

BEFORE THE
BOARD OF TRUSTEES
CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2010030137

CERTIFICATED EMPLOYEES OF THE
CHAFFEY JOINT UNION HIGH SCHOOL
DISTRICT LISTED ON EXHIBIT A,

Respondents.

PROPOSED DECISION

On April 8, 2010, in Ontario, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Mark W. Thompson and Edward B. Reitkopp, Attorneys at Law, represented the Chaffey Joint Union High School District.

Michael R. Feinberg and Amy M. Chi, Attorneys at Law, represented the respondents set forth on Exhibit A attached hereto.

Prior to the hearing, the District withdrew layoff notices and dismissed the accusations against Nexhat Argun, Florence Dabney, Monica Christianson, Connie Hensley, Douglas Colenbrander, Walter Phillips, Ashley Hatcher, Natalie McMinn, Gina Cantelletta, and Vanessa Ressa.

The matter was submitted on April 19, 2010.

FACTUAL FINDINGS

1. On March 4, 2010, Lynne S. Ditfurth, Assistant Superintendent, Personnel, of the Chaffey Joint Union High School District (hereafter, "the District"), made and filed the accusations against respondents in her official capacity.

2. Respondents are certificated employees of the District.

3. Before March 15, 2009, pursuant to Education Code sections 44949 and 44955, Ms. Ditfurth notified the Board of Trustees of the District of the Superintendent's recommendation that respondents be notified their services will not be required for the ensuing school year. The Superintendent's notification to the Board of Trustees set forth the reasons for the recommendation.

4. On or before March 15, 2009, each respondent was given written notice that the Superintendent had recommended that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing year. Each written notice set forth the reasons for the recommendation. The notices satisfied the requirements of sections 44949 and 44955. *San Jose Teachers Association, Inc. v. Allen* (1983) 144 Cal.App.3d 627, 632; *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 803-04, distinguishing *Karbach v. Board of Education* (1974) 39 Cal.App.3d 355, 360-63.

5. Each respondent timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year. Accusations were timely served on respondents, and each respondent filed a timely Notice of Defense. All pre-hearing jurisdictional requirements have been met.

6. The Board of Trustees of the District took action in Resolution No. 2010-02 to discontinue the following services for the 2010-11 school year:

English Teaching Services	(18 F.T.E.)
Social Science Teaching Services	(8 F.T.E.)
Math Teaching Services	(7 F.T.E.)
Physical Science Teaching Services (Includes Chemistry, Physics, Earth/Geological, Integrated 7-9, Intro General, Intro Physical	(2 F.T.E.)
Life Science Teaching Services (Includes Biology, Anatomy/Physiology, Natural Science, Integrated 7-9 Integrated 7-9, Intro General, Intro Life	(4 F.T.E.)
Librarian Services	(8 F.T.E.)
Business Teaching Services	(3 F.T.E.)
Spanish Language Teaching Services	(4.8 F.T.E.)
French Language Teaching Services	(1 F.T.E.)
Art Teaching Services	(1 F.T.E.)
Special Education Teaching Services	(5 F.T.E.)
Physical Education Teaching Services	(1.4 F.T.E.)
Parenting/Child Care Services	(1 F.T.E.)
Counseling Services	(4 F.T.E.)
Adult School—Parenting Services	(2 F.T.E.)
Adult School—Jail Program	(6 F.T.E.)
TOTAL TEACHING SERVICE POSITIONS	(76.2 F.T.E.)

Administrator—Assistant Principal

(8 F.T.E.)

TOTAL CERTIFICATED POSITIONS

(84.2 F.T.E.)

The resolution proposed elimination of a total of 84.2 full-time equivalent positions.

The resolution provided:

That “competency” as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include possession of: (1) a valid credential in the relevant subject matter area; (2) “highly qualified” status under the No Child Left Behind Act in the position to be assumed; and (3) an appropriate formal (not emergency) EL authorization (if required by the position).

The services set forth above are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. *California Teachers Association v. Board of Trustees of the Goleta Union School District* (1982) 132 Cal.App.3d 32, 34-37 and cases cited therein. *See also San Jose Teachers Association v. Allen, supra* at 635-38, in which the court specifically rejected the reasoning of *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571; *Zalac v. Governing Board* (2002) 98 Cal.App.4th 838, 853-54.

Furthermore, these services may be reduced because of budgetary difficulties. *Zalac v. Governing Board, supra*, and cases cited therein. The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

7. No certificated employee junior to any respondent is retained to perform services which any respondent is certificated and competent to render.

8. The reduction or discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees of the District as determined by the Board of Trustees.

9. The Board of Trustees considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

10. The Board of Trustees established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The Board of Trustees provided the order of termination shall be based on the needs of the District and its students. The criteria were to be applied based on information on file as of February 1, 2010, one step at a time, until the tie was broken in accordance with the following:

- “1. Highly Qualified Status under NCLB in area of assignment.
2. Credential status in area of assignment, in order of priority:
 - a. Clear, Life, Standard Secondary, etc.;
 - b. Preliminary
 - c. Intern
 - d. Provisional or STP.
3. Possession of a Clear or Preliminary Single Subject credential
4. Possession of a supplemental or subject matter authorization in one of the core subject areas, in order of priority:
 - a. Math
 - b. Science
 - c. English
 - d. Social Science
5. Total number of Clear or Preliminary credential in different subject areas.
6. Total number of supplementary or subject matter authorizations in different subject areas.
7. Number of years of credentialed teaching experience prior to employment with District, as indicated by initial salary schedule placement.
8. Possession of a Doctorate Degree, earliest date prevails.
9. Possession of a Masters Degree, earliest date prevails.
10. Total number of post-Bachelor credits on file with the District by February 1.
11. If ties cannot be broken by using the above criteria, then order of seniority shall be determined by a random drawing of lots among employees in the individual tie.”

11. The District created a Seniority List which contains employees' seniority dates (first date of paid service), site, job description, department, credential description, and subjects. The District used the Seniority List to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the two services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees.

12. Candice Newman (seniority date of August 15, 2008) has a single subject preliminary credential in biology, and single subject credentials in chemistry and geology. She teaches two classes of chemistry and three classes of integrated science at Rancho Cucamonga High School and has been noticed for layoff. She testified at the hearing that she has 36 students in her chemistry classes, and there are two other chemistry teachers at Rancho Cucamonga High School. She is concerned that if she is laid off, the remaining teachers will have in excess of 50 students in their classes and their chemistry labs. She testified there are nine to ten work spaces in the labs, and currently, with 36 students in a class, there are more than three students at each work station, but if the class size increased to more than 50, there would be more than five students per work station in the labs. She noted that there were health hazards that would be exacerbated by the increased size of the classes, and that currently, 36 students were difficult to supervise, but 50 or more would be "chaos." She added that she learned from the fire marshal that the maximum number of students permitted in a lab was 49.

13. Doniella Callaway (seniority date of August 7, 2009) has a single subject preliminary credential in biology and teaches physical science and biology at Chaffey High School. She testified there are six biology teachers at Chaffey High School, and while she and one other teacher will be laid off, another teacher will be moved into a BTSA position, which is full-time, and that will result in a reduction of three biology teachers. Since she presently has 35 students in her class, a reduction of half the number of biology teachers could double the size of the classes.

14. Ashley Thompson (seniority date of August 7, 2009) has a single subject intern credential in biology and teaches biology and physical science at Chaffey High School.

15. Dresden Hauck has a single subject credential in English and teaches English at Etiwanda High School. She is also a cheer advisor. Her seniority date is August 21, 2008 but believes it should be July 16, 2008.

As a cheer advisor, Ms. Hauck is paid a stipend by the District in addition to her regular salary. She testified she receives the stipend twice a year and is not required to document the hours she works as a cheer advisor, and she spends a great deal of time with the cheerleaders.

Ms. Hauck testified that when she was hired, Thomas Mitchell, the principal at Etiwanda High School, called her and said she would be offered a job that would take effect after the Board approved her hiring. That occurred on July 15, 2008. According to Ms. Hauck, Mr. Mitchell called her that day and told her to report for an orientation on July 16. That involved completing relevant paperwork. She then went to cheerleading practice from 2:00 to 4:00 that afternoon. She testified she continued attending practice four times a week.

Ms. Hauck testified that on July 29, 2008, she attended a cheer camp at San Diego State University. She believed her attendance at the camp was expected of her. The camp ended on August 2. She lived in a dormitory with the cheerleading students and other teachers, including teachers from the District. After she returned from the camp, she continued cheerleading practice four times a week.

The District did not pay for the expenses associated with the cheer camp at SDSU. Ms. Hauck assumed she was paid for the cheerleading work she did during the summer and for attendance at the cheer camp.

After the hearing concluded, the District reviewed its records and submitted several documents relating to Ms. Hauck's employment and pay. The records were marked Exhibit 18 and admitted into evidence. The records relevant to Ms. Hauck's seniority date include:

a. A District Personnel Requisition form dated May 12, 2008 signed by Ms. Ditfurth requesting Ms. Hauck be employed at Etiwanda as an English teacher, filling a new position, and the date needed is August 21, 2008. In the administration office use box, the effective date is indicated as August 21, 2008.

b. A District Personnel Requisition form dated June 20, 2008 signed by Mr. Mitchell requesting Ms. Hauck be employed at Etiwanda as a Pep Squad Advisor, replacing Michelle Coffey, and the date needed is the 2008-09 school year. In the administration office use box, the effective date is indicated as August 21, 2008.

c. A Tentative Offer of Employment dated June 26, 2008 as a teacher for the 2008-09 school year. Ms. Hauck signed it July 2, 2008. The offer indicates a salary at the level of Class C, step 6. There is no reference to an offer of employment as a Pep Squad Advisor.

d. A Board Agenda Item reflecting that at a board meeting on July 15, 2008, Ms. Ditfurth recommended the employments of a number of certificated teachers, including Ms. Hauck to teach English.

e. A Contract of Employment dated July 16, 2008. The contract indicates the school year began on July 1, 2008 and ended on June 30, 2009. It further indicates Ms. Hauck would be paid her annual salary as a teacher, class D, step 6, beginning on August 21, 2008 until June 10, 2009. The contract reflects her salary as a teacher and as a pep squad assistant. The contract indicates she is classified as a probationary teacher.

f. A Notice of Employment sent to the San Bernardino County Superintendent of Schools reflecting Ms. Hauck's employment effective August 21, 2008.

g. An Application to Teach Outside of Credential Authorization for Ms. Hauck to teach pep squad, which is a subject outside her credential, for the 2008-09 school year. The date is 11/6/08 and was approved and signed by Ms. Dittfurth on November 19, 2008. The application has a handwritten note which reads "Committee on Assignments 08-09."

h. A Teacher Consent Form on which the District approved Ms. Hauck to teach outside her credential for the 2008-09 academic school year and Ms. Hauck consented to the teaching assignment.

i. Three pages of Payroll Transactions showing payment of Ms. Hauck's salary. They indicate she first received a stipend payment for the first semester on or about February 1, 2009 of \$750.00, she received another stipend payment of \$1000.00 on or about March 1, 2009, and a third stipend of \$1750.00 on or about July 1, 2009. There is also a note that reads "\$3500 for entire yr. original pmt of \$750 (asst. advisor) was in error."

16. Michelle Dane has a single subject credential in English and teaches four periods of English at Ontario High School. She also serves as a yearbook advisor for which she receives a stipend. Her seniority date is August 21, 2008. She believes it should be July 28, 2008.

Ms. Dane testified when she was hired she believed she had to attend a yearbook camp as part of her yearbook duties, and did attend a yearbook camp in Palm Springs from July 28 to 30. She did not pay for room and board. Two students also attended the camp. The District did not pay for her expenses at the camp.

After the hearing concluded, the District reviewed its records and submitted several documents relating to Ms. Dane's employment and pay. The records were marked Exhibit 19 and admitted into evidence. The records relevant to Ms. Dane's seniority date include:

a. A District Personnel Requisition form dated May 7, 2008 requesting Ms. Hauck be employed at O.H.S as an English teacher, filling a replacement position, and the date needed is the 2008-2009 school year. In the administration office use box, the effective date is indicated as August 21, 2008. At the bottom of the form appears the date 8-8-08 and a reference to yearbook advisor.

b. A District Personnel Requisition form dated June 3, 2008 requesting Ms. Hauck be employed at O.H.S. as a Yearbook Advisor, replacing Lee Tintary, and the date needed is the 2008-09 school year. In the administration office use box, the effective date is indicated as August 21, 2008. At the bottom of the form appears the date 8-8-08.

c. A Tentative Offer of Employment dated May 29, 2008 as a teacher for the 2008-09 school year. Ms. Dane signed it June 1, 2008. The offer indicates a salary at the level of Class D, step 10. There is no reference to an offer of employment as a Yearbook Advisor.

d. A Board Agenda Item reflecting that at a board meeting on June 17, 2008, it was recommended that a number of certificated employments be approved, including Ms. Dane to teach English.

e. A Contract of Employment dated June 18, 2008. The contract indicates the school year began on July 1, 2008 and ended on June 30, 2009. It further indicates Ms. Dane would be paid her annual salary at class D, step 10, beginning on August 22, 2008 until June 10, 2009. The contract reflects her salary as a teacher. Ms. Dane signed the acceptance of the offer on July 8, 2008. The contract indicates she is classified as a probationary teacher. In the acceptance portion of the contract, Ms. Dane indicated she held a single subject clear English credential. Her contract does not refer to a Yearbook Advisor.

f. A Notice of Employment sent to the San Bernardino County Superintendent of Schools reflecting Ms. Dane's employment effective August 21, 2008.

g. An Application to Teach Outside of Credential Authorization dated November 7, 2008 for Ms. Dane to teach yearbook, which is a subject outside her credential, for the 2008-09 school year. It was approved and signed by Ms. Ditfurth on November 19, 2008. The application has a handwritten note which reads "Committee on Assignments application."

h. A Teacher Consent Form on which the District approved Ms. Dane to teach outside her credential for the 2008-09 academic school year and Ms. Dane consented to the teaching assignment.

i. Three pages of Payroll Transactions showing payment of Ms. Dane's salary. They indicated she first received a stipend payment for an extra assignment on or about December 1, 2008 of \$337.79; she received another stipend payment of \$750.00 on or about February 1, 2009 (with a note reading "1/2 stipend for 1st semester"); a third stipend payment of \$82.66 on or about April 1, 2009; and a fourth stipend payment of \$750.00 on or about July 1, 2009 (with a note reading "1/2 stipend for 2nd semester").

17. Jaime Graham (seniority date of August 21, 2008) holds a single subject credential in foundational math as well as biology and chemistry. She presently teaches chemistry and biology at Ontario High School, with the two positions constituting one F.T.E. Her two science positions will be reduced. The District's bump analysis shows that she would bump into a math vacancy by virtue of her math credential, and, therefore, would not be laid off. Candice Newman, who is more senior to Ms. Graham, however, does not hold a math single subject credential and therefore will be laid off as part of the reduction of two F.T.E. positions in physical science and four F.T.E. positions in Life Science.

The District proposes to reduce math by seven F.T.E. positions. The bump analysis indicates there is one vacant position in math, and, consequently, six teachers will be laid off. Ms. Dittfurth testified the District did not skip any science teachers and her intention is for Ms. Graham to teach math, not science, and that Ms. Graham would not be placed in a science position ahead of Ms. Newman. Ms. Dittfurth testified there are always math courses for Ms. Graham to teach such as math intervention for students who need assistance with the math curriculum. She also testified that she believed there was a math vacancy into which Ms. Graham could be placed in addition to the one indicated on the bump analysis. Finally, she testified that Ms. Graham's foundational math credential permits her to teach beyond the ninth grade.

18. Patricia Guerra (seniority date of September 1, 1989) teaches in the Parenting Child Care Department. The District proposes to reduce that department by one F.T.E. Its bump analysis shows that she will bump Bonnie Culp (seniority date of August 28, 1997), a less senior teacher who teaches Homemaking and Child Development. Ms. Culp also holds an English credential and will bump into a vacant English position.

Ms. Culp is more senior than any of the English teachers the District proposes to lay off.

19. Marilyn Irwin (seniority date of October 19, 1983) is a librarian and holds a single subject credential in social science and a supplemental authorization in Introductory English. The District proposes to bump her into a social studies position held by Jaclyn Smits (seniority date of October 18, 2007), who holds a single subject credential in social science, and who is the most senior social science teacher to be laid off.

Ms. Dittfurth testified that Ms. Irwin with her supplemental authorization in English could teach some English classes in the ninth grade, but could not teach beyond that, and it was the practice of the District not to staff teachers only at the ninth grade level. She testified a single subject credential in social science was preferable to the supplemental authorization in English for that reason.

Vanessa Ressa (seniority date of August 15, 2008) and Gina Cantelletta (seniority date of January 22, 2008) have single subject credentials in English. The District does not propose to lay off either of them. According to Ms. Dittfurth, both of these teachers can teach English at any level, while Ms. Irwin cannot. In her view, it is preferable to have Ms. Irwin bump into a social science position than into an English position. The result is that Ms. Smits, who is senior to both Ms. Ressa and Ms. Cantelletta, would be laid off.

20. Karman Johnson-Vega (seniority date of August 23, 2007) is a credentialed librarian with a single subject credential in fine arts. She is the most senior librarian who is to be laid off. Arthur Olivas (seniority date of September 3, 1998) has a multiple subject credential and teaches fine arts, photography, and video.

Ms. Dittfurth testified that Mr. Olivas is appropriately teaching photography because he is highly qualified to teach upper division students.

21. Kevin Davis (seniority date of August 29, 2002) teaches business. The District proposes to lay him off as part of the three F.T.E. reductions in business education. He would willingly take AVID (Advancement Via Individual Determination) training over the summer and would agree to be employed as an AVID teacher.

Ms. Dittfurth testified the AVID program was designed for underachieving students to help them prepare for college. Classes teach study skills, writing, organizational skills, and so forth. It has its own curriculum and is not connected to any subject. A teacher who teaches AVID does not need a particular credential, but instead receives training in the program. AVID teachers also teach other subjects.

Ms. Dittfurth also testified that all freshmen take a success course, but it is not required. It is a part of curriculum and generally, students at Chaffey High School take it.

22. Claudia Mercado (seniority date of August 20, 2007) has a single subject credential in social science and a supplemental authorization in art history. She teaches social studies and two periods of art history, and will be bumped by Graciela Cortez (seniority date of August 30, 2001), a librarian. Ms. Cortez could not teach art history. In order to teach AP art history, a teacher needs an art history credential or art credential.

The District is not proposing to reduce art history. According to Ms. Dittfurth, art history is a discretionary, elective assignment each year, it is not required, and she was not sure if it would be offered for the 2010-11 school year.

23. Francesco Macchia (seniority date of August 23, 2007) teaches physical education. Ms. Dittfurth testified he should not bump into a sixth period physical education class (called athletics by the District), because he would then only teach one class a day, and it was the District's practice not to hire teachers to teach one class a day.

24. Karina Ramirez (seniority date of August 7, 2009) is a special education teacher serving as a resource specialist at Chaffey High School and will be laid off as part of the District's reduction of five F.T.E. positions. She testified she serves 24 students in small groups or one-on-one. She did not have her own classroom, and she was not sure if there were other resource specialists. She testified that she is concerned about the ability of the remaining special education teachers to provide the services that special education students need.

Ms. Dittfurth testified there was not a lack of funding for special education, and the reduction in services depended on the reduction in the number of students, or the way services would be provided. She testified the District draws no distinction between a resource specialist and a classroom teacher. She did not know what effect the elimination of a resource specialist would have.

25. The District proposes to eliminate all of the eight librarian positions. Ms. Dittfurth testified the District could operate a library without a certificated librarian but a

librarian has to have a credential. She explained the elimination of all of the library positions was a budget proposal and the District was negotiating this with the teachers' association. She further explained that the District planned to cover all the services libraries provided but she did not know how the District would accomplish this.

26. Regarding the camps that Ms. Hauck and Ms. Dane attended prior to the commencement of school, Ms. Dittfurth testified that attendance at the camps and the other duties the teachers performed in connection with the additional duties as a cheer or yearbook advisor did not count toward seniority. She noted there were duties the teachers performed that were outside the school day or school year, and that the teachers were paid twice a year for performing those duties, once during each semester. She testified that the duties advisors perform are at their discretion, and the District did not verify what work was done or what hours the advisors worked.

Ms. Dittfurth testified that there was no requirement that the advisor attend a camp or do anything with students prior to the first day of school. She did not know what Ms. Dane or Ms. Hauck had been told regarding what duties they should perform prior to the beginning of school. She added that the District did not pay the expenses for Ms. Hauck or Ms. Dane to attend the summer camps, nor did it pay for the students to attend the camps.

Prior to the hearing, the District sent an e-mail to all certificated employees and asked for any corrections to the seniority list. At the hearing for the layoffs regarding the 2009-10 school year, Ms. Hauck had sought to have her seniority date advanced based on her attendance at an orientation, but the District in its final decision did not change her seniority date. Ms. Hauck did not seek to have her seniority date changed on the basis of her duties as a cheer advisor prior to this hearing.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter relating to the elimination of 84.2 full-time equivalent positions exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Education Code section 44955 provides in relevant part:

...

(b) [W]henver a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary . . . to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any

probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render. . . . As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) . . .

The governing board shall make assignments and reassignments in such a manner that the employees shall be retained to render any service which their seniority and qualifications entitle them to render. . .

. . .

(d) *Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:*

(1) *The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.*

(2) *For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.*

To put it more succinctly, a senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. See *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. See *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; see also *Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.

3. Regarding Findings 15, 16 and 17, respondents argue the District treated vacancies in the math and English departments differently, and this impacted certain teachers differently. In the math department, the District proposes to reassign Ms. Graham from physical and life science to math based upon her credential in foundational math, and thus she would be retained, over Ms. Newman, who is senior to Ms. Graham but who cannot teach math. While the bump analysis indicates there is one vacant math position, Ms. Ditfurth testified there were positions to which Ms. Graham could be assigned for the 2010-11 school year in addition to the vacant math position listed on the bump analysis. There is no reason to disbelieve Ms. Ditfurth that Ms. Graham will be assigned a math position if there is such a position available, and that she will not be retained to teach science at the expense of a more senior science teacher.

The same is true in the English department. Ms. Ditfurth testified there was a vacant English position into which Ms. Culp would be placed, despite the absence of such a position listed on the bump analysis. Ms. Culp is more senior than any of the English teachers to be laid off. There is no reason to believe that there is not a position available for Ms. Culp, and consequently, no reason to set aside the layoff of the most senior English teacher, Laurette Ortiz. Respondents' arguments are rejected.

4. Regarding Finding 19, respondents argue that Ms. Irwin who bumped into a social studies position by virtue of her single subject credential in social science should have been assigned to the English department, thereby allowing the District to retain Ms. Smits. The District had legitimate reasons to choose to bump Ms. Irwin into social studies rather than English. By virtue of her social science credential, she could teach any social studies course but she was limited to teaching ninth grade English because of her English supplemental authorization.

Section 44955, subdivision (c) gives the District the authority to make assignments and reassignments that allows it to retain employees to render any service which their seniority and qualifications permit. The District's decision to retain Ms. Irwin in a social studies position is neither arbitrary nor capricious, but rather a decision based on sound reasons. Respondents' argument that the District should assign Ms. Irwin to teach English so that Ms. Smits would not be laid off is an example of what is called "inverse bumping." Such a proposal was rejected in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 568-69. Although that was a community college layoff under Education Code section 87743, the assignment and reassignment language is identical to the assignment and reassignment language in section 44955(c). Respondents' arguments are rejected.

5. Regarding the District's proposal to eliminate all of the eight librarian positions (Finding 25), respondents argue the District must keep at least one credentialed librarian and cannot operate the libraries solely with aides. Respondents point to Title 5, California Code of Regulations, section 16043, and Education Code section 45344.

Section 16043 provides:

Persons employed by a school district as school librarians, assisted by other certificated personnel where deemed necessary, are responsible to perform the duties assigned by the school district governing board, including, but not limited to, supplementing classroom instruction, helping and instructing pupils in the choice and use of library materials, planning and coordinating school library programs with the instructional programs of a school district, selecting materials for school libraries, and conducting a planned course of instruction for those pupils who assist in the operation of school libraries, subject to such policies, rules and regulations as may be established by the governing board for the operation and utilization of school libraries. Classified personnel assigned school library duties are to be under the supervision of certificated personnel; instructional aides assigned to school libraries are subject to the provisions of [Education Code Sections 45340 through 45349](#); pupils are under the supervision of certificated personnel.

Respondents recognize that *Brough v. Governing Board* (1981) 118 Cal. App. 3rd 702, 715 addresses the issue. The court there held:

The term “certificated personnel” under the terms of this statute does not necessarily connote certificated librarians as appellants suggest. Nowhere within [section 16043](#) is “certificated personnel” defined as a certificated librarian. The clear language of the section refers to any and all certificated personnel. The trial court determined that the certificated librarian, Rosenberg, was properly reassigned to a classroom position; her vacancy was filled by a certificated teacher with supervisory capabilities. ([Cal. Admin. Code, tit. 5, § 16043.](#))

Respondents argue *Brough* is distinguishable because after the librarian was reassigned to a classroom position, her vacancy was filled by a certificated teacher, while in this case, the District does not propose to assign any certificated personnel to perform the duties of a librarian. According to Ms. Ditfurth, the District planned to cover all the services libraries provided but she did not know how the District would accomplish this, and indicated the District and the teachers’ association were negotiating this issue.

At present, the District has no certificated personnel assigned to serve as librarians, but, according to *Brough*, such personnel need not be certificated librarians. Thus, the District is free to assign any certificated personnel to perform the services of a librarian. While Karman Johnson-Vega, as the most senior librarian proposed for layoff would be the best choice, the District is not required to select her. It is premature to consider whether the District has violated its obligations under section 16043.

Regarding Finding 21, Ms. Johnson-Vega also argues she should be retained because Mr. Olivas, while senior to her, should have been reassigned to teach courses within his credential such as core courses in the ninth grade, and that would allow her to be assigned to teach Fine Arts/Photography/Video courses to which Mr. Olivas has been assigned.

Ms. Ditfurth testified that Mr. Olivas is appropriately teaching photography because he is highly qualified to teach upper division students. As with Ms. Irwin (Legal Conclusion 4), the District reasonably could assign Mr. Olivas to teach this subject, and was not required to reassign him to another position in order to create an opening for Ms. Johnson-Vega. *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, *supra*. The layoff of Ms. Johnson-Vega must be upheld.

6. Mr. Davis (Finding 21) and Ms. Mercado (Finding 22) argue they should be retained because they can provide other services to the District: AVID in Mr. Davis' case and art history in Ms. Mercado's case. Neither of these subjects is required, and the District is free to provide them in the exercise of its discretion. Respondents' argument is without merit and is rejected.

7. Francesco Macchia (Finding 23) argues as a physical education teacher, he could teach sixth period athletics, and should be retained at least to the extent of 0.2 F.T.E., and he points to other non-physical education teachers who teach sixth period athletics. The District's reason for not retaining him, that it is not its practice to hire teachers to teach only one athletics class a day, is a reasonable one. Mr. Macchia's argument must be rejected.

8. Respondents argue that the District should not reduce the number of teachers teaching such subjects as chemistry, biology, and special education because such reductions are irrational and not in the best interests of the students. (Findings 13, 14, and 24.) A school district may reduce particular kinds of services so long as the decision is reasonable and not fraudulent, arbitrary, or capricious. *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808. A school district may reduce its offerings as long as it does not reduce them below code-mandated levels. *Id.* at 811. Respondents' arguments are without merit.

9. Education Code section 44845 provides:

Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position.

Education Code section 44929.27 provides:

No employee of a school district or districts, in which the average daily attendance of all the districts combined is in excess of 200,000, governed by the same governing board shall hereafter acquire permanent certificated tenure or permanent noncertificated status, or a combination of tenure and status, for more than one full-time position. Any employee who hereafter acquires any combination of permanent certificated tenure or permanent noncertificated status or both which exceeds that for one full-time position shall have a choice which tenure or status to retain so long as that retained does not exceed one full-time position.

It is the intent of this section that an employee holding permanent certificated tenure or permanent noncertificated status for a full-time position may not have permanent tenure or status protection for any additional time in either a certificated or a noncertificated position under any such school district governed by the same governing board.

10. Ms. Dane (Finding 16) and Ms. Hauck (Finding 15) argue the services they provided as advisors during the summer of 2008 prior to the beginning of school on August 21, 2008, and in particular the services they provided to students while they attended camps in Palm Springs and San Diego, should cause their seniority dates to be advanced to the time they began to provide these services. Based upon the testimony of Ms. Dittfurth (Finding 26), the District does not believe their seniority dates should be changed.

A review of the documentary evidence submitted by the District after the hearing concluded shows that both teachers were paid a stipend for their work as advisors in addition to being paid a regular salary as a teacher. In particular, the District Personnel Requisition forms requesting that Ms. Dane and Ms. Hauck be employed as advisors indicate an effective date of August 21, 2008 and their services were needed for the 2008-09 school year. The payroll records indicate the teachers were paid a fixed amount for their services as advisors, with the earliest payments coming in December 2008 (Ms. Dane) and February 2009 (Ms. Hauck). There is no evidence that the teachers were required to keep records of the time they spent advising the students either before classes began or after school, nor is there evidence as to how much time they were required to spend with their students.

By the terms of the tentative contract, both Ms. Dane and Ms. Hauck were hired as English teachers for the 2008-09 school year. The Board approved their employment as English teachers and the District then notified the San Bernardino County Superintendent of Schools that both were hired as new employees to teach high school English. Their contracts of employment indicate they were hired as probationary teachers and only Ms. Hauck's contract refers to an advisor position in addition to a teaching position.

There is no question but that Ms. Hauck and Ms. Dane spent considerable amounts of time with their students before school began on August 21, 2008, including the time at the camps. Both were justified in believing they would be paid for their services as advisors, and both should be commended for committing the time and energy they did to their students. The question is whether the time they spent serving as advisors affects their seniority dates pursuant to section 44845.

Based upon the evidence presented, it appears that section 44929.27 should be considered in determining Ms. Hauck's and Ms. Dane's seniority dates. That statute limits tenure to one full-time position, and in this case, the full-time positions Ms. Hauck and Ms. Dane were hired to fill were as English teachers. They were not hired in probationary positions as advisors. They could not acquire tenure as advisors. Their work as advisors was over and above their work as English teachers and the only benefit they received from performing that work was the stipend. The stipends were paid for their work throughout the course of the school year and were not paid on an hourly or per diem basis. According to the

Collective Bargaining Agreement (Exhibit D, pps. 82, 85), their work as advisors was paid as “Other Duty Assignments Stipends,” while their salary as teachers was determined by a “Certificated Salary Schedule.” Thus, it must be concluded that the seniority dates for Ms. Hauck and Ms. Dane must be based upon their employment as English teachers, and their first dates of paid service to the District in probationary positions was August 21, 2008.

The requests of Ms. Hauck and Ms. Dane to advance their seniority dates must also be rejected because neither teacher established their services as advisors provided prior August 21, 2008 was mandatory or a condition of their employment. Both testified they were expected to perform such services, but neither offered any evidence to corroborate their testimony. Neither showed, for example, that if they did not attend the camps or participate in cheer or yearbook activities prior to school beginning, their stipends would be reduced. Neither offered the testimony of the administrators who hired them or any documents to describe what they were told. On the other hand, Ms. Dittfurth testified that there was no requirement that the advisor attend a camp or do anything with students prior to the first day of school.

11. Any additional arguments offered by respondents have been considered and are rejected.

12. Cause exists under Education Code sections 44949 and 44955 for the District to discontinue particular kinds of services relating to 84.2 full-time equivalent positions. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Accusation. It is recommended that the Board give respondents notice before May 15, 2010, that their services will no longer be required by the District.

ORDER

The Accusations served on the respondents listed on Exhibit A are sustained. Notice shall be given to each respondent before May 15, 2010 that his or her services will not be required for the 2010-11 school year pursuant to the Board of Trustees’ resolution because of the reduction of particular kinds of services.

Notice shall be given in inverse order of seniority.

DATED: _____

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT

EXHIBIT “A”

The following certificated personnel will receive a layoff notice:

#	Last Name	First Name	FTE
1	Alvaro	Gil	1.0
2	Bentley	Amanda	1.0
3	Bremer	Jessica	1.0
4	Bucka	Nicole	1.0
5	Callaway	Doniella	1.0
6	Chen	Vincent	1.0
7	Corbett	Angela	1.0
8	Cortez	Christine	1.0
9	Cross	Susan	1.0
10	Dane	Michelle	1.0
11	Davis	Kevin	1.0
12	De Jong	Christine	1.0
13	Deocales	Demoree	1.0
14	Do-Gorlero	Kim Yen	1.0
15	Dolven	Michelle	1.0
16	Echols	Cari	1.0
17	Fair	Julie	1.0
18	Flax	Michael	1.0
19	Flores	Judy	0.6
20	Flory	Kristen	1.0
21	Franco	Windy	1.0
22	Frost	Patrick	1.0
23	Greenlee	Kristi	1.0
24	Hauck	Dresden	1.0
25	Holbrook	Jessica	1.0
26	Horwitz	Mandi	1.0
27	Johnson-Vega	Karman	1.0
28	King	Alexis	1.0
29	Lopez	Nancy	1.0
30	Macchia	Francesco	0.8
31	Mangione	Vincent	1.0

#	Last Name	First Name	FTE
32	Marcucci	Nan	1.0
33	Maxwell	Ashley	1.0
34	McConnell	Leanne	1.0
35	Mercado	Claudia	1.0
36	Morales	Lillia	1.0
37	Newman	Candice	1.0
38	Newman	Candice	1.0
39	Ortiz	Laurette	1.0
40	Potts	Latonya	1.0
41	Ramirez	Karina	1.0
42	Randall	Joanne	1.0
43	Riviere	Chantal	1.0
44	Robbins	Anne	1.0
45	Rogers-Mayle	Takiyah	1.0
46	Ruiz	Courtney	1.0
47	Smits	Jaclyn	1.0
48	Strickland	Jason	1.0
49	Sy	Leanne	1.0
50	Thompson	Ashley	1.0
51	Thompson	Dennis	1.0
52	Umana	Roy	1.0
53	Uzarski	Wendy	1.0
54	Villegas	Gricenda	1.0
55	Whitten	Aja Adia	1.0