

BEFORE THE  
GOVERNING BOARD OF THE  
UKIAH UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

JESSICA BROWN, SHARON CREW,  
DENISE DOERING, CHRIS DOUTHIT,  
AARON FORD, BOYD GRIMSHAW,  
DIANE JOHNSON, KRISTINE KANEY,  
LESLIE LIND, LINDA LOGAN,  
CARMEN MATUS, DARRIN MICHAELS,  
BRET MORTON, DAVID SPAIN,  
BOBBY TAYLOR, TAMI TURNER,

Respondents.

OAH No. 2008030959

**PROPOSED DECISION**

On April 21, 2008, within a conference room of the Mendocino County Office of Education at 2240 Old River Road, Ukiah, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Margaret M. Merchat, Associate General Counsel, School and College Legal Services of California, 5350 Skylane Boulevard, Santa Rosa, California 95403, represented Dr. Lois Nash, Superintendent, Ukiah Unified School District.

James D. Allen, Attorney at Law, 726 College Avenue, Santa Rosa, California 95404, represented respondents in this matter. All respondents were present, except for Jessica Brown, who was represented by Mr. Allen. (Complainant's motion for an order under Government Code section 11520 to treat Jessica Brown as being in default, and thereby to cause her exclusion from the proceeding, was denied.)

On April 21, 2008, the parties submitted the matter and the record closed.

**FACTUAL FINDINGS**

1. On or before March 6, 2008, the District's Superintendent presented the District's Governing Board with a recommendation that the District grant authority to

the Superintendent to give notice that particular kinds of services, then offered through the District, be reduced or eliminated for the ensuing school year (2008-2009).

2. On March 6, 2008, the District's Governing Board unanimously adopted District Resolution No. 23, 2007-08, which adopted the Superintendent's recommendation.

The resolution recites that it has become necessary for the District to reduce and/or to discontinue, no later than the beginning of the 2008-2009 school year, particular kinds of services in the form of 22.76 FTE (full time equivalent) certificated positions as follows:

*High School Services*

1.0 FTE	Social Studies
1.0 FTE	English
1.0 FTE	Math
1.0 FTE	Spanish
0.2 FTE	French (one period)
1.0 FTE	Science
0.2 FTE	Journalism (one period)
0.2 FTE	Drivers' Education (one period)
0.2 FTE	Health (one period)
0.2 FTE	Creative Writing (one period)
0.2 FTE	Intramural (one period)
0.8 FTE	Excel (four periods)
0.2 FTE	Jewelry (one period)
0.2 FTE	Ceramics (one period)
0.4 FTE	ICE (In-School Suspension Instructional Services) (two periods)
1.0 FTE	Certificated Dean Services
0.2 FTE	High School Chorus (one period)
0.2 FTE	High School Band (one period)
0.2 FTE	High School Guitar (one period)
9.4 FTE	Subtotal

*Elementary School Services*

1.5 FTE	Elementary Music instructional services
3.0 FTE	Elementary Instruction
4.5 FTE	Subtotal

*Other Services*

1.0 FTE	Counselor II Services
0.5 FTE	SPACE (Independent Study)

1.5 FTE Subtotal

*Continuation High School*

0.14 FTE	Science (one period)
0.14 FTE	World History (one period)
0.14 FTE	Math (one period)
0.14 FTE	PE (one period)
0.14 FTE	Ag Science (one period)
0.28 FTE	English (two periods)

0.98<sup>1</sup> FTE Subtotal

*Special Education*

1.0 FTE	SH Instructional Services
1.0 FTE	RSP Instructional Services

2.0 FTE Subtotal

*Middle School Instructional Services*

.34 FTE	P.E. (two periods)
.17 FTE	English/Language Arts (one period)
.34 FTE	Math (two periods)
.17 FTE	Science (one period)
.17 FTE	Social Studies (one period)
1.0 FTE	English Language Development Instructional Services
1.17 FTE	Careers and Technology (7 periods)
1.0 FTE	Math (6 periods)

4.36 FTE Subtotal

The grand total equals 22.74<sup>2</sup> FTE as the designated teacher positions selected for reduction or discontinuance of services as provided by the District's certificated employees for the ensuing 2008-2009 school year.

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<sup>1</sup> The resolution sets out under "Continuation High School:" "Total instructional periods = 1.0 FTE."

<sup>2</sup> The resolution prescribes a total of full-time equivalent employee positions to be eliminated or reduced to stand at 22.76.



3. By individual letters, dated March 12, 2008, the District's Superintendent dispatched preliminary notices to a number of FTE position holders, including each respondent, that the District's Governing Board had an intention to reduce or to discontinue 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 that each had respectively worked.

Also the letter, dated March 12, 2008, which had attached to it the District's resolution and other pertinent documents, conveyed to each respondent a right to file a request for hearing "to determine if there is cause for not reemploying [the named respondent] in the ensuing school year."

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

5. 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.

6. On April 3, 2008, the District's Superintendent, through her designee, signed the accusation, which included an attachment (marked as "Exhibit B" to the document) that listed the names of 27 individuals, including the 16 respondents herein. Then the District's Superintendent, through her designee, timely served upon each respondent the Accusation and related documents. Each respondent filed timely an executed Notice of Defense.

7. All pre-hearing jurisdictional requirements were met.

8. Mr. Bryan Barrett, in his capacity as the District's Assistant Superintendent for Personnel (Human Resources) and Student Services, appeared at the hearing. He provided competent, credible and persuasive evidence at the hearing of this matter.

The prospective elimination of particular kinds of services for the 2008-2009 school year directly results from a prospective shortfall in money for the District's quest for a balanced budget. In order to partially aid the District in crafting a reasonable budget for the ensuing school year, the Superintendent recommended to the Governing Board that certain certificated positions be eliminated due to lack of funds.

On March 6, 2008, the Governing Board adopted a resolution that identified the particular kinds of services for the next year as a means to handle the pressing financial difficulties faced by the District.

9. Assistant Superintendent Barrett further established that upon learning that the District was required to initiate layoff proceedings for teacher employees of the District, the assistant superintendent with his staff took reasonable and lawful steps to develop the District's seniority list for the District's teachers. He caused news to be disseminated among certificated employees of the District regarding the existence of a draft of the seniority list so that each employee could exercise an opportunity to verify the accuracy of the data that pertained to each certificated employee. And Assistant Superintendent Barrett required each certificated teacher to confirm the credential or credentials held by the teacher.

Assistant Superintendent Barrett accurately attended to identifying the District's teachers who were properly designated as temporary-employee teachers. He studied and set forth on the District's 2007-2008 seniority list dates calculated as the hire dates or first date of paid service for all teachers to the District.

The Superintendent, with the aid of Assistant Superintendent Barrett, recommended that the District eliminate 22.76 (or 22.74) full-time equivalent positions for the ensuing school year. The decision was reached through the study and analysis of a variety of professional personnel in consultation with the Superintendent.

10. Before March 6, 2008, the Superintendent's office established criteria for tie-breaking mechanism for teachers who had same dates of paid service to the District so as to develop the District's seniority list for the year 2008-2009. On March 6, 2008, the Board adopted Resolution No. 22, 2007-08 that sets forth criteria for tie-breaking for contests regarding seniority where teachers had identical first days of paid service to the District. The District's tie-breaking criteria were grounded upon purely objective criteria to address pressing needs of the District. The system developed in executing tie-breaking criteria involved a point system that weighed ten categories that measured employees hired respectively on August 26, 2003; August 24, 2004; August 23, 2005; and August 22, 2006.

11. On March 11, 2008, the District adopted Resolution 25, 2007-08, regarding criteria in establishing which certificated employees would be exempt from the order of layoff, which was otherwise called the District's "skipping" methodology.

12. Ms. Debbie Ornelas (Ms. Ornelas) offered evidence in support of Complainant.

Ms. Ornelas is employed by the District as the Executive Assistant to the Superintendent and the Governing Board. In the past she acted as administrative assistant in the District's Personnel Department.



Ms. Ornelas participated in aiding the Superintendent to develop the District's current "2007-08 Certificated [Employees] Seniority Report [with] Credentials." She became familiar with the teaching assignments of teachers with the District through her work of monitoring assignments of teachers.

Ms. Ornelas described the methods used by Complainant in applying in a consistent and rational fashion the tie-breaking criteria in determining the order of termination among certificated employees with the same date of paid service to the District. Ms. Ornelas offered persuasive evidence regarding the distribution of points to various teachers based upon analysis of such person's record of credentials and certificates.

Ms. Ornelas further offered compelling evidence regarding the District's objective development, and execution, of criteria to determine certificated personnel whom the District seeks to exempt from the order of layoff by reason of credentials, competence, or experience in the process called "skipping." Ms. Ornelas showed that the District's criteria were reasonably applied in all instances germane to the hearing in this matter.

#### *Application of Tie-Breaking Criteria as Among Various Teachers*

##### *a. Bobby Taylor versus Pilar Crooks*

13. For the ensuing school year, the District rationally implemented a mechanism for determination of whether to retain either the services of Mr. Bobby Taylor or the services of Ms. Pilar Crooks, who both possess a first date of paid service to the District of August 22, 2006. Each teacher is a high school teacher and holds a multiple subject credential. Each holds a CLAD and other credentials identified as "CC/Lang/Acad/Dev/cert." In its execution of a tie-breaking formula as between Ms. Crooks and Mr. Taylor, the District will retain the services of Mr. Bobby Taylor who has conversational Spanish skills that enables him to communicate with Spanish speaking students and parents.

Resolution Number 25, 2007-2008 specifies, among other things:

The Board of Trustees finds that to make effective . . . employment decisions, objective criteria must be established. This will ensure that District and its students are treated fairly and equitably. To this end, the needs of the District and its students will be best served by using the following criteria in establishing which certificated employees will be exempt from the order of layoff: . . . d. Certificated personnel who possess conversational Spanish skills that are used in the course of their work day to assist students and families. . . .

The District is reasonable in its determination that Mr. Bobby Taylor has such competency in speaking conversational Spanish that he may be retained as a District certificated employee for the ensuing school year, while Ms. Pilar Crooks may be given a final notice of the District's administrative action for the reduction of its certificated personnel for the ensuing school year.

*b. Chris Douthit versus David Spain*

14. In contemplation of a prospective retention of a teacher for the provision of instruction in English at the high school level during the coming school year, the District has applied tie-breaking criteria as between Mr. Chris Douthit and Mr. David Spain. Each of the certificated employees occupies a first date of paid service to the District of August 22, 2006.

The District's use of its point distribution tie-breaking scheme reasonably resulted in five points being ascribed to Mr. Douthit, while eight points were granted to Mr. Spain. Mr. Spain's points exceed the points of Mr. Douthit for the purpose of retaining teacher services for the ensuing school year.

The District is reasonable in its determination that Mr. Spain has such competency in amassing points under tie-breaking criteria that he may be retained in an English teacher's position at the high school while Mr. Douthit may be given final document of the layoff action that impacts him.

*District's Exercise of Skipping Procedures after Application of Tie-Breaking*

*Ms. Jessica Brown versus Ms. Tami Turner*

15. In the area of teachers who are competent to instruct in chemistry, two teachers were affected by the tie-breaking criteria, namely Jessica Brown and Tami Turner. Each teacher has a first date of paid service to the District of August 23, 2005. Ms. Brown has a single subject credential in geosciences, while Ms. Turner has a single subject credential in biological sciences. Although both teachers earned seven points on the tie-breaking point system, the Superintendent or her designee views Ms. Turner as being more competent to teach chemistry in the District during the ensuing year as opposed to Ms. Brown.

Despite her credential in biological sciences, Ms. Turner has taught chemistry to student of the District within three years.



Resolution No. 25, 2007-2008 specifies, among other things:

The Board of Trustees finds that to make effective . . . employment decisions, objective criteria must be established. This will ensure that District and its students are treated fairly and equitably. To this end, the needs of the District and its students will be best served by using the following criteria in establishing which certificated employees will be exempt from the order of layoff: . . . f. Certificated personnel who have actual and recent experience (within 3 years) in teaching the particular skill or domain within a broad subject area and the skill/domain is a service being retained by the District.

The District is reasonable in its determination that Ms. Turner has such competency in teaching chemistry that she may be retained while Ms. Brown may be given a final notice of the District's administrative action for the reduction of its certificated personnel for the ensuing school year.

*Reasonable Basis to Skip a Choral/Voice Teacher*

16. The vocal music teacher for the District's high school is Ms. Denise Doering, who has a first date of paid service to the District of August 23, 2005. Among other things she teaches chorus, but her position is to be reduced by 0.2 FTE from a current level of 1.0 FTE. The District plans to retain Ms. Doering for the next year to teach 0.8 FTE in high school chorus due to her education, training, and experience in teaching chorus and vocal lessons that demonstrate her competency in that academic area.

Resolution No. 25, 2007-2008 specifies, among other things:

The Board of Trustees finds that to make effective . . . employment decisions, objective criteria must be established. This will ensure that District and its students are treated fairly and equitably. To this end, the needs of the District and its students will be best served by using the following criteria in establishing which certificated employees will be exempt from the order of layoff: . . . f. Certificated personnel who have actual and recent experience (within 3 years) in teaching the particular skill or domain within a broad subject area and the skill/domain is a service being retained by the District.

Currently, Ms. Doering teaches vocal lessons and chorus at both the high school and middle school level. But, there are respondent music teachers who are subject to the layoff and who are more senior than Ms. Doering. Those other music teachers, who



have greater seniority than Ms. Doering but are subject to the layoff action, are Mr. Boyd Grimshaw, Ms. Leslie Lind, and Mr. Darrin Michaels.

Mr. Grimshaw has a first date of paid service to the District of August 29, 2000. For the present school year, Mr. Grimshaw teaches in a 0.6 FTE of high school teacher position. Also, he teaches one period of high school band that amounts to a 0.2 FTE position. During this year, Mr. Grimshaw possesses a 0.4 FTE position in the provision of services for the ICE (In-School Suspension Instructional Services) program. All of those positions are to be eliminated. Mr. Grimshaw has a single subject credential in music; but, he has never taught chorus for the District.

Ms. Leslie Lind is another music teacher, who has a higher position on the District's seniority list than Ms. Doering. Ms. Lind has a first day of paid service of August 21, 1997. She has a single subject credential in music, and she teaches at the sixth grade of the elementary school level on a district-wide basis. However, there is no evidence that she is competent to teach vocal or choral music.

Mr. Darrin Michaels has a first date of paid service to the District of August 31, 1995. He holds a single subject credential in music, and he serves as middle school teacher at Pomolita Middle School. However, there is no evidence that he is competent to teach vocal or choral music.

17. Ennis James Willeford offered evidence on behalf of Complainant.

Mr. Willeford is employed by the District as principal of Ukiah High School. He holds an "administrator's clear" credential and a teacher's credential in music. (He taught music for 14 years before becoming an administrator.)

Mr. Willeford persuasively opined that teaching vocal music necessitates a teacher to possess particular experience, education and training that are not held by a teacher of only instrumental music.

Mr. Willeford established that Ms. Doering has a master's degree in music education. And, Ms. Doering has taught vocal music at the college level as well as the high school level for many years.

Mr. Willeford provided credible evidence that Ms. Doering currently teaches, in a highly commendable manner, the choirs at the District's high school.

And Mr. Willeford acknowledged that the District will offer a reduced scope of vocal music at the high school during the coming school year. The principal for Ukiah High School noted that although both Ms. Doering and Mr. Grimshaw hold a credential to teach music, Ms. Doering has competency based upon her experience, training and knowledge that Mr. Grimshaw lacks to competently teach vocal music at the high school

level because he has neither taught vocal music to students of the District nor taught any vocal or choral music to any student within the recent past, that is within three years.

And, he observes that Mr. Grimshaw teaches guitar at the high school level under a single subject credential in music. A reasonable inference is drawn from the evidence presented by Mr. Willeford that he has a view that Mr. Grimshaw is not competent to teach vocal music.

Mr. Willeford has never observed either Mr. Michaels or Ms. Lind teach vocal music.

18. Ms. Ornelas, the Superintendent's Executive Assistant, established that Ms. Lind has never taught vocal music at the District's high school. Ms. Ornelas expressed her personal knowledge that Mr. Grimshaw has not taught vocal music in any teaching assignments with the District. And, Ms. Ornelas showed that Mr. Michaels has not taught vocal music at the District's high school.

19. The Superintendent, or her designee, was reasonable in her determination that three teachers, who have higher placement on the seniority list than Ms. Doering, do not possess her competency to teach high school chorus. The Superintendent, or her designee, reasonably determined that Ms. Doering has particularly keen expertise in teaching vocal music, while three other music teachers, although senior to Ms. Doering, have not shown the District evidence of having such experience or qualification as to establish competency to teach vocal music. Hence, there is sufficient reason to warrant the District exercising its "skipping" prerogative to retain Ms. Doering while the layoff action may operate against the three other music teachers.

#### *Respondents' Contentions*

20. Respondents contend that the District's proposed action is procedurally defective and improper insofar as the application of tie-breaking criteria for the purpose of rating those certificated employees who share identical first-date-of-paid service in probationary positions with the District. Respondents assert that the prospective layoff of the subject credentialed respondents, as well as teachers deemed to be temporary, does not fully account for future standing of recently hired teachers on the District's prospective seniority list.

On the matter of tie-breaking criteria, Respondents contend that the resolution promulgated by the Governing Board is misleading or fatally ambiguous as the criteria assigns points for credentials for certain "hard to find" positions or program services and then gives points for credentials to teach "in a particular program of need" by the District.



Also Respondents contend that the Governing Board has "over-noticed" for layoff a number of music teachers whose services should be retained. And respondents contend that the District is not acting lawfully by retaining the services next year of Ms. Doering, who is a music teacher, although she has a junior position on the District's seniority list as measured against three other music teachers, namely Mr. Grimshaw, Ms. Lind and Mr. Michaels.

Respondents aver that the District incorrectly applied or ranked seniority dates for certain respondents who actually shared the same date of first paid service to the District. Respondents argue that ten teachers, who have August 22, 2006, as the first date of paid service, were not afforded due process protections when the District failed to timely circulate or widely broadcast tie-breaking criteria for review and input from the affected teachers.

Respondents contend that the District's prospective layoff of credentialed teachers is unlawful because the reduction or elimination of services falls below a minimum mandated array of services allowed by law.

Respondents contend that the District employs a number of certificated teachers in categorically funded positions and that those teachers, in being improperly classified by the District as temporary employees, have been summarily terminated without due process of law in violation of principles highlighted in *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1287. Respondents' argument further advances that the exclusion from the proceeding of about 12 teachers, who are supposedly deemed as temporary employees, distorts the District's seniority list relative to the named respondents so as to render the entire layoff action fatally flawed as being arbitrary and capricious. Respondents also aver that such exclusion of teachers designated as temporary interferes with a fair process for prospective application of the rehiring order of teachers who are subject to layoff action.

Respondents' contentions are without merit and are rejected.

*Teachers in Categorically Funded Programs and Teachers Classified as Temporary Employees*

21. Complainant, through Assistant Superintendent Barrett, demonstrated that the District's determination regarding the classification of individual teachers as being temporary certificated employees, although about a dozen of those individuals performed work in categorically funded programs, was lawful and correct.

### *Individual Respondents*

22. Respondent Boyd Evans Grimshaw, Jr. (Respondent Grimshaw) offered evidence at the hearing.

Respondent Grimshaw is employed by the District at Ukiah High School as a music teacher and as an ICE (in-school suspension) supervising teacher.

Since August 2000, which marked his first date of paid service to the District, Respondent Grimshaw has taught music. During the current school year, he teaches one guitar class, two concert band classes and two periods of ICE. In the past, Respondent Grimshaw has taught jazz band classes. But, Respondent Grimshaw has never taught classes involving vocal music or a chorus class over the eight school years that the District has employed him as a teacher.

Respondent Grimshaw noted that his clear credential "came through" during the past year, namely 2007. (He held a credential, which dated to 1998, in the State of Nevada in music for students in "K through 12." In Nevada, he taught vocal music over four semesters at the high school level.)

However, Respondent Grimshaw provided insufficient, credible evidence that the District has retained any teacher junior to him for which Mr. Grimshaw possesses a credential and is currently competent to teach. Nor did Respondent Grimshaw establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects his teacher position with the District.

23. Respondent Christopher Douthit (Respondent Douthit) provided evidence at the hearing of this matter.

The District employs Respondent Douthit as an English teacher at Ukiah High School. He has a first date of paid service to the District as of August 22, 2006. He holds a single subject credential in English.

However, Respondent Douthit provided no competent evidence that the District has retained any teacher junior to him for which Mr. Douthit possesses a credential and is currently competent to teach. Nor did Respondent Douthit establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects his teacher position with the District.

24. Respondent Linda Logan (Respondent Logan) offered evidence at the hearing of this matter.



Respondent Logan is employed by the District at Frank Zeek Elementary School. She is an ELD teacher as she provides instruction in the English language to "non-native speakers." Respondent Logan is a part-time teacher as she holds a 0.4 FTE position.

Respondent Logan holds a life special studies specialist credential as a reading specialist as well as a life standard elementary credential of self-contained subjects instruction with emphasis in social science. And Respondent Logan possesses a certificate in staff development. She is capable of offering subjects under the "SDAIE/ELD" authorization.

Respondent Logan has a first date of paid service to the District of August 22, 2006. For the current school year, she holds the 0.40 FTE position as a "categorically funded" resource teacher at the Frank Zeek School. She operates on a "pull-out" arrangement whereby she pulls students from other classrooms to provide instruction as she does not have a fixed group of students who are assigned to her.

However, Respondent Logan provided no competent evidence that the District has retained any teacher junior to her for which Ms. Logan possesses a credential and is currently competent to teach. Nor did Respondent Logan establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District.

25. Respondent Sharon Lou Crew (Respondent Crew) provided evidence at the hearing of this matter.

The District employs Respondent Crew in its ELD program at Frank Zeek Elementary School. She currently works in a 0.4 FTE position, which she has had since December 6, 2006.

Respondent Crew persuasively offered that her correct first date of paid service to the District is December 6, 2006, rather than December 16, 2006, as shown on the District's Seniority List. But, on cross-examination, Respondent Crew noted that she had "signed off" on the information on the District's seniority list when a draft was circulated among teachers; however, when she examined her personal records she telephoned the District's office to ask for a change to the seniority list. Respondent Crew acknowledged that correcting her seniority date would not bestow on her an ability to bump any person who might be junior to her on the seniority list whose services are being retained for the ensuing school year.

Respondent Crew provided no competent evidence that the District has retained any teacher junior to her for which Ms. Crew possesses a credential and is currently competent to teach. Nor did Respondent Crew establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District.

### *The District's Reasonable Basis to Proceed*

26. For the respondent certificated teachers subject to the layoff action, no competent and credible evidence establishes that as a result of the proposed elimination of the full-time equivalent positions the District will retain any teacher who is junior to such affected respondents to perform services for which respondents have been certificated or found to be competent to teach in such FTE positions that are subject to elimination or reduction for the next school year.

27. The recommendation by the District's Superintendent and the Board's decision to eliminate or discontinue a total of 22.76 FTE positions, including the positions held by respondents who are affected, were neither arbitrary nor capricious. Rather, Complainant's recommendation and the Board's decision were within the proper exercise of the District's discretion.

28. The District's proposed elimination or discontinuation of a number of FTE positions, including the positions respectively held by most of the respondents, for the ensuing school year is related to the welfare of the District and its overall student population.

### LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44944 and 44955.

2. The District provided all notices and other requirements of Education Code sections 44944 and 44955. This conclusion of law is made by reason of the matters set forth in Factual Findings 1 through 7, inclusive.

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. *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627 establishes that a school district need not consider positively assured attrition that occurs between the date of issuance of the preliminary notice of a Board determination that certificated employees not be reemployed for the following school year by reason of a reduction in particular kinds of services and the date for dispatch of the final notice that determines the number of certificated employees that are to be terminated. "In PKS cases the determination of the amount by which a service is to be reduced is the determination of the number of positions to be eliminated." (*San Jose Teachers Assn. v. Allen, supra*, 144 Cal.App.3d at 636.)



At the hearing, Complainant offered evidence that the District has received 19 or more letters from certificated teachers who plan to retire from employment for the ensuing year. Complainant provided evidence regarding the District's needs to identify junior teachers, who are named as respondents herein, as certificated employees who may be offered contracts in being retained for the ensuing year.

5. Among other things, Complainant noted that music teacher Ms. Doering has competency that prompted the Superintendent to recommend retaining her rather than three other music teachers who have earlier first date of service (Mr. Grimshaw, Ms. Lind and Mr. Michaels) because Ms. Doering has experience, training and skills that establish her competency as a vocal lesson or chorus teacher.

The Superintendent, or her designees, reasonably employed skipping procedures by reason of Factual Findings 11, 12, and 16 through 19.

6. As to the tie-breaking formula, the Superintendent concluded that due to Mr. Bobby Taylor's competency to engage in conversational Spanish, the Superintendent recommends under a tie-breaking analysis that Mr. Taylor offers the District the ability for greater service to the District's mission than Ms. Pilar Crooks. And, the Superintendent was reasonable in her use of tie-breaking to determine that Mr. David Spain has competency that Mr. Douthit lacks.

The Superintendent, or her designees, rationally implemented the tie-breaking criteria resolution by reason of Factual Findings 12 through 15 inclusive.

7. With the retirement of a teacher of chemistry, the Superintendent applied its tie-breaking criteria as to two teachers of sciences classes that were subject to reduction. After the tie-breaking criteria were applied, the subject teachers had the same number of points. The Superintendent was compelled to assess which of the two teachers had the requisite competency to teach chemistry. Ms. Tami Turner, a biology teacher, who has actual and recent experience in teaching chemistry, has competency in that subject. The Superintendent reasonably determined that Ms. Turner may be retained rather than Ms. Jessica Brown, a teacher of geoscience, who may be given final notice of her layoff.

8. As Complainant advanced in its reasonable interpretation of *San Jose Teachers Assn. v. Allen*, the District is not required to consider positively assured attrition through the dates statutorily required for the execution of the teacher layoff administrative actions. The District may exercise prudence in marshalling its limited financial resources in making a determination for the retaining of important teacher resources. Hence, the District is not engaged in an unlawful exercise of "over noticing" layoffs of certificated employees.

*Ruling on Respondents' Motion to Dismiss Accusation of Certain Certificated English Teachers*

9. In their motion for dismissal of the accusation herein, Respondents cite *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1287. The argument was made that the District's failure to include 35 certificated teachers who occupy positions as temporary employees, especially those in categorically funded programs, was unlawful. But, respondents did not offer adequate evidence that the District erred in designating certain teachers as temporary employees. Moreover, teachers, who are classified as temporary employees, have no standing in the instant proceeding. As Complainant noted, should any teacher who was not included in the instant layoff action have further grievance in being designated as a "temporary" employee, such individual has recourse to an action in the California Superior Court.

Respondents' motion to dismiss the accusation on the ground that certain temporary teachers were excluded from the hearing process is denied, by reason of Factual Finding 21.

*Ultimate Determinations*

10. Pursuant to Education Code sections 44944 and 44955, cause exists for the District to eliminate or reduce particular kinds of services for the ensuing year where such services are now offered in District schools. And cause exists to give certain respondents notice that for the ensuing school year they will not be reemployed to provide services now rendered by such respondents. These determinations are made by reason of the matters set out in Factual Findings 8 to 12 inclusive, 26 and 27.

11. 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 28.

ORDER

1. The Accusation is dismissed as to Respondents David Spain, Bobby Taylor, Tami Turner, and Denise Doering.

2. The final notice may be given to Jessica Brown, Sharon Crew, Chris Douthit, Aaron Ford, Boyd Grimshaw, Diane Johnson, Kristine Kaney, Leslie Lind, Linda Logan, Carmen Matus, Darrin Michaels, and Bret Morton, that their respective services will not be required for the 2008-2009 school year because of the reduction or discontinuance of the particular kinds of services by the District.



3. Respondent Sharon Lou Crew is granted a date on the seniority list of December 6, 2006.

DATED: May 6, 2008

A handwritten signature in black ink, appearing to read "Perry O. Johnson", written over a horizontal line.

PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings