

BEFORE THE
GOVERNING BOARD OF THE
ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

OAH No. 2010030179

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE ROSEVILLE JOINT
UNION HIGH SCHOOL DISTRICT,

Respondents.

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, in Roseville, California, on April 6, 2010.

Terry Filliman, Attorney at Law, represented the Roseville Joint Union High School District (District).

Michael McCallum, Attorney at Law, represented the respondents, who are listed on Attachment A hereto.

Evidence was received on April 6, 2010. The record was left open to allow the parties to submit legal citations in support of their arguments. On April 9, 2010, the District submitted its list of citations, which was marked for identification as Exhibit 22. On April 9, 2010, respondents submitted their list of citations, which was marked for identification as Exhibit A. The record was closed and the matter was submitted for decision on April 9, 2010.

FACTUAL FINDINGS

1. On March 2, 2010, the District's Board of Trustees (Board) adopted Resolution No. 1002, entitled "Resolution of the Roseville Joint Union High School District Board of Trustees Relative to the Reduction or Elimination of Particular Kinds of Certificated Services" (PKS Resolution). Pursuant to the PKS Resolution, the Board determined that it was necessary and in the best interest of the District to reduce or eliminate certain particular kinds of services (sometimes referred to herein as PKS) and to decrease a corresponding number of certificated District employees not later than the beginning of the 2010-2011 school year. In the PKS Resolution, the Board directed the Superintendent to

send appropriate notices to all employees whose services will be terminated by virtue of the PKS reductions and eliminations. The Board also directed the Superintendent to make assignments and reassignments in such manner that certificated employees are retained to render any service which their seniority and qualifications entitle them to render. The PKS reductions and eliminations are based solely upon economic reasons, and are not related to the skills, abilities or work performance of the affected teachers.

2. The PKS Resolution identified the following particular kinds of services for reduction or elimination:

A. High School Teaching Services:

1. Athletic Director Release Periods (GBHS, OHS)	.67 FTE ¹
2. Activities Director Release Periods (RHS, WHS, AnHS)	1.00 FTE
3. Librarians, .50 FTE at each Comprehensive Site	2.50 FTE
4. Special Education Academic Lab	2.00 FTE
5. English	6.17 FTE
6. Math	5.50 FTE
7. Science (Physical and Life Science)	2.83 FTE
8. Social Science	2.00 FTE
9. Spanish	.50 FTE
10. Drama	.33 FTE
11. Family and Consumer Sciences	.50 FTE
12. Physical Education	.33 FTE
13. Business (at GBHS)	.33 FTE
14. Web Design, Computer Applications	1.00 FTE
15. 3D Animation, Advanced Multimedia	.67 FTE
16. Construction Technology	.67 FTE

B. High School Certificated Support Services:

1. Counselor	2.00 FTE
2. EL Coordinator	.67 FTE

C. Administrative Services:

1. Assistant Principals (.17 FTE, two each at GBHS, OHS, RHS, and WHS)	1.33 FTE
2. Assistant Principal (Adelante High School)	.50 FTE

Total 31.50 FTE

¹ "FTE" stands for full-time equivalent. According to the District, a one-semester class is a .17 FTE, and a two-semester class is a .33 FTE.

3. The PKS Resolution set forth the District's competency criteria as follows:

That "competency" for the purposes of Education Code section 44955, 44956 and 44957 shall be met based upon (1) current possession of a preliminary or clear credential for the subject matter, grade level or pupil personnel services to which the employee will be assigned at the beginning of the 2009-10 school year; and (2) the employee must have taught at least one subject within the department of the proposed assignment, taught in alternative education, or performed the non-teaching service (*e.g.*, pupil personnel) for one semester term within the District in the past ten school years (*e.g.*, 2000-2001 or later).

4. In addition, the PKS Resolution set forth the District's tie-breaking criteria as follows:

That as between employees who first rendered paid service on the same date, the order of termination and reemployment pursuant to Education Code sections 44955 and 44846 shall be based solely on the needs of the District and the students thereof, as determined by applying the point system described herein. This system shall be applied only where the implementation of layoffs or reemployment rights actually impacts two or more employees with the same first date of paid service and is applied only to those employees. In case of each tie, points shall be granted to each affected employee based upon all the following criteria. The points for each employee shall be totaled and the employees ranked from highest to lowest with the lowest being subject to layoff and next lowest being subject to layoff, etc. For reemployment, the employee with the highest total shall be reemployed first and so on. In the case that two or more employees remain tied by point total after totaling points for criteria a-h and the tie must be broken to determine a layoff, then criteria i shall be invoked.

- a. Possession of a currently valid preliminary or clear California teaching credential – *three points*.
- b. Possession of one or more additional valid subject matter authorizations (excluding supplemental authorizations) – *one point for each additional authorization*
- c. Possession of a National Board Certification for teaching – *two points*.
- d. Possession of one or more language certifications (*e.g.*, LDS, CLAD, SB 1969, SB 395, BCC, BCLAD, Certificate of Completion

of Staff Development) authorizing instruction to English Learners – *one point*.

- e. Assignment during the 2009-2010 school year teaching in a program primarily for severely handicapped or emotionally disturbed students – *two points*
- f. Possession of a master's or doctorate degree – *one point for each degree*.
- g. Service during 2009-2010 supervising one of the following school sponsored extra curricular activities: athletic director, high school head or assistant coach, student activities director, yearbook advisor, ASB leadership advisor, choir director, band director, drama director, dance director or newspaper advisor – *one point for each activity up to three points maximum*.
- h. Assignment during the 2009-2010 school year teaching International Baccalaureate courses, Advanced Placement courses, Project Lead the Way courses, AVID courses or ELD courses – *one point for each course up to three points maximum*.
- i. In any case where a tie results after calculating points for all the above criteria, a random drawing by lot will be conducted for each tie by the Assistant Superintendent for Personnel Services in the presence of an authorized representative of the Roseville Secondary Education Association.

5. Pursuant to the PKS Resolution, on March 8, 2010, Tony Monetti, Superintendent of the District, gave notice to the Board of his recommendation that certain identified certificated employees be given written notice that their services would not be required for the 2010-2011 school year as provided in Education Code sections 44949 and 44955.²

6. On or about March 4, 2010, Ronald Severson, Assistant Superintendent, Personnel Services, sent preliminary layoff notices to the certificated employees identified for layoff. The preliminary layoff notices enclosed a copy of the PKS resolution and informed the certificated employees of their right to request a hearing. In response to the preliminary layoff notices, the District received 23 requests for hearing. On March 18, 2010, Mr. Severson sent letters to the 23 certificated employees who requested a layoff hearing, serving upon them the Accusation, Statement to Respondent, form Notice of Defense, Notice of Hearing and relevant statutes, and informing them of their right to file a notice of defense if they desired a hearing. On March 19, 2010, a Notice of Defense was served on behalf of

² All further statutory references are to the Education Code unless otherwise indicated.

the 23 certificated employees who desired a hearing, all of whom are respondents in this matter.

7. Attached hereto as Attachment A is a list of all respondents. Respondents are currently certificated employees of the District. Each respondent was properly and timely served with a preliminary layoff notice and timely requested a hearing. Each was also properly and timely served with the Accusation, Statement to Respondent, form Notice of Defense, Notice of Hearing and relevant statutes, and had filed on their behalf a timely Notice of Defense.

8. At the hearing, the District rescinded the preliminary layoff notice served upon respondent Jessica Fork. The District reduced the proposed layoff of respondent Amy Shishido from 1.0 FTE to .50 FTE, and the proposed layoff of Mark Armstrong from 1.0 FTE to .50 FTE.

9. The PKS Resolution provides that the Board “has considered all positively assured attrition, including deaths, resignations, retirements and other permanent vacancies, for 2010-2011 which has occurred to date in determining the needed services to be reduced or eliminated.” Mr. Severson testified that all positively assured attrition had been considered when the District made its layoff determinations. There was no evidence presented at the hearing to indicate that the District failed to properly take into consideration any positively assured attrition.

Angela Ash

10. Angela Ash is a respondent in this matter. Her seniority date with the District is August 19, 2008. She is a probationary employee. She has a preliminary single subject credential in Home Economics and Health Sciences, and an English Learner Authorization. She holds a .83 FTE at Granite Bay High School.³ She is currently teaching two periods of Culinary Tech. As a result of the reduction of .50 FTE of Family and Consumer Sciences as set forth in section A.11 of the PKS Resolution (Finding 2), the District has proposed to reduce .50 FTE of Culinary Tech and, correspondingly, to reduce .50 FTE of Ms. Ash’s .83 FTE.

11. Lisa Sherman is also a probationary employee of the District with a seniority date of August 19, 2008. She has a preliminary single subject credential in Health Science. She is currently teaching three periods of Health and Wellness at Antelope High School. The District did not serve a preliminary layoff notice on Ms. Sherman.

12. At the hearing, Ms. Ash argued that she is credentialed and competent to teach Health and Wellness and should be permitted to bump into .50 FTE of Ms. Sherman’s Health

³ The Seniority List indicates that Ms. Ash holds a .66 FTE position, but the Revised Layoff/Bump Chart developed by the District states that Ms. Ash holds a .83 FTE position. The parties did not address this discrepancy during the hearing. The .83 FTE set forth in the Revised Layoff/Bump Chart is accepted as the correct FTE for Ms. Ash for the purposes of this proposed decision.

and Wellness assignment. The District disputed Ms. Ash's argument, asserting that Ms. Ash did not meet the competency criteria set forth in the PKS Resolution (Finding 3), and that, even if Ms. Ash were deemed to be competent, she cannot bump Ms. Sherman because Ms. Sherman scored more points than Ms. Ash when the tie-breaking criteria (Finding 4) were applied.

13. Ms. Ash was a student teacher for a Health and Safety class at Roseville High School during the second term of the 2007-2008 school year. She asserted that, as a result of her student teaching, she meets the competency criteria set forth in the PKS, which requires that a certificated employee "must have taught at least one subject within the department of the proposed assignment ... for one semester term within the District in the past ten school years (*e.g.*, 2000-2001 or later)."

14. The District argued that the competency criteria in the PKS Resolution should be interpreted to require that a teacher must have been employed by the District as a certificated employee at the time he or she taught in order to receive recognition for teaching a subject in the past 10 years.

15. The plain language of the PKS Resolution's competency criteria does not support the interpretation the District seeks. There is no requirement in the PKS Resolution that the teacher had to have been a certificated employee of the District when he or she taught the subject for which he or she seeks recognition. From the information presented at the hearing, when Ms. Ash student-taught, she assumed all the duties and responsibilities of a teacher. Given this evidence and the plain language of the PKS Resolution, Ms. Ash established that she met the PKS Resolution's competency criteria to teach the Health and Wellness class currently being taught by Ms. Sherman.

16. Even though the District disputed that Ms. Ash complied with the competency criteria, the District applied the tie-breaking criteria set forth in the PKS Resolution (Finding 4), and determined that Ms. Sherman prevailed, receiving six points to Ms. Ash's five points. Ms. Ash did not dispute the number of points the District assigned to Ms. Sherman. Ms. Ash asserted, however, that the District should have assigned her one more point for the extracurricular culinary internship program she is currently supervising. The District pays her a \$2,000 stipend per semester to supervise this extracurricular activity. The District argued that this extracurricular activity did not qualify for any points under the tie-breaking criteria established by the Board.

17. Section g. of the tie-breaking criteria (Finding 4) provides that a certificated employee will obtain a point for the following school-sponsored extracurricular activities, up to a total of three points: "athletic director, high school head or assistant coach, student activities director, yearbook advisor, ASB leadership advisor, choir director, band director, drama director, dance director or newspaper advisor." Mr. Severson testified that the Board chose to give points for the specific extracurricular activities identified in section g. because the Board determined that these activities added value to the District, its schools and/or its programs, and that a teacher could not be granted points for teaching other extracurricular activities that were not specifically identified in the PKS Resolution.

18. Mr. Severson's testimony was persuasive. In section g. of the tie-breaking criteria (Finding 4), the Board listed the particular extracurricular activities for which certificated employees would receive points. The list does not include the extracurricular culinary internship program Ms. Ash is currently supervising. It was within the discretion of the Board to establish its tie-breaking criteria. Respondents did not establish that the Board engaged in arbitrary or capricious action or violated its discretion by choosing to give points only for certain specified extracurricular activities. Because the extracurricular culinary internship program supervised by Ms. Ash is not one of the extracurricular programs specifically listed in the tie-breaking criteria, Ms. Ash cannot be given any points for it. Because she cannot be given any points for that program, Ms. Ash did not establish that she should be permitted to bump into .50 FTE of Ms. Sherman's Health and Wellness teaching assignment.

Leadership Course

19. The parties disputed whether any of the respondents should be allowed to bump into an elective Leadership course currently taught by Emmalyn Kisaka.

20. Ms. Kisaka is employed by the District as a probationary teacher. Her seniority date is August 19, 2008. She has a clear single subject credential in Physical Education, with a supplementary authorization in Marketing/Entrepreneurship. She also has a clear Adapted Physical Education Specialist credential and an English Learner Authorization. She teaches at Antelope High School. In the fall semester of the 2009-2010 school year, she taught three periods of Physical Education; in the spring semester, she is teaching two periods of Physical Education and one period of Leadership. The District did not serve her with a preliminary layoff notice.

21. There was a question raised at the hearing about the number of FTE's at issue with regard to the Leadership class. According to respondent Kristen Patten, in the 2009-2010 school year, Ms. Kisaka is teaching the spring Leadership class, a .17 FTE; Josh Nielsen taught the fall Leadership class, also a .17 FTE. The District conceded that Leadership is a year-long class with a .33 FTE.

22. Mr. Nielsen is a respondent in this matter. His seniority date is August 7, 2009. He has a clear single subject credential in Social Science and Physical Education, and a CLAD (English Learner Authorization). He also teaches at Antelope High School. He is currently teaching two periods of AP European History and one period of World Studies.

23. Leadership is an elective class, i.e., it is not an academic subject required for graduation. The class is designed to teach leadership skills to students who may wish to assume leadership positions at Antelope High School. Ms. Kisaka and Mr. Nielsen were approved to teach the Leadership class in the 2009-2010 school year by a committee on assignments pursuant to section 44258.7.⁴

⁴ Section 44258.7, in relevant part, provides:

24. The Commission on Teacher Credentialing, in its Administrators' Assignment Manual, has provided the following guidance on electives such as Leadership:

Elective Classes: In most cases there is an obvious match between the class curriculum and the authorizations listed on the credential. However, there will be classes, usually electives, for which there is no match. These include, but are not limited to, classes in life skills, leadership, study skills, conflict management, teen skills, and study hall. ... [¶] If no credential exists that authorizes the curriculum and elective credit is being given, the employing agency should select the credentialed teacher whose knowledge and training best fulfills the needs of the student. In such assignments, the teacher's consent is required. Title 5 § 80005(b) allows an employing agency to select an individual that holds a credential based on a bachelor's degree and a teacher preparation program including student teaching and approved subject area knowledge and training. An individual who holds an emergency permit, teaching permit, internship, or waiver may not serve in this type of assignment.

25. Mr. Severson testified that a certificated employee does not require a specific credential to teach Leadership, and that the types of qualifications and experience that the committee on assignments looks for in deciding whether a certificated employee should be approved to teach that elective class include whether the employee has a Social Science credential, and/or experience with school government, team dynamics, school clubs and organizations, and/or has worked with students leaders in the past.

26. For the 2009-2010 school year, the committee on assignments determined that Ms. Kisaka had "developed the necessary leadership skills and training needed to teach this course through her AVID training as well as her educational and coaching experiences over the past three years." The committee approved Mr. Nielsen to teach the Leadership course because he had "[y]ears of experience as a teacher and coach. Has the ability, knowledge and skills to shape our students in accordance with course content."

(c) A teacher employed on a full-time basis who teaches kindergarten or any of grades 1 to 12, inclusive, and who has special skills and preparation outside of his or her credential authorization may, with his or her consent, be assigned to teach an elective course in the area of the special skills or preparation, provided that the assignment is first approved by a committee on assignments. For purposes of this subdivision an "elective course" is a course other than English, mathematics, science, or social studies. The membership of the committee on assignments shall include an equal number of teachers, selected by teachers, and school administrators, selected by school administrators.

(d) Assignments approved by the committee on assignments shall be for a maximum of one school year, but may be extended by action of the committee upon application by the schoolsite administrator and the affected teacher. All initial assignments or extensions shall be approved prior to the assignment or extension...

27. The District asserted that a more senior teacher could not bump into the elective Leadership class for three reasons. First, the District argued that, before a certificated employee could teach an elective course, he or she had to apply for and receive approval from the committee on assignments pursuant to section 44258.7. According to the District, because none of the respondents had received such approval, they could not bump into the Leadership class. Second, the District asserted that, to teach Leadership to students at Antelope High School, the teacher should be located at that high school in order to build relationships with the students.⁵ Third, the District initially asserted that it would be “problematic” for a teacher from another high school to teach a one-period Leadership class at Antelope High School given time and travel issues. The District withdrew this third reason for opposing bumping into the Leadership class when it was pointed out that, as part of this layoff, several teachers who were employed at one high school were permitted to bump into classes taught by more junior teachers at other high schools.

28. Ms. Patten is currently a probationary teacher. Her seniority date is August 19, 2008. She holds a clear single subject credential in Social Science. She also has an English Learner Authorization. She currently teaches one period of U.S. History and one period of Student Government at Antelope High School. She also has one release period for Activities Director. She designed the Leadership class currently being taught by Ms. Kisaka, and taught that class during the 2008-2009 school year. Before her employment with the District, Ms. Patten had experience with student government and leadership from her prior teaching experience and her involvement with student government at California State University, Sacramento. The ninth-grade elective Leadership class “directly feeds into” the tenth-grade Student Government class Ms. Patten is now teaching.

29. Ms. Patten testified that the most important qualification to teach the Leadership class is past leadership experience. She believes that it is also helpful to have a Social Science credential. She agreed with the District that it would be detrimental to the students in the Leadership class to have a teacher who was not located at Antelope High School given the “continuity” that is important to prepare the students to assume leadership positions at the school.

30. During closing argument, the District conceded that of all the respondents, Ms. Patten was the most qualified to teach the Leadership class, but she was not the most senior.

31. Even though the District disputed that a more senior teacher should be allowed to bump into the Leadership class, it identified the five most senior respondents who might wish to bump into that class: Steve Clinton, Deborah DeBacco Weddle, Jessica Fork, Cindy Geistert, and Amy Shishido. All these respondents have seniority dates of August 16, 2007. They are permanent certificated employees. The District applied the tie-breaking criteria set forth in the PKS Resolution (Finding 4) to these five respondents. Ms. Fork received seven points; Ms. Shishido received five points; the other three respondents each received four

⁵ The District consists of eight high schools: Adelante High School, Granite Bay High School, Oakmont High School, Antelope High School, Independence High School, Roseville High School, Woodcreek High School, Challenge High School.

points. Respondents did not dispute these tie-breaking results. Because Ms. Fork's preliminary layoff notice was rescinded at the hearing, the parties agreed that, as a result of the application of the tie-breaking criteria, Ms. Shishido was the most senior respondent with an August 16, 2007 seniority date.

32. Ms. Shishido has a preliminary single subject credential in English and an English Learner Authorization. She is currently teaching two periods CP English 10 and one period of CP English 9 at Roseville High School. She has consented to teach the elective Leadership class at Antelope High School. There was, however, no evidence presented at the hearing as to her qualifications or experience to teach that class.

33. The evidence established that there are no mandatory credentials, qualifications or experience requirements necessary to teach the elective Leadership class. Instead, on an annual basis, the committee on assignments determines whether the teacher(s) who have consented to teach the class have sufficient qualifications and experience to be approved for that assignment. There was no evidence presented that the District has yet selected a certificated employee to teach the Leadership class in the 2010-2011 school year or that the committee on assignments has yet reviewed any teachers for that assignment.

34. While the evidence showed that it might be more beneficial to assign a teacher from Antelope High School, instead of a teacher from another District high school, to teach the Antelope High School elective Leadership class, in this layoff, the District has permitted senior teachers who are currently teaching at one District high school to bump into a single class taught by more junior teachers at different District high schools in subjects including Math, History, Science and English. Because the District has allowed these single-class bumps, the District did not present sufficient evidence to establish that such single-class bumping should not be allowed for the Leadership class. In this era of email and cellphone communications, the evidence did not establish that it would be contrary to the students' interests to allow Ms. Shishido to teach the elective Leadership class at Antelope High School, even though she may currently be teaching classes at a different District high school.⁶

35. Although Ms. Patten may be located at Antelope High School and may be the most qualified respondent to teach the Leadership class, she is not the most senior. Because Ms. Shishido has given her consent and is the most senior respondent, she must be given the first opportunity to present her qualifications and experience to, and seek approval from, the committee on assignments to teach the .33 FTE elective Leadership class at Antelope High School during the 2010-2011 school year. If the committee on assignments determines that Ms. Shishido does not have sufficient qualifications and experience to teach that course, it must then review the experience and qualifications of the other respondents who have

⁶ At the hearing, respondents argued that, based upon the District's argument regarding the elective Leadership class, all the bumping that the District has allowed by senior teachers into classes taught by more junior teachers at different District high school should be disallowed. In light of the findings in Finding 34, respondents' argument is rejected.

consented to teach that course in order of seniority, and must retain the most senior respondent who is approved by the committee on assignments for .33 FTE.

Ted Herr's Bump

36. Ted Herr is a certificated District employee. His seniority date is August 27, 1986. He has a life single subject credential in Math and Spanish. He also has a CLAD. He currently teaches one class of EL Pre-Algebra at Roseville High School. He also is the Intervention Support Coordinator, also known as the EL Coordinator, for .67 FTE.

37. Pursuant to section B.2. of the PKS Resolution (Finding 2), the Board is eliminating Mr. Herr's .67 FTE EL Coordinator position for the 2010-2011 school year.

38. Given Mr. Herr's seniority date and Math credential, the District decided that he could bump into .67 FTE of respondent Deborah DeBacco Weddle's math assignment.

39. Ms. DeBacco Weddle is a permanent certificated employee. Her seniority date is August 16, 2007. She holds a professional clear single subject credential in Math. She also has an English Learner Authorization. She is currently teaching one period of Algebra 1 and two periods of Geometry at Granite Bay High School.

40. Respondents argued that, given Mr. Herr's Spanish credential, in order to ensure that the most junior teachers were laid off, instead of allowing Mr. Herr to bump into .67 FTE of Ms. DeBacco Weddle's Math classes, the District should have allowed Mr. Herr to bump into .67 FTE of the Spanish classes taught by certificated employees more junior than Ms. DeBacco Weddle. Respondents pointed to the following Spanish classes taught by more junior employees that the District should have allowed Mr. Herr to bump into: (1) Aimee Girouard is a probationary employee with an August 7, 2009 seniority date, a preliminary single subject credential in Spanish, and an English Learner Authorization. She is currently teaching three periods of Spanish 2 at Oakmont High School. The District has served her with a notice of non-reelection. Her current position will therefore be vacant for the 2010-2011 school year; (2) Jessica Hartman is a probationary employee with a seniority date of August 7, 2009, and a preliminary single subject credential in Spanish, with supplementary authorizations in Introductory English, Introductory Music, and Literature, and an English Learner Authorization. She is currently teaching two periods of Spanish 1 and one period of Spanish 2 at Woodcreek High School; (3) Amparo Quinonez is a probationary employee with a seniority date of August 7, 2009, and a preliminary single subject credential in Spanish, with a supplementary authorization in Introductory Math and an English Learner Authorization. He is currently teaching three periods of Spanish 1 at Antelope High School.

41. Mr. Severson testified that the District has allowed Mr. Herr to bump into Ms. DeBacco Weddle's Math classes, and not into the Spanish classes currently taught by the three identified more junior certificated employees, because Mr. Herr currently teaches Math and has taught Math extensively in the recent past. Although Mr. Severson recognized that Mr. Herr was credentialed to teach Spanish, he testified that it has been "several years" since

Mr. Herr had taught that subject. There was no evidence to establish exactly when in the past Mr. Herr taught Spanish in the District or whether it was in the last 10 years, as required by the competency criteria set forth in the PKS Resolution (Finding 3).

42. While the District may have chosen to allow Mr. Herr to bump into .67 FTE of the Spanish assignments currently being taught by certificated employees more junior than Ms. DeBacco Weddle, it was within the District's discretion to determine that Mr. Herr should bump into a Math assignment and not a Spanish assignment. Respondents did not establish that the District acted in an arbitrary or capricious manner or abused its discretion by allowing Mr. Herr to bump into .67 FTE of Ms. DeBacco Weddle's Math assignment.

Assistant Principals

43. As set forth in Finding 2, section C.1. of the PKS Resolution provides for the reduction of the following Administrative Services:

- | | |
|--|----------|
| 1. Assistant Principals (.17 FTE, two each at GBHS, OHS, RHS, and WHS) | 1.33 FTE |
| 2. Assistant Principal (Adelante High School) | .50 FTE |

44. When it reduced the FTE's of Assistant Principals, the District did not choose the most junior Assistant Principals. Instead, the District chose to reduce more senior Assistant Principals based upon the recommendations of the high school Principals. The Board approved the layoffs of the Assistant Principals designated by the Principals in a separate resolution not made part of the record. None of the Assistant Principals chosen for reduction were given preliminary layoff notices. Instead, they were allowed to bump more junior certificated employees.

45. The affected Assistant Principals and certificated employees were as follows:

(a) Andrea Zimmerman is currently an Assistant Principal at Oakmont High School. Her seniority date is August 15, 1996. She has a professional clear single subject credential in Life Science and Biological Sciences, with a supplementary authorization in Introductory Sciences. Her Assistant Principal assignment was reduced by .17 FTE. Given her Biological Sciences credential, she was allowed to bump into .17 FTE of respondent Amy Kraft's 1.0 FTE. Ms. Kraft is a probationary employee with a seniority date of August 7, 2009. She has a preliminary single subject credential in Chemistry and Biological Sciences. She currently teaches two periods of CP Chemistry and one period of Biology at Antelope High School. Pursuant to Ms. Zimmerman's bump, Ms. Kraft's 1.0 FTE was reduced to a .83 FTE.

Mark Werlein is also currently an Assistant Principal at Oakmont High School. His seniority date is July 1, 2007. He holds a clear single subject credential in music. If Mr. Werlein, instead of Ms. Zimmerman, had been partially released from .17 FTE of his Assistant Principal position, given his

credential, he would not have been able to bump into .17 FTE of Ms. Kraft's Biological Sciences assignment.

(b) Heather Schlaman is an Assistant Principal at Woodcreek High School. Her seniority date is August 15, 1996. She holds a clear single subject credential in English, and a clear specialist instruction credential in Reading and Language Arts. Her Assistant Principal assignment was reduced by .17 FTE. Given her English credential, she was allowed to bump into .17 FTE of respondent Florentino Guzman's 1.0 FTE. Mr. Guzman is a probationary employee with a seniority date of August 19, 2008. Mr. Guzman has a preliminary single subject credential in English. He is currently teaching two periods of CP English 10 and one period of AP Language/Composition at Granite Bay High School.

Shane Waggoner is also an Assistant Principal at Woodcreek High School. His seniority date is July 1, 2007. He holds a clear single subject credential in Math, with a supplementary authorization in Physics. If Mr. Waggoner, instead of Ms. Schlaman, had been partially released from .17 FTE of his Assistant Principal position, given his credential, he would not have been able to bump into .17 FTE of Ms. Guzman's English assignment.

(c) Brent Mattix is an Assistant Principal at Granite Bay High School. His seniority date is August 19, 1999. He holds a professional clear single subject credential in English. His Assistant Principal assignment was reduced by .17 FTE. Given his English credential, he was allowed to bump into .17 of Mr. Guzman's 1.0 FTE. Pursuant to the bumps by Ms. Schlaman and Mr. Mattix, and two other reductions pursuant to this layoff, Mr. Guzman's full 1.0 FTE was eliminated.

David Vujovich is also an Assistant Principal at Granite Bay High School. His seniority date is July 1, 2007. He holds a clear single subject credential in Social Science. If Mr. Vujovich, instead of Mr. Mattix, had been partially released from .17 FTE of his Assistant Principal position, given his credential, he would not have been able to bump into .17 FTE of Mr. Guzman's English assignment.

46. At the hearing, the District argued that it was within its discretion under section 44951 to choose whichever Assistant Principals it wished to partially release from their assignments without concern for their seniority. Respondents argued that, while section 44951 permits a school district to release whichever Assistant Principal it wishes outside a layoff, because the reductions of the Assistant Principals' assignments were included in this layoff pursuant to the PKS Resolution, the District was required to comply with the provisions of section 44955 and reduce the most junior Assistant Principals' assignments. Respondents asserted that if the District had complied with section 44955 and chosen the most junior Assistant Principals for reduction, because those Assistant Principals have different credentials than the more senior Assistant Principals who were partially released,

those more junior Assistant Principals would not have been able to bump respondents Kraft and Guzman. This issue is addressed in the Legal Conclusions below.

47. There was no evidence that the District proposes to eliminate any services that are mandated by state or federal laws or regulations.

48. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

49. Except as provided in Findings 35 and 46, no junior employees are being retained to render services that more senior respondents are certificated and competent to perform.

50. The District's reductions and discontinuances of particular kinds of services relate solely to the welfare of the District's schools and pupils.

LEGAL CONCLUSIONS

1. The District complied with all notice and jurisdictional requirements set forth in sections 44949 and 44955.

2. The services identified in the PKS Resolution are particular kinds of services that may be reduced or eliminated under section 44955. The Board's decision to reduce or eliminate the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or elimination of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

3. As set forth in Finding 8, the District agreed to rescind the preliminary layoff notice served upon respondent Jessica Fork. The District also agreed to reduce the proposed layoff of respondent Amy Shishido from 1.0 FTE to .50 FTE, and the proposed layoff of Mark Armstrong from 1.0 FTE to .50 FTE.

4. As set forth in Finding 35, the District must give respondent Amy Shishido the first opportunity to present her qualifications and experience to, and seek approval from, the committee on assignments to teach the .33 FTE Leadership class at Antelope High School during the 2010-2011 school year. If the committee on assignments determines that Ms. Shishido does not have sufficient qualifications and experience to teach that class, it must then review the experience and qualifications of the other respondents who have consented to teach that class in order of seniority, and must retain the most senior respondent who is approved by the committee on assignments for .33 FTE.

5. As set forth in Findings 45 and 46, pursuant to section 44951, the District chose to partially release Assistant Principals from their assignments who were more senior to other Assistant Principals whose assignments were not reduced. Respondents argued that, because the Board chose to include the reductions of the Assistant Principals' assignments in this

layoff, pursuant to section 44955, the District was required to reduce the assignments of the most junior Assistant Principals. Respondents asserted that if the District had complied with section 44955 and chosen the most junior Assistant Principals for reduction, because those Assistant Principals have credentials that are different from those possessed by the more senior Assistant Principals who were partially released, those more junior Assistant Principals would not have been able to bump respondents Amy Kraft and Florencio Guzman.

6. 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 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**. (Bolding added.)

7. By its express terms, the provisions of section 44951 cannot be used when an Assistant Principal's employment is being terminated pursuant to a layoff under section 44955. The PKS Resolution, in section C, explicitly provides for the reduction of the Assistant Principals' FTE's. (Finding 2.) Although the District asserted that the more senior Assistant Principals were partially released pursuant to a separate resolution adopted by the Board, the District did not offer that separate resolution into evidence or otherwise establish reasons for the partial release other than this layoff. Given the seniority dates of the affected Assistant Principals and their credentials (Finding 45), it appears that the more senior Assistant Principals were chosen for partial FTE reductions because the more junior Assistant Principals did not have either the seniority or the credentials to effectuate the layoff reductions that the District was seeking. Given the plain language of section 44951, the District could not utilize that section's release provisions when, as in this case, it was terminating the Assistant Principals' employment under section 44955. Because .17 FTE of Ms. Kraft's employment and .33 FTE of Mr. Guzman's employment would not have been reduced had the District complied with section 44955 in reducing the FTE's of its Assistant Principals, these respondents' reductions must be rescinded. Because Ms. Kraft's FTE was reduced from 1.0 to .83 pursuant to the preliminary layoff notice served upon her, her notice must be rescinded.

8. Except as set forth in Legal Conclusions 3, 4 and 7, cause exists to reduce certificated employees of the District due to the reduction or elimination of particular kinds of services. Except as set forth in Legal Conclusions 3, 4 and 7, the District properly identified the certificated employees to be laid off as directed by the Board.

9. Except as set forth in Legal Conclusions 3, 4 and 7, no junior certificated employee is scheduled to be retained to perform services that a more senior respondent is certificated and competent to render.

10. Other than for Ms. Fork (Legal Conclusion 3) and Ms. Kraft (Legal Conclusion 7), and as reduced for Ms. Shishido (Legal Conclusions 3 and 4), Mr. Armstrong (Legal Conclusion 3), and Mr. Guzman (Legal Conclusion 7), cause exists to give notice to respondents that their services will be reduced or will not be required for the 2010-2011 school year because of the reduction or elimination of particular kinds of services.

RECOMMENDATION

1. Pursuant to Legal Conclusion 3, the District shall rescind the preliminary layoff notice served upon Jessica Fork.

2. Pursuant to Legal Conclusion 3, the District shall reduce the layoff of Mark Armstrong from 1.0 FTE to .50 FTE.

3. Pursuant to Legal Conclusion 3, the District shall reduce the layoff of Amy Shishido from 1.0 FTE to .50 FTE. Pursuant to Legal Conclusion 4, the District shall reduce the layoff of Amy Shishido by an additional .33 FTE if the committee on assignments determines that she has the qualifications and experience to teach the Leadership class at Antelope High School during the 2010-2011 school year. If the committee on assignments determines that Ms. Shishido does not have the qualifications and experience to teach the Leadership class at Antelope High School during the 2010-2011 school year, the District shall comply with Legal Conclusion 4.

4. Pursuant to Legal Conclusion 7, the District shall rescind the preliminary layoff notice served upon Amy Kraft.

5. Pursuant to Legal Conclusion 7, the District shall reduce the preliminary notice of layoff served upon Florencio Guzman by .33 FTE.

6. Except as provided in Recommendations 1, 2, 3, 4, and 5, notice may be given to respondents that their services will be reduced or will not be required for the 2010-2011 school year. Notice shall be given in inverse order of seniority.

DATED: April 13, 2010

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings