLAD (Crosscultural, Language and Academic Development) certificate, likewise Respondent Arias does not hold a CLAD certification.

17. At the hearing of this matter, the Superintendent asserted that although he had considered making a recommendation to the Governing Board that a certificated employee's prior experience teaching in a subject area be set out as a basis to determine competence, the Superintendent decided to recommend to the Board prior teaching experience should only be listed as a criterion for tie-breaking purposes among teachers with the same first day of employment with the District. He exercised his judgment and discretion to prescribe in the resolution that defines competency that prior teaching experience in a particularized subject would not be a criterion to define competency.

18. The District, through the Superintendent, exercised its discretion to determine that Ms. Sanden is competent to teach social science, the area in which Respondent Arias has rendered services.

19. Respondent Arias, who was present at the hearing, did not offer testimonial evidence to show that he has greater competency to teach social science classes in place of Respondent Sanden. He did not show that the needs of the District and its students would be better served by retaining him over a more senior teacher in the person of Ms. Sanden.

20. Respondent Arias provides no competent evidence that the District has retained any teacher junior to him for which Mr. Arias possesses a credential and is currently competent to teach.

Lynell Hanck

21. Respondent Lynell Hanck (Respondent Hanck) initially was employed by the District on August 23, 2001, under a temporary teacher contract.

Under a temporary teacher's contract, Respondent Hanck taught first grade full time for the entire school year for 2001-2002.

The District hired Respondent Hanck for the next school year (2002-2003) when she taught in a full FTE first grade. As a probationary teacher Respondent Hanck has a first date of paid service of August 22, 2002.

After the school year 2002-2003, the District hired Respondent Hanck for the school year 2003-2004, when she taught grades "K - 1" classes in a full time position. She was a subject of a lay-off proceeding that year that resulted in the District not retaining her services for the 2004-2005 school year.

During the 2004-2005 school year, Respondent Hanck worked as a substitute teacher during the concluding few months of the school year.

Respondent Hanck returned to the District as a teacher for the current school year 2005-2006.

Respondent holds a CLAD and a multiple subject credential, which she received before she first worked for the District.

Respondent Hanck occupies the 29th position of the 31 person seniority list of the District.

22. Respondent Hanck was the subject of a lay off proceeding in the school 2003-2004 so that she was not hired as a permanent teacher for the 2004-2005 school year. For that school year, she worked sporadically as a substitute teacher. However, the District rehired Respondent Hanck for the current school year 2005-2006. She provides services as a first grade teacher, which is a position that is being reduced or eliminated under Board Resolution number 06-XII.

23. Respondent Hanck's seniority must be measured from the first date on which she actually rendered paid service to the District in a probationary status. She was not persuasive that Education Code section 44917, which pertains to rights afforded a person who first works as a temporary teacher, alters the authority of Education Code sections 44845 and 87414.

Contrary to her argument, Respondent Hanck is not tied on the District's seniority list with Respondents Karen Zook and Respondent Anna Kent, who each have hire dates of August 23, 2001. Rather, Respondent Hanck's first date of paid service on August 22, 2002, places her in position 29 on the District's total list that numbers 31 positions.

24. Respondent Hanck provided no competent evidence that the District has retained any teacher junior to her to teach in an area for which Ms. Hanck possesses a credential and is competent to teach.

Paddy O'Regan

25. Respondent Paddy O'Regan has a first day of paid service to the District of August 26, 1999. She holds a multiple subject credential and a CLAD certification with a single subject Spanish Authorization credential. For the current school year, Respondent O'Regan teaches "CTE/Spanish," under an 0.8 FTE.

Board Resolution number 06-XII specifies that the District will reduce or eliminate 0.4 FTE of a Spanish teaching position. For the ensuing school year, Respondent O'Regan will have a 0.4 FTE teaching position in a Spanish language class.

26. Respondent O'Regan provides no competent evidence that the District has retained any teacher junior to her in an area for which Ms. O'Regan possesses a credential and is currently competent to teach.

Michele Ignoffo

27. There is no dispute that Respondent Michele Ignoffo (Respondent Ignoffo) holds a clear, single subject credential in Life Science with a Nutrition Authorization. She has a hire date of August 28, 1998. For the current school year, she has taught "CTE/Science."

28. Under the proposed lay-off action, Respondent Ignoffo's 1.0 FTE teacher position for science will be reduced by 0.2. The District proposes to retain Respondent Ignoffo in a 0.8 FTE position.

29. Respondent Ignoffo offered credible and persuasive evidence at the hearing of this matter. By her demeanor, the consistency of her manner and presentation and her attitude towards the proceeding, Respondent Ignoffo established that she was a credible² and reliable witness.

On August 17, 1998, the Santa Clara County Office of Education registered at least two³ credential certificates as issued by the Commission of Teacher Credentialing that bore the name of Respondent Ignoffo. The Multiple Subject Teaching Credential showed a valid period of licensure from January 9, 1996, to February 1, 2001. The San Clara County Office of Education showed for each credential certificate that Respondent was affiliated with "District - Loma Prieta."

Respondent Ignoffo persuasively testified that sometime near her original hire date (August 26, 1999), she delivered copies of the two credential certificates into the possession of the senior administrator, who occupied the same role as the District's current Manager of Administrative Services, Ms. Monica Torres. Respondent Ignoffo was believable when she asserted at the hearing of this matter that on or about August 17, 1998, she gave Jodine Grabeel, then the District's Manager of Administrative Services, a copy of a multiple subject credential and CLAD certificate.

At the hearing of this matter, the District's entire personnel file that pertains to Respondent Ignoffo was shown to include pink-colored copies of the credential certificates that bore registration dates of August 17, 1998. The pink-colored photocopies are: a Preliminary Multiple Subject Teaching Credential, valid for the period January 9, 1996, to February 1, 2001; a CLAD, valid for April 8, 1999, and Single Subject Authorization for Food and Nutrition, January 9, 1996, to February 1, 2001.

On September 6, 2002, the Santa Clara County Office of Education registered for Respondent Ignoffo a Professional Clear Multiple Subject Teaching Credential certificate. The credential certificate⁴ shows the period of valid licensure as January 16, 2001, to February 1, 2006.

² Government Code section 11425.50, subdivision (b), third sentence.

³ The documents were "Preliminary Multiple Subject Teaching Credential (Authorized Field: General Subjects)", and a "Preliminary Single Subject Teaching Credential (Authorized Field: Life Science) with Supplementary Authorization: Food and Nutrition."

⁴ The documents prescribes, "This credential authorizes the holder to teach all subjects in a self-contained class and, as a self-contained classroom teacher, to team teach or to regroup students across classrooms, in grades twelve and below, including preschool. . . ."

30. In February 2006, Respondent Ignoffo met with the Superintendent in his office where he informed Respondent Ignoffo that part of her science class might be reduced by a lay-off proceeding. During the meeting, Respondent Ignoffo asked the Superintendent whether or not he had knowledge that she possessed a multiple subject credential. The Superintendent conveyed to Respondent Ignoffo in February 2006 he was not aware that Respondent Ignoffo possessed a multiple subject credential.

31. After February 8, 2006, when the District's Manager of Administrative Services posted a copy of the District's seniority list, Respondent Ignoffo went to the District's administrative offices to correct the seniority list. She wrote "multiple subject credential and CLAD" on the list for her credentials and Respondent Ignoffo signed her name to the list. (Respondent Ignoffo interacted with a secretary other than the District's manager for personnel matter when she wrote onto the posted copy of the seniority list.) And, Respondent Ignoffo did not send a reply e-mail to Ms. Torres regarding the fact that she possessed credentials other than as expressed on the District's seniority list as distributed in February 2006.

32. Ms. Monica Torres, the District's Manager of Administrative Services (Ms. Torres), offered evidence at the hearing of this matter.

Since December 1, 2004, Ms. Torres has been an employee of the District. Among her duties in the human resources area, Ms. Torres attends to credentials, verification of employee and usual "HR" functions that arise in a school district. One of her responsibilities is to maintain the certificated employees' seniority list.

33. Ms. Torres has been with the District for the past two years for lay-off proceedings. For the current lay-off action, as well as the previous year's lay-off, Ms. Torres used the seniority list that had been created by her predecessor who held the role of Manager of Administrative Services for the District. Ms. Torres has distributed to teachers the earlier prepared seniority list for input for corrections or amendments.

Ms. Torres has never personally studied or analyzed the respective personnel files of teachers regarding credentials or other documents so as to prepare seniority lists for the District certificated employees. In particular, Ms. Torres has never examined the personnel file of Respondent Torres to ascertain the existence of a multiple subject credential.

34. About February 6, 2006, Ms. Torres sent to all teachers a copy of the District's seniority list, along with a memorandum. Ms. Torres caused the seniority list to be sent by e-mail to each teacher of the District, and she placed the list into the mail box for each teacher as well as posted the list in each teacher "break room" of the school facilities. After mid-February 2006, two teachers notified her regarding erroneous entries on the seniority list so that correction could be made. However, before March 8, 2006 (the date of the Board's layoff resolutions), Ms. Torres did not personally know Respondent Ignoffo had communicated to a District employee, and written onto a posted

copy of the District's seniority list that she possessed a multiple subject credential and a CLAD certificate.

35. On March 13, 2006, Respondent verbally informed Ms. Torres that she possessed a multiple subject credential and a CLAD. On that date, which was four days after the dispatch of the preliminary lay-off notices to affected teachers, Ms. Torres asked that Respondent Ignoffo establish in writing that she held such credential and CLAD certificate.

36. Ms. Torres verbally informed the Superintendent on March 13, 2006, that Respondent Ignoffo had told her that she possessed a Multiple Subject credential in addition to the single subject credential that appeared on the District's seniority list.

37. On March 15, 2006, Respondent gave Ms. Torres a copy of a Professional Clear Multiple Subject Teaching Credential, which had been renewed for the period February 1, 2006, to February 1, 2011.

On March 15, 2006, at 10:52 a.m., Ms. Torres received an e-mail message from Respondent Ignoffo. The subject of the e-mail was titled, "credentials." The message read: "This is just a reminder that to check and/or update my credentials for the seniority list. I have a Single Subject Life Science, a multiple subject, Nutrition supplement and CLAD. . . ."

38. The District's error in failing to carefully analyze the extant personnel file that pertains to Respondent Ignoffo and to record on the seniority list Respondent Ignoffo's possession of a Multiple Subject Credential and CLAD certification was not, within the meaning of Education Code section 44949, subdivision (c)(3), a "nonsubstantive procedural error." Rather, the failure to carefully study and analyze the District's own personnel file that pertained to Respondent Ignoffo is a substantive error that necessitates dismissal of the Accusation against her.

39. Ms. Shoemate has a first date of paid service to the District on August 28, 1998, which is the same date of hire for Respondent Ignoffo with the District.

Ms. Shoemate does not possess a CLAD, which is one of the District's criteria for determining competency. Respondent Ignoffo holds a CLAD certificate.

The District withdrew the Accusation against Ms. Shoemate so as to retain her services to teach under a Multiple Subject credential.

Because Respondent Ignoffo holds a CLAD as well as a Multiple Subject credential, Ms. Shoemate is not senior to Respondent Ignoffo insofar as competency may be determined.

40. Respondent Ignoffo provided competent evidence that the District has retained a teacher junior to her for which Ms. Ignoffo possesses a credential and is currently competent to teach.

41. The District's layoff action against Respondent Ignoffo was erroneous and must be reversed.

District's Reasonable Basis to Proceed Against Respondents, Other Than Respondent Ignoffo

42. During the immediate past school year, the Board has found that the District faces a prospective budget shortfall in that the amount of funding from the State of California may be markedly reduced for the upcoming school year. Hence, the Board has determined that sufficient money is not available to operate the same number of teacher positions and programs during the ensuing school year so that the District must prospectively reduce or eliminate a number of FTE of particular kinds of services, including the positions held by respondents.

43. Except as to Respondent Ignoffo, the recommendation of the Superintendent and the Board's decision to eliminate or discontinue certain FTE positions, including the positions held by each respondent other than Respondent Ignoffo, was neither arbitrary nor capricious. Rather, the Superintendent's recommendation and the Board's decision were within the proper exercise of the District's discretion, except for Respondent Ignoffo.

44. The District's proposed elimination or discontinuation of a number of FTE positions, including the positions respectively held by respondents (other than in the instance of Respondent Ignoffo), for the ensuing school year is related to the welfare of the District and its overall student population.

45. The Board determined that it will be necessary, due to the elimination of particular kinds of services, to decrease the number of teachers before the beginning of the next academic year. The Board lawfully directed the notification to respondents of the elimination of the certificated positions held by each respondent, except for Respondent Ignoffo.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

2. The District provided all notices and other requirements of Education Code sections 44949 and 44955. This conclusion of law is made by reason of the matters set forth in Factual Findings 1 through 9 inclusive.

The effect of a teacher's failure to obtain, hold or file a proper credential in a timely manner is governed by *Campbell Elementary Teachers Assn. v. Abbott, supra*, 76 Cal.App.3d 796. In that decision, a teacher caused the proper recordation of a critical credential one day after the final notice that she was been laid by the governing board of the teacher's employing school district. The Campbell court set out, "The governing board is not to be held responsible for the fact that [the affected teacher] recorded her credential after *all notices* had been sent, *a hearing held*, and *a decision rendered*."

Fine v. Los Angeles Unified School District, supra, 116 Cal.App.4th 1070, dealt with a teacher who began work under an emergency teaching permit but who in a subsequent year of employment secured a credential. The essence of the *Fine* court's holding was that the employing school district had no duty to classify the teacher as probationary to a date retroactive to the actual validity date of the credential. The basis of the result in the *Fine* opinion was that a necessary requisite for a teacher's service is the registration of a teaching credential. Thus "a teacher serving under an emergency permit continues to serve under that permit, and under the contract to which she agreed, until the teacher is issued a credential and registers it with the District." (*Fine, supra*, 116 Cal.App.4th at 1078.)

In another decision, the court noted a teacher was too late when the teacher filed a credential on a date six months after the layoff hearing was held, the ALJ had recommended layoff as to 60 percent of a full-time position, and the board had reduced him to 40 percent of a full-time position. "Should a teacher be allowed to present a certificate to the governing board after March 15 and thereby obligate the board to continue to employ that teacher, the board would by that date be precluded from serving a layoff notice to a junior teacher." *Daux v. Kern Community College District* (1987) 196 Cal.App.3d 555, 568.

But in the afore-cited appellate court decisions, the affected teacher presented the employing school district with a credential after the administrative hearing and after the issuance of a final lay-off notice by the governing board of the school district. In the important decision of *Campbell Elementary Teachers Association v. Abbott, supra*, 76 Cal.App.3d 796, the County Office of Education, through a clerical error, had never registered the affected teacher's classroom teacher's credential, and hence the governing board could not be charged "with information which it did not have and was not responsible for recording." (76 Cal.App.3d at 814.)

In this matter, in 1978 the Santa Clara County Office of Education had registered Respondent Ignoffo's multiple subject credential and CLAD certificate. Thereafter, in 1998, Respondent Ignoffo had personally delivered the documents to the District's Manager for Administrative Services. Respondent met the burden of recording her own credential. Contrary to the facts in the *Campbell Teachers Association* decision, Respondent did not record "her credential after all notices had been sent, a hearing held, and a decision rendered." (76 Cal.App.3d at 815.)

Here, the error, if any, by Respondent Ignoffo was that she presented a recently renewed credential to the District's personnel officer about five days after the dispatch in the mail of the preliminary lay-off notice, and on the last day (March 15) for the District to serve such preliminary notice. But the weight of credible evidence shows that the District's file contained the subject credential and certificate for more than seven years, and that District personnel had overlooked the copies of the credential and certificate, which lay in the personnel file for Respondent Ignoffo.

The District bears a greater duty to carefully analyze its own records (that is, personnel files of certificated teachers) in crafting seniority lists that serve as a tool in lay-off notices than as shown by the District in the instance of Respondent Ignoffo. By reason of the matters set out in Factual Findings 26 to 40, the Accusation against Respondent Ignoffo must be dismissed.

6. Respondent Arias presented a compelling argument. He advanced that neither the District nor Ms. Sanden, a fourth grade teacher of general subjects, showed that Ms. Sanden had greater competency to teach a social science class now offered by Respondent Arias. He based his assertion of the lack by Ms. Sanden of a CLAD certificate. His argument alluded to lack of proof of teaching by Ms. Sanden of a social science class. But, Respondent Arias does not possess a CLAD, and he offered no evidence that he has a greater degree of competency than Ms. Sanden. Moreover, "the District was acting within its 'discretion' in evaluating whether the qualifications" (*Royal King v. Berkeley Unified School District*, (1979) 89 Cal.App.3d 1016.) between Respondent Arias and Ms. Sanden so as to retain Ms. Sanden for the ensuing school year.

7. Board Resolution number 06-X11, as adopted on March 8, 2006, stated that it was the Board's determination that it was necessary to reduce or eliminate particular kinds of services for the 2006-2007 school year. A decline in average daily attendance was not cited as a basis for eliminating five full time equivalent certificated positions in the District's corps of teachers.

The preliminary layoff notice, dated March 9, 2006, stated that the reason for the notice was due to a decision "to reduce or eliminate particular kinds of services of the District no later than the beginning of the 2006-2007 school year. A copy of the Revised Resolution No. 06-X11 is attached hereto and incorporated herein as if set forth in length. [¶] As a result of the reductions and eliminations of services . . . , the Board has determined that it will be necessary to reduce the certificated staff by a corresponding number of full-time equivalent positions." The preliminary notice did not mention a decline in average daily attendance.

Education Code section 44955, subdivision (b), authorizes a district's governing board to terminate the services of not more than a corresponding percentage of employees whenever in any school year the average daily attendance for all schools in

the first six months has declined below the corresponding period of either of the previous school year or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year.

Education Code section 44949, subdivision (a), requires that no later than March 15 and before an employee is given notice that his or her services will not be required for the ensuing year, the governing board and the employee will be given notice by the superintendent that it has been recommended that preliminary notices be given to employees and the reason for that recommendation. The preliminary notice is intended to insure that affected employees are informed of the facts upon which they can reasonably assess the probability that they will not be reemployed. The preliminary notice must state the reasons for the recommendation. (*Karbach v. Bd. of Education* (1974) 39 Cal.App.3d 355.

A notice that specifies both grounds, that is PKS reduction/elimination and declining average daily attendance, is suspect. (See, *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App. 3d 648.) And, where a notice specifies one of the two statutory reasons for a teacher layoff, a governing board may not later attempt to justify dismissal on the other ground. (*Karbach v. Bd. of Education, supra*, 39 Cal.App.3d 355⁵.)

A governing board's decision to reduce or eliminate particular kinds of services need not be tied to any statistical computation, such as a projected decline in the number of students in the affected district. The number of terminations by a PKS reduction of certificated employees depends entirely on the district's governing board's decision regarding how many, or which, services to reduce or to eliminate. It is wholly within the Board's discretion to determine the numbers by which the District will reduce a particular service. (*San Jose Teachers Assn. v. Allen, supra*, 144 Cal.App.3d 627.)

The procedural defect or error in *Karbach* may be distinguished from the facts pertaining to this matter. Unlike *Karbach*, the Loma Prieta Joint Union School District's Governing Board did not propose layoffs for any reason not specified in the preliminary notice as sent to certificated employees. The projection of declining pupil attendance or enrollment, as offered in evidence by the superintendent, was one of a few reasons for consideration by that professional education administrator offered as the ground for teacher lay-off to the subject governing board for its decision to eliminate particular kinds of services. In this matter, the reduction of particular kinds of services was not a

⁵ In *Karbach*, the governing board gave notice to probationary teachers that such employees would not be reemployed for the ensuing school year on the ground of a decline in average daily attendance. But, at the administrative adjudication hearing, the presiding officer allowed the board to present evidence justifying the decision to eliminate positions of the affected probationary teachers on the new theory of reduction in particular services. The Court of Appeal held that the governing board had no authority to terminate the teachers for any reason not specified in the original preliminary notice and that the proposed terminations on the ground of reduction in services were not valid.

3. Evidence Code section 664 establishes a presumption that the action or official duties of a public entity, such as the District and its governing board, have been regularly performed. Respondents offer no evidence to rebut the presumption that the District has properly performed actions related to the procedures that seek the non reemployment of respondents.

4. Judgments entered by a tribunal on the stipulations of the parties have the same effect as acts tried on the merits. *John Siebel Associates v. Keele* (1986) 188 Cal.App.3d 560, 566.

The District stipulated to withdrawing the Accusation against the teacher named in Factual Finding 10. The stipulation is binding on the parties.

5. Education Code section 44955, subdivision (b), establishes that no certificated employee of a school district may be laid off if another employee with less seniority is retained to render a service that the noticed employee is "certificated and competent to render."

The District contends that its seniority list showed Respondent Ignoffo to hold neither a Multiple Subject Credential nor a CLAD. The District further contends that Respondent Ignoffo provided the District on too late a date authenticate information to correct the seniority list and thereby alter the preliminary decision to give Respondent Ignoffo notice that part of her teaching services would not be retained in a full FTE position for the ensuing school year.

The District advances that *Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, and *Fine v. Los Angeles Unified School* (2004) 116 Cal. App. 4th 1070, support the proposition that the District cannot not be held responsible for not granting respondent seniority status for information regarding certain credentials. The District further contends that Respondent Ignoffo did not emphatically point out on the seniority list that circulated before dispatch of the preliminary notice. The District's position is that, even though copies of credentials existed in the personnel file, Respondent Ignoffo did not explicitly restate in writing before March 15, 2006, that she held credentials that would have established her seniority vis-à-vis a teacher retained by the District.

Degener v. Governing Board (1977) 67 Cal.App.3d 689, does establish that after-acquired credentials, which are filed after the date of mailing of a preliminary lay-off notice, need not be considered by a school district in a lay-off action. But neither *Campbell Elementary Teacher*, *supra*, nor *Fine v. Los Angeles Unified*, *supra*, support the District's refusal to acknowledge the credentials held by Respondent Ignoffo.

fraudulent, arbitrary or capricious action. (*Campbell Elementary Teachers Assn. v. Abbot, supra*, 76 Cal.App.3d 796.)

The Loma Prieta Joint Union School District's Governing Board's decision to eliminate six (6.0) F.T.E. positions for the 2006-2007 school (which may have been based in some measure on a projected decline in enrollment of pupils for the 2005-2006 school year) was a discretionary decision that constituted a valid basis for reduction in particular kinds of service under the Education Code.

8. Except as otherwise specified, pursuant to Education Code sections 44949 and 44955 cause exists to give respondents notice of the discontinuation of full-time equivalent positions in the particular kinds of services rendered by respondents, by reason of the matters set out in Factual Findings 11 to 13 inclusive, 18 to 20 inclusive, 23 through 25 inclusive, and 41, 42 and 44.

9. The discontinuation of the subject particular kinds of service provided by each respondent relates solely to the welfare of the District and its students within the meaning of Education Code sections 44949 and 44955, by reason of the matters in Factual Finding 43.

ORDER

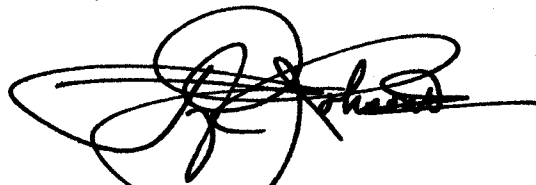
1. The Accusation is dismissed as to Respondent Debra Shoemate, by reason of Legal Conclusion 4.

2. The Accusation is dismissed as to Respondent Michele Ignoffo, by reason of Legal Conclusion 5.

3. The Accusation served Respondents Anthony Arias, Lynell Hanck, Anna Kent, Paddy O'Regan, Katherine Ray and Karren Zook is sustained.

4. Final notice may be given to Respondents Anthony Arias, Lynell Hanck, Anna Kent, Paddy O'Regan, Katherine Ray and Karren Zook that their respective services will not be required for the 2006-2007 school year because of the reduction or discontinuance of the particular kinds of services by the District.

DATED: May 5, 2006



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings