

BEFORE THE
GOVERNING BOARD OF THE
NATOMAS UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE NATOMAS
UNIFIED SCHOOL DISTRICT,

Respondents.

OAH No. 2010020874

PROPOSED DECISION

Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on April 27, 2010.

James Scot Yarnell, Attorney at Law, of Atkinson, Andelson, Loya, Ruud & Romo, represented the Natomas Unified School District.

Carolyn Langenkamp, Attorney at Law, of Langenkamp & Curtis, LLP, represented 70 respondents identified in Exhibit A, a copy of which is attached hereto and incorporated herein by reference.

Evidence was received, the hearing was closed, and the matter was submitted for decision on April 27, 2010.

FACTUAL FINDINGS

Jurisdiction

1. Kenneth Whittemore is the Assistant Superintendent, Human Resources of the Natomas Unified School District (District). The actions of Mr. Whittemore, and the actions of the District Board of Trustees (Board), were taken in their official capacities.

2. On February 24, 2010, the Board adopted Resolution No. 10-02, which reduced and/or discontinued particular kinds of certificated services no later than the beginning of the 2010-2011 school year.

3. The Board further determined that it shall be necessary by reason of the reduction and/or discontinuance of services to decrease the number of permanent and/or probationary certificated employees at the close of the 2009-2010 school year by a corresponding number of full-time equivalent (FTE) positions, and directed the Superintendent or his designee to proceed accordingly by notifying the appropriate employees to implement the Board's determination.

4. On or before March 15, 2010, the District served 96 certificated employees, including respondents, with a written notice, pursuant to Education Code sections 44949 and 44955, that their services would not be required for the next school year (Notice). Each Notice set forth the reasons for the recommendation. The Notice attached and incorporated by reference Resolution No. 10-02, which listed the services to be reduced or discontinued, resulting in a proposed reduction in the certificated staff by 97.55 FTE positions.

5. Requests for Hearing were timely filed by 81 certificated employees to determine if there is cause for not reemploying them for the next school year.

6. The Assistant Superintendent made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense (Accusation packet) were timely served on those certificated employees.

7. Notices of Defense were timely filed by the represented respondents, and by the following individuals who are not represented by Ms. Langenkamp: Geri Ayoade; Maria Cortez; Amy Edgar; Teang Kuy; and Angela Saunders.

8. Except as set forth in the stipulations below, any unrepresented certificated employee (i.e., not listed on Exhibit A) that failed to file a Request for Hearing or Notice of Defense, or who failed to appear at hearing, including the individuals listed in Finding 7, has waived his or her right to a hearing, and may be laid off by the District. No unrepresented employee appeared at the hearing.

9. Each respondent (set forth in Exhibit A) is presently a certificated probationary or permanent employee of the District.

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

Stipulation Re: Rescission of Layoff Notices

11. At the commencement of the hearing, the District rescinded or confirmed the rescission of Notices to the following employees, who shall be retained by the District for the 2010-2011 school year: Tiffanie Lau; Christina Meyer; Angela Saunders; and Rebekah Anthony. Rebekah Cyr is retained for .5 FTE. Sara Thorn is retained for .6 FTE, and shall be laid off for .4 FTE.

Services to be Reduced or Eliminated

12. Resolution No. 10-02 called for the reduction or discontinuance of the following particular kinds of services for the 2010-2011 school year:

Service	FTE
A. Elementary Teaching Services	
1. Multiple Subject Service	52.0
2. Physical Education	3.6
3. Prep Specialist/Fine Arts	1.0
B. Secondary Teaching Services	
1. English	3.8
2. English (DHS)	1.0
3. ELD	2.0
4. Physical Education	3.0
5. Science – Middle School	3.0
6. Social Science	4.0
7. Social Science (DHS)	1.0
8. Spanish	2.0
9. Math	1.0
10. ROP Auto	0.4
11. Multiple Subject Service (Middle School)	4.0
C. Other Services	
1. Counselors	6.75
2. RSP Services (NP3/BC)	1.0
3. RSP Services (LFG)	1.0
4. SDC Services (NMS)	1.0

Service	FTE
5. Assistant Principals	5.0
6. Principal (Community Day School)	1.0
District Total	97.55

The above-described services are “particular kinds of services” that can be reduced or discontinued within the meaning of Education Code section 44955.

13. In arriving at the number of certificated employees required to be terminated, Resolution No. 10-02 stated that the Board “considered all positively assured attrition, including deaths, resignations, retirements, and other permanent vacancies, for 2010-2011 which [had] occurred up to and including February 23, 2010.” The Board concluded that, notwithstanding any vacancies resulting in positively assured attrition, it would still be necessary to terminate certificated employees equal to 97.55 FTE certificated positions.

Seniority List – Seniority Issues

14. The District maintains a seniority list which contains pertinent information such as employees’ date of first paid service, current assignment, and credentials on file. The District provided certificated employees with the opportunity to confirm information in the District’s files concerning their seniority dates and credentials. Resolution No. 10-02 stated, in part that, “for purposes of calculating seniority, credentials held and information necessary to apply skipping, bumping and tie-breaker criteria, the District will consider only such documentation provided to the Human Resources Office by certificated personnel by February 10, 2010.”

Seniority Date – Hannah Gilman

15. The parties stipulated that Ms. Gilman’s seniority date shall be changed to July 11, 2006.

Seniority Date – Deborah Eisberg

16. Ms. Eisberg holds a Pupil Personnel Services (PPS) counseling credential. She was employed full-time as a counselor for the Folsom-Cordova Unified School District for the 2003-2004 school year. Her contract with Folsom-Cordova Unified School District ended on June 11, 2004. On March 15, 2004, she signed an Offer of Probationary Employment with the District which stated, in part:

You are hereby conditionally offered probationary employment for the 2004-2005 school year as a(n) Counselor at Inderkum

High School. You are to report to duty at Inderkum High School on (date) to be determined at 7:35 a.m. This offer is contingent upon your securing a valid California credential prior to your first day of service and official election by the Board of Education. Attached is a copy of the current Certificated Salary Schedule. Upon receipt of all original transcripts, your placement on the salary schedule will be evaluated (*salary agreement to follow*). Your assignment is for 190 work days per contract year pending fingerprint clearance.

The salary payment schedule will be on a 12 month basis; the first salary payment will be on 09/30/04.

17. By letter dated April 19, 2004, Ms. Eisberg was notified that, “at the April 14, 2004 Regular Meeting of the Board of Trustees, the Board approved your employment as a counselor at Inderkum High School effective for the 2004-2005 school year.” The 2004-2005 school year commenced on July 1, 2004, and ran through June 30, 2005.

18. Inderkum High School (IHS) was a new school that opened at the start of the 2004-2005 school year. According to Diane Borrecco, the District’s Human Resources Coordinator, it was anticipated that the counselors hired to work at IHS would begin work prior to the first day of school, but their exact start date was unknown in March 2004, when the initial offer of employment was made to Ms. Eisberg.

19. District records indicate that Ms. Eisberg performed paid services for the District prior to the start of the 2004-2005 school year on the following dates in 2004: March 25, April 2; April 14; April 16; April 23; May 6; May 7; May 12; May 14; May 18; May 19; May 24; May 26; June 2; and June 11. Ms. Eisberg recorded her hours for payment on a document entitled, “Certificated Timesheet – To be completed for any extra duty/excess class size, coaching stipends, and other stipends for work beyond normal salary agreement.” Ms. Eisberg was paid the contract hourly rate for first year certificated employees of the District. The work performed included meetings related to IHS; International Baccalaureate (IB) research; data entry; “Code PPSAT;” “PSAT/WASC;” and “CAS research.” Ms. Eisberg also attended the California International Baccalaureate Organization (CIBO) teacher training workshop from June 27 to July 1, 2004. However, the District did not pay her for her attendance; rather, she was given credit for her attendance for purposes of placement on the certificated salary schedule. At the time Ms. Eisberg began providing services to the District in March 2004, she was not provided written notification that she was being employed as a temporary employee.

20. Education Code section 44915¹ provides that, “[g]overning boards of school districts shall classify as probationary employees, those persons employed in positions

¹ All statutory references are to the Education Code, unless otherwise specified.

requiring certification qualifications for the school year, who have not been classified as permanent employees or as substitute employees.” Section 44916 states:

The classification shall be made at the time of employment and thereafter in the month of July of each school year. At the time of initial employment during each academic year, each new certificated employee of the school district shall receive a written statement indicating his employment status and the salary that he is to be paid. If a school district hires a certificated person as a temporary employee, the written statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. If a written statement does not indicate the temporary nature of the employment, the certificated employee shall be deemed to be a probationary employee of the school district, unless employed with permanent status.

21. Although Ms. Eisberg signed a contract with the District to work as a full-time counselor for the 2004-2005 school year, the District did not provide her with a written statement indicating the temporary nature of her employment when she provided services to the District in the spring of 2004. The activities she performed appear to be those requiring certification qualifications, within the meaning of section 44915. She was not providing services as a substitute employee.

22. Respondents contend that, consistent with the holding in *Kavanaugh v. West Sonoma County High School District* (2003) 29 Cal.4th 911 (*Kavanaugh*), Ms. Eisberg must be deemed a probationary employee of the District with a seniority date of March 25, 2004, because she commenced paid service to the District in the 2003-2004 school year prior to receiving notice of her salary and temporary employment status. This argument is persuasive. As the Supreme Court stated in *Kavanaugh*:

Section 44916 [of the Education Code] thus mandates that a school district comply with three requirements if it desires to hire a “new certificated employee” (such as plaintiff *Kavanaugh*) as a temporary employee: it must (a) notify the employee of his or her salary and status as a temporary employee; (b) do so in a written notice; and (c) give such notice “at the time of initial employment.” (*Id.*, at p. 919)

The *Kavanaugh* court concluded, “Reading section 44916 to mean that certificated teachers must be informed in writing, on or before their first day of paid service to their employing districts, of their salary and employment status is thus consistent with the apparent purpose of the statute.” (*Id.*, at p. 921)

23. The District argued that Ms. Eisberg could not obtain probationary status with the District while she was employed full-time with another school district, citing section

44923, which states: “In the event a permanent employee of a school district has tenure as a full-time employee of the district, any assignment or employment of such employee in addition to his full-time assignment may be terminated by the governing board of the district at any time.” Section 44923 does not preclude Ms. Eisberg from commencing employment with the District as a probationary employee while still employed with the Folsom-Cordova Unified School District. In the absence of authority to the contrary, Ms. Eisberg’s first date of paid service to the District in a probationary capacity was March 25, 2004, and her seniority date shall be changed accordingly.

Bumping and Skipping

24. Economic layoffs are generally to be carried out on the basis of seniority. A teacher with more seniority typically has greater rights to retain employment than a junior teacher. A senior teacher whose position is discontinued has the right to a position held by a junior teacher if the senior teacher is properly credentialed. That displacement of a junior teacher is known as “bumping.” In general, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers if the senior teacher has both the credentials and competence to occupy such positions. The seniority rule is not absolute, and a junior teacher with a needed credential or skills may be retained even if a more senior teacher is terminated. Such “skipping” is recognized by statute (Education Code section 44955, subdivision (d)(1)) and appellate law (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of the Santa Clara Unified School District* (1981) 116 Cal.App.3d 831; *Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127). In order to depart from a seniority-based economic layoff, section 44955, subdivision (d)(1), requires the District to “demonstrate a specific need for personnel to teach a specific course or course of study... and that the certificated employee [to be skipped] has special training and experience necessary to teach that course or course of study...which others with more seniority do not possess.”

25. The District used the seniority list to develop a proposed layoff list. The District considered whether senior employees currently assigned in the various services being reduced or eliminated could displace, or “bump,” more junior employees. In determining who would be laid off for each kind of service reduced or eliminated, the District first applied known vacancies and then applied in progressive sequence the seniority list in inverse order, from least to most senior. Employees with the same date of hire were laid off according to the needs of the District and its students. Resolution No. 10-02 set forth criteria to be applied to determine the relative seniority of those certificated employees who first rendered paid probationary service on the same day (tie-breaker criteria). There were no issues at hearing concerning the application of the District’s tie-breaker criteria.

Highly Qualified Teachers under the No Child Left Behind Act

26. Resolution No. 10-2 states, in part, that the Board “is required by the No Child Left Behind Act of 2001 (‘NCLB’) to take steps to ensure that all teachers who have been assigned to teach core academic subjects including teachers in alternative programs, have

met NCLB requirements as ‘highly qualified’ since the beginning of the 2006-07 school year.” Consequently, the Board resolved to “skip” junior employees on the basis of highly qualified teacher status under NCLB, as follows:

That due to the specific need of the District to hire and retain only highly qualified teachers in core academic subject areas, the Superintendent and/or his designee is authorized to deviate from terminating certificated employees in order of seniority only in instances where the less senior employee possesses a currently valid intern, preliminary or clear California teaching credential and evidence of core academic subject competency in accordance with the NCLB and the more senior employee meets certification or licensing requirements solely on an emergency, temporary, or provisional basis except a valid intern credential, or does not possess evidence of core academic subject competency in accordance with the NCLB.

Homeless Liaison

27. Resolution No. 10-02 states, in part:

That due to the specific need of the District to provide services authorized by a services credential with a specialization in pupil personnel services and special training and experience necessary to provide Homeless Liaison services, the Superintendent and/or his designee is authorized to deviate from terminating certificated employees in order of seniority where the employee is currently assigned to provide those services and will be assigned to provide those services for the next school year and more senior employees do not possess the same specialized training and experience necessary to provide those services.

28. Amreek Singh (#516 – 9/22/08)² holds a PPS school social work credential. He is the employee assigned to provide Homeless Liaison (HL) services for the District. He did not receive a layoff Notice, in accordance with the provisions of Resolution No. 10-02 set forth in Finding 27.

29. The District’s HL position description states, in part, that “[t]he primary duty of the position is to ensure that the educational rights of preschool-aged and school-aged children in homeless situations are protected in accordance with the McKinney-Vento Homeless Assistance Act. The position works to improve coordination between community service organizations, government agencies, housing, shelters, school and the school district,

² Numbers in parentheses indicate an employee’s position on the District’s seniority list, from most senior (#1) to least senior (#535), and seniority date.

to best meet the needs of homeless students and families.” The HL position is paid according to the salary schedule for “Psychologist/Counselor.” Under “Education and Experience,” the position description states:

Required:

Possession of a valid credential authorizing pupil personnel services.

Three years experience in human service setting.

Experience in working with ethnic minority communities

Preferred:

Master’s degree in social work (MSW) or Master’s degree in counseling or related fields such as psychology or sociology.

The required “Licenses and Certificates” are a “valid Pupil Personnel Services Credential issued by the California Commission on Teacher Credentialing.”

The HL position statement lists the following “Qualifications:”

Knowledge of:

- Principles and procedures related to student support programs and services.
- Graduation and college entrance requirements.
- Counseling techniques, laws, rules, and regulations.
- Child abuse reporting laws.
- Registration procedures.
- Diverse academic, socioeconomic, cultural, disability and ethnic backgrounds of District students.
- Federal, state, and local governmental and non-governmental agencies.
- Federal legislation and requirements in regards to homeless education principles and practices.
- The community and its resources.

Ability to:

- Provide student support services to students.
- Communicate effectively with students, parent[s], and appropriate District staff regarding student progress.
- Perform a variety of administrative functions related to homelessness.
- Identify student needs related to appropriate services.

- Prepare and maintain a variety of documents related to homeless student needs.
- Maintain current knowledge of program rules, regulations, requirements, and restrictions.
- Establish and maintain cooperative and effective working relationships with others.
- Read, interpret, apply and explain rules, regulations, policies and procedures.
- Develop, implement and coordinate projects.
- Relate to and be sensitive towards students and families including persons from diverse backgrounds.
- Operate basic office equipment.
- Work confidentially with discretion.
- Keep accurate records.
- Communicate effectively orally and in writing.

30. Deborah Eisberg (#279 – 3/25/04)³ holds a PPS counseling credential, and has a Masters degree in educational counseling. She is the most senior certificated employee with a PPS credential who received a Notice. As the English Language Development counseling coordinator for IHS, Ms. Eisberg has experience in working with ethnic minority communities. She has more than eight years of experience in human services settings, due to her work as a school counselor. She fully meets the qualifications listed in the HL position description.

31. The District contended that it was entitled to “skip” Mr. Singh because he possesses a PPS school social work credential, which the District claimed was essential to the performance of the HL position. This contention was not persuasive. Ms. Borrecco testified that she sent a draft of the HL position description to the California Commission on Teacher Credentialing (CCTC) in the summer of 2008, at the request of Kay Baker, the District’s Coordinator of Classified Personnel. According to Ms. Borrecco, she spoke to someone from CCTC’s information services staff, which Ms. Borrecco described as a “help-line.” Hearsay evidence suggests that she was advised by CCTC staff that the essential functions of the HL position required a PPS school social work credential.⁴ Although Ms. Borrecco believes she informed Ms. Baker about the information obtained from CCTC, the District did not modify the HL position description.

³ Ms. Eisberg’s position number on the District’s seniority list was based on a seniority date of August 19, 2004; with the correction of her seniority date to March 25, 2004, her position number would be adjusted as well, to #267).

⁴ Government Code section 11513, subdivision (d), states in pertinent part: “Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. ...”

32. Under section 44955, subdivision (d), the District has demonstrated that it has a specific need for personnel to teach a specific course or course of study, i.e. the HL position. However, it may deviate from seniority order and retain a junior employee only if the certificated employee to be skipped “has special training and experience **necessary to teach that course or course of study**...which others with more seniority do not possess.” (Emphasis added.) In this case, the “special training and experience” possessed by Mr. Singh is the school social work PPS credential. However, the evidence did not establish that such a credential is necessary for an individual to serve as the HL. Ms. Eisberg has demonstrated that she has the necessary credential and qualifications to serve in the HL position. Therefore, the District was not entitled to skip Mr. Singh, and Ms. Eisberg shall be retained for the 2010-2011 school year.

Application of the District’s Competency Criteria – Bumping Issues

33. The Board adopted competency criteria that teachers must satisfy in order to bump into a position held by another teacher. As set forth in Resolution No. 10-02 the competency criteria states:

That “competency” for the purposes of Education Code section 44955 shall be determined solely upon current possession of a preliminary or clear credential for the subject matter or grade level to which the employee will be assigned at the beginning of the 2010-11 school year and at least one (1) year of experience within the preceding five (5) years teaching the subject matter at the applicable elementary, middle or high school level. Further, that due to the specific need of the district to hire and retain only highly qualified teachers in academic subject areas, “competency” shall require (highly qualified) current confirmation of qualifications of academic subject competency, or verifiable eligibility for competency if not previously reviewed by the District, in all subjects of a proposed assignment, including assignments teaching multiple academic subjects and assignments in secondary alternative schools, in accordance with the NCLB [sic].

Counselors

34. The Board approved a reduction of 6.75 FTE counselor positions. As a consequence of this reduction, the District issued Notices to counselors Necol Harness (#371 – 12/12/05), Adam Munguia (#280 – 8/19/04), and Deborah Eisberg (#279 – 3/25/04), all of whom serve as counselors in the District’s comprehensive high schools. The District proposes to retain senior counselors Joel Sigurdson (#29 – 8/29/88), Yvonne Arnold (#43 – 8/28/90), and Brenda Borge (#106 – 9/2/97). Ms. Arnold is a counselor at Discovery High School (DHS), the District’s alternative education high school. Mr. Sigurdson and Ms. Borge are middle school counselors. Although assignments are not finalized for the 2010-

2011 school year, the District anticipates that the three senior counselors will be reassigned as counselors to the comprehensive high school positions currently occupied by Ms. Harness, Mr. Munguia, and Ms. Eisberg.⁵

35. Respondents contended that application of the Board's competency criteria would preclude the three senior counselors from bumping the junior counselors, since none of the senior counselors had worked at a comprehensive high school in the preceding five years. This contention is not persuasive. The competency criteria refer to experience **"teaching the subject matter** at the applicable elementary, middle or high school level." (Emphasis added.) This element of the competency criteria does not apply to counselors.

AVID Teacher – Natomas High School

36. The Board approved a reduction of 5.0 FTE assistant principal positions. Janet Mann (#82 – 8/19/96) holds a clear single subject social science credential. She is currently serving as an assistant principal at IHS and has return rights to a teaching position. As a consequence of her reassignment to the classroom for the 2010-2011 school year, the District issued a Notice to Nancy Kidd (#475 – 9/14/07) as the employee who is being bumped by Ms. Mann. Ms. Kidd holds a clear single subject health science credential. Her assignment for the past three school years has been as an Advancement Via Individual Determination (AVID) teacher at Natomas High School (NHS). AVID is a program to identify students who are not traditionally college-bound and provide support for them to succeed academically and apply to college. The position of AVID teacher may be held by any employee with an academic credential. Ms. Kidd was identified as the least senior teacher with an academic credential who was not otherwise slated for layoff.

37. NHS is an AVID-certified site. To maintain certification, it must meet certain requirements, including AVID training for teachers who participate in the program. If teachers in the AVID program at NHS are not AVID-trained, it could potentially jeopardize AVID certification (i.e., the District would not be able to use the term "AVID" to describe its program). AVID is not a state or federally mandated program. Initial AVID training is obtained through attendance at the AVID summer institute in San Diego. There is on-going AVID training through the Sacramento County Office of Education (SCOE). The AVID curriculum underwent substantial revision in 2005, and recent AVID training is therefore recommended by SCOE.

38. Respondents contended that Ms. Mann was not "competent" to bump Ms. Kidd because she has not received recent AVID training. Ms. Mann obtained four units of AVID training at the AVID summer institute at the University of San Diego in August 1993.

39. Respondents' contention is not persuasive. Although her training is not recent, Ms. Mann has received AVID training. It was not established that NHS's AVID certification

⁵ Ms. Eisberg's entitlement to continued employment with the District is addressed elsewhere in this Decision.

would be jeopardized by the assignment of Ms. Mann to the AVID program. Ms. Mann is eligible to bump Ms. Kidd.

Proposed Bump – Jacobson-Sanchez

40. Gregg Ellis (#148 – 8/23/99) is an assistant principal at IHS who is returning to the classroom as a result of the Board's approval of 5.0 FTE reduction in assistant principal positions. Mr. Ellis holds a clear single subject social science credential. The District identified Mara Harvey (#367 – 9/2/05) as the least senior certificated employee with a social science credential who could be bumped by Mr. Ellis. Ms. Harvey holds a clear single subject social science credential and a subject matter authorization to teach introductory English. She also holds a CLAD certification. Her current teaching assignment is social science/English Language Learner social science at NHS. The District identified Kimberly Jacobson-Sanchez (#450 – 8/8/07) as a less senior teacher occupying a position into which Ms. Harvey could bump. Ms. Jacobson-Sanchez holds a clear multiple subjects (MS) credential, as well as subject matter authorizations to teach Introductory English and Introductory Social Science. She also holds an English Language Learner Authorization. She is currently assigned to teach English Language Development (ELD) at Natomas Middle School.

41. Respondents contended that Ms. Harvey was not eligible to bump Ms. Jacobson-Sanchez from her position at Natomas Middle School under the Board's competency criteria because Ms. Harvey has not taught at the middle school level for at least one year within the preceding five years. This contention has merit. District records indicated that Ms. Harvey last taught at a middle school site on October 14, 2005. Therefore, she does not meet the competency criteria. Ms. Jacobson-Sanchez must be retained by the District.

Individual Teacher Issues

Scott Fitzgerald

42. The Board approved a 4.0 FTE reduction in social science services. Scott Fitzgerald (#474 – 9/13/07) holds a preliminary single subject credential in social science. He currently teaches leadership and APEX, a credit recovery program, at NHS. He taught one period of geography in the fall semester; otherwise, he has not taught social science in the 2009-2010 school year.

43. No specific credential is required to teach leadership or APEX. Any credentialed teacher may serve in these positions.

44. The District identified Mr. Fitzgerald as the least senior teacher with a social science credential, and sent him a Notice based upon the 4.0 FTE social science reduction. The District did not realize that Mr. Fitzgerald was not teaching social science courses when it identified him for layoff.

45. Respondents contend that Mr. Fitzgerald cannot be laid off as a result of the reduction in social science services, because he is not teaching social science this school year. This contention is not persuasive. If the District had not identified Mr. Fitzgerald for layoff as the least senior teacher with a social science credential, it would have identified a more senior teacher with such a credential; that individual would have been able to bump Mr. Fitzgerald from his current teaching assignment. Therefore, Mr. Fitzgerald was properly served with a layoff notice.

Carolyn Lopes

46. The Board approved a reduction of 5.0 FTE assistant principal positions, and a 1.0 FTE reduction for the Community Day School principal. Carolyn Lopes (#64 – 8/22/94) is currently an elementary school principal. She holds a clear single subject English credential. At her request, the District is reassigning her to a classroom position for the 2010-2011 school year. The District did not eliminate Ms. Lopes' principal position. The District characterized her reassignment as a release under section 44951.⁶

47. Benjamin Odell (#487 – 1/14/08) holds a preliminary single subject English credential. He is currently assigned to teach English at NHS.

48. The District sent a Notice to Mr. Odell as a consequence of Ms. Lopes' return to the classroom. The District characterized this as a "bump." However, there is no corresponding PKS reduction to account for Mr. Odell's proposed layoff. The Board approved a reduction of 3.8 FTE English services and 1.0 FTE reduction of English (DHS) services. To account for this reduction, the District identified a vacant position (.8 FTE) due to the nonreelection of a probationary employee, and four teachers who received Notices: Teang Kuy (#518 – 10/20/08); Callie Zaidel (#513 – 8/6/08); Jana Andrews (#497 – 8/4/08); and Paul Sanchez (#463 – 8/8/07).

49. Respondents contended that Ms. Lopes is not eligible to bump any of the respondents, because her position was not reduced or eliminated as part of the PKS

⁶ Section 44951 states:

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.

reduction. This contention is persuasive. In essence, the District has permitted Ms. Lopes to transfer back into a teaching position. If the Board had not authorized layoffs for the 2010-2011 school year, the District would not have been permitted to terminate a certificated employee to “make room” for Ms. Lopes. If the District complied with section 44951, then it gave Ms. Lopes “notice” of her release from her position as an administrator prior to March 15, 2010. The Board could have authorized an additional PKS reduction to account for her return to the classroom, but did not do so. Under the circumstances, it was not appropriate for the District to “bump” a junior employee because of Ms. Lopes’ return to classroom teaching.

50. It appears that Mr. Sanchez has greater seniority than Mr. Odell. Mr. Sanchez holds a clear single subject English credential and is currently assigned to teach middle school language arts. It is not clear whether Mr. Sanchez is eligible to bump Mr. Odell from his high school English assignment under the District’s competency criteria. The District shall be required to retain the most senior teacher with the credential and competency to occupy the position held by Mr. Odell or, if no one is eligible to bump Mr. Odell, shall retain Mr. Odell.

Welfare of the District and Its Students

51. The Board’s decision to reduce or discontinue the particular kinds of services identified in Resolution No. 10-02 was not arbitrary or capricious, but constituted a proper exercise of discretion.

52. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The decision was made because of a variety of factors affecting the District including the State budget crises with the resultant possible loss of revenue from the State. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

53. Except as specifically noted above, no certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. The services identified in Resolution No. 10-02 are particular kinds of services that could be reduced or discontinued under section Education Code section 44955. Cause exists to reduce the number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services. Cause for the reduction or discontinuance of

services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

4. As set forth in Finding 15, Hannah Gilman's correct seniority date is July 11, 2006.

5. As set forth in Findings 16-23, Deborah Eisberg's correct seniority date is March 25, 2004.

6. As set forth in Finding 11, the District has rescinded or shall rescind notices of layoff to the following individuals: Tiffanie Lau; Christina Meyer; Angela Saunders; and Rebekah Anthony. Rebekah Cyr is retained for .5 FTE. Sara Thorn is retained for .6 FTE, and shall be laid off for .4 FTE.

7. As set forth in Findings 27-32, the District shall rescind the layoff notice to Deborah Eisberg.

8. As set forth in Findings 40-41, the District shall rescind the layoff notice to Kimberly Jacobson-Sanchez.

9. As set forth in Findings 46-50, the District was not authorized to lay off a teacher as a result of the release of an administrator pursuant to section 44951, and it did not establish a need to lay off an additional English teacher on the basis of a reduction in PKS. Therefore, the District shall retain the most senior teacher with the credential and competency to occupy the position held by Benjamin Odell or, if no one is eligible to bump Mr. Odell, shall retain Mr. Odell.

10. All other arguments of the parties not specifically addressed herein were considered and are rejected.

11. No employee with less seniority than any named respondent is being retained to render a service which any named respondent is certificated and competent to render. Except as set forth in Legal Conclusions 6, 7, 8, and 9, the Board may give respondents final notice before May 15, 2010, that their services will not be required for the ensuing school year, 2010-2011.

ORDER

1. The District shall comply with Legal Conclusions 4 through 9.

2. Except as set forth in Legal Conclusions 6, 7, 8, and 9, the Accusations served on respondents are sustained. Notices of layoff shall be rescinded as to the certificated employees listed in Legal Conclusions 6, 7, 8, and 9. Notices shall be given to the remaining respondents identified in attached Exhibit A that their services will not be required for the 2010-2011 school year because of the reduction or discontinuation of particular kinds of services. Notice shall be given to respondents in inverse order of seniority.

Dated: May 5, 2010.

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

NATOMAS UNIFIED SCHOOL DISTRICT

RESPONDENTS REPRESENTED BY

LANGENKAMP, CURTIS & PRICE, LLP

Lydiana Alfaro
Rebekah Anthony
Lindsay Anzelc
Sandra Asimos
Ranbir Bains
Brian Bellisario
Ernest Berryman
Kristen Bishop
Lori Blalock
Brandon Breckenridge
Shannon Brinkley
Yvonne Bruins-Scarborough
Christina Carpenter
Jason Crabtree
Linda Cravens
Rebekah Cyr
Joseph Daniels
Arcy De Vera
Beverly Drew
Nekita DuVal
Deborah Eisberg
Susan England
Scott Fitzgerald
Shazana Gardner
Hannah Gilman
Kendra Gorski
Karen Hall-Sandlund
Julie Hanson
Necol Harness
Norma Hernandez
Wendy Heu
Roger Heym
Melanie Intiso
Scott Jackson
Kimberly Jacobson-Sanchez
Christina Jolly

Nancy Kidd
Allyson Kirby
Nicole Lamb
Tiffanie Lau
Hannah Lingrell
Gayle Martin
Barbara Martinez
Tanya Mendoza
Christina Meyer
Krista Meyers
Andrea Mitchell
Adam Munguia
Mario Ochoa
Tavia D. Pagan
Jenna Pal-Freeman
Jessica Penney
Alice (Rose) Penrose
Cherie Perez
Siurave Plantillas
Niccole Pulis
Erin Ryan
Paul Sanchez
Navneet Sandhu
Sue Saunders
Amy Sparks
Scott Taylor
Sara Thorn
Julie Torres
Eileen Tumacder
Celia Valiente-Raeder
Amanda Van Vliet
Anna Williams
Colleen Yates
Callie Zaidel