

BEFORE THE  
GOVERNING BOARD OF THE  
PATTERSON JOINT UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

JULIE DuPRIEST, NATALIE KENYON, and  
GRACE VILLALOBOS,

Respondents.

OAH No. 2009020789

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, in Patterson, California, on April 29, 2009.

Janice J. Hein, Attorney at Law, represented the Patterson Joint Unified School District (District).

Ernest H. Tuttle, IV, Attorney at Law, represented respondents.

Evidence was received, the record was closed, and the matter was submitted for decision on April 29, 2009.

**FACTUAL FINDINGS**

1. On March 2, 2009, the Governing Board of the District adopted Resolution No. 03-02-09(a), entitled "Resolution of the Governing Board of the Patterson Joint Unified School District Regarding the Reduction or Discontinuance of Particular Kinds of Service (Certificated Layoff)" (PKS Resolution), by which it determined that it was necessary to reduce or discontinue the following particular kinds of services (sometimes referred to below as PKS) for the 2009-2010 school year, as recommended by Patrick Sweeney, Superintendent of the District:

18.0	FTE	Elementary Teachers
1.0	FTE	Elementary Music Teacher
1.0	FTE	Counseling Services
2.0	FTE	Vocational Education Teachers
2.0	FTE	Secondary Music Teachers

1.0	FTE	Business Teacher
1.0	FTE	Science Teacher
4.5	FTE	English Teachers
1.0	FTE	Math Teacher
1.0	FTE	Physical Education Teacher
1.0	FTE	Home Economics Teacher
1.0	FTE	High School Librarian

TOTAL: 34.5 FTE<sup>1</sup>

The Governing Board directed the Superintendent or his designee to send appropriate notices to all employees whose positions may be affected by virtue of the PKS reduction in accordance with the provisions of the Education Code, and to afford all such employees all rights to which they may be entitled. The PKS Resolution also set forth the order of termination as between employees with the same seniority dates (i.e., tie-breaking criteria), and defined “competency” for the purposes of Education Code section 44955. The District’s reduction of particular kinds of services and certificated employees is based solely upon the severe budget cuts that the District anticipates in these difficult economic times, and is not related to the skills, abilities or work performance of the affected employees.

2. Before March 15, 2009, the Superintendent gave written notice to 33 certificated employees of the District that, pursuant to Education Code sections 44949 and 44955, he had recommended to the Governing Board that they be given notice that their services would not be required for the 2009-2010 school year (Notices of Recommended Layoff). Prior to the hearing, the District rescinded all but 10 of these notices. Although the exact dates of the rescissions were not established by the evidence, they occurred after March 12, 2009.

3. Respondents are currently certificated employees of the District. Respondents were properly and timely served with the Notice of Recommended Layoff, and timely requested a hearing. Respondents were also properly and timely served with an Accusation, Statement to Respondent, form Notice of Defense, Notice of Hearing and relevant statutes. Respondents Julie DuPriest and Grace Villalobos filed timely Notices of Defense. The District waived the time deadline for respondent Natalie Kenyon to file a Notice of Defense and accepted as timely the notice she filed.

4. The Seniority List admitted into evidence at the hearing states that it was approved by the Governing Board on October 27, 2008, and revised and submitted for Governing Board approval on February 9, 2009. On the Seniority List, respondent Kenyon’s seniority date is listed as August 9, 2007, and respondent DuPriest’s seniority date is listed as September 4, 2007. At the hearing, respondents Kenyon and DuPriest asserted that their seniority dates as set forth on the Seniority List are not correct.

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<sup>1</sup> “FTE” stands for full-time equivalent.

### The District's Estoppel Argument

5. At the hearing, the District argued that, because respondents Kenyon and DuPriest had been given an opportunity to seek correction of their seniority dates before the Notices of Recommended Layoff were issued, they were prohibited by the doctrine of estoppel from challenging their seniority dates at the hearing. As set forth below, the District's argument was not supported by either the evidence or the law.

6. On February 3, 2009, Philip Alfano, Assistant Superintendent - Human Resources, informed temporary and probationary certificated employees and interns by email that he would be conducting an informational meeting regarding the proposed reductions in force. On February 12, 2009, Mr. Alfano held an informational meeting and emailed the Seniority List to all staff. Respondents Kenyon and DuPriest attended the informational meeting and received the Seniority List. During the February 12, 2009 informational meeting, Mr. Alfano informed the employees that they could challenge their seniority dates as set forth on the Seniority List. There was no evidence to indicate that, during the meeting, Mr. Alfano told the employees that any such challenges had to be submitted by a particular date. There was also no evidence to indicate that the District ever notified respondents Kenyon and DuPriest in writing that they had to request a change in their seniority dates by a specified time deadline. In addition, the evidence did not establish that respondents Kenyon and DuPriest had ever received a copy of the Seniority List prior to February 12, 2009.

7. Elana Davidson is a certificated employee of the District and the president of the Patterson Association of Teachers (PAT). Prior to March 12, 2009, respondent Kenyon notified Ms. Davidson that she had a concern about her seniority date. Ms. Davidson relayed respondent Kenyon's concerns to Mr. Alfano. On March 12, 2009, Mr. Alfano informed Ms. Davidson by email as follows: "I double-checked, and Natalie's seniority date is correct. Although she subbed, her first day of paid service as a probationary teacher (she was actually temp and retroactively made prob by board action this year) was 8/9/07...." Ms. Davidson responded by email, "Thanks, I will let her know."

8. Respondent DuPriest also informed Ms. Davidson of her concerns with her seniority date shortly after she received the Notice of Recommended Layoff. Ms. Davidson told Ms. DuPriest about Mr. Alfano's response regarding respondent Kenyon. Because respondent DuPriest's concerns were the same as respondent Kenyon's and Mr. Alfano had rejected respondent Kenyon's concerns, Ms. Davidson did not relay respondent DuPriest's concerns to Mr. Alfano. Instead, it was decided that both respondent Kenyon and respondent DuPriest would raise their concerns at the hearing in this matter.

9. According to the District, PAT "signed off" on the Seniority List. There was no evidence submitted in this matter to indicate that respondents Kenyon and DuPriest waived any of their rights to contest the Seniority List or authorized the union to waive any rights on their behalf.

10. The District argued that the doctrine of equitable estoppel applies to prevent respondents Kenyon and DuPriest from challenging their seniority dates in this matter. The District's argument is not persuasive.

In *California School Employees Association v. Jefferson Elementary School District* (1975) 45 Cal.App.3d 683, 692, the court explained the doctrine of equitable estoppel as follows:

It is elementary that equitable estoppel lies only where someone by his words or conduct *wilfully* causes another to believe the existence of a certain state of things and *induces* him to act on that belief so as to alter his own previous position [citation]. Or as the court put it in *Seymour v. Oelrichs* (1909) 156 Cal. 782, 795 [106 P. 88]: ““The vital principle is that he who by his language or conduct leads another to do *what he would not otherwise have done* shall not subject such person to loss or injury by disappointing the expectations upon which he acted ...” (italics added.) Accordingly, in order to establish the claim or defense based on equitable estoppel there must be: (1) a *representation or concealment of material facts*; (2) made with knowledge, actual or virtual, of the facts; (3) to a party ignorant of the truth; (4) *with the intention that the latter act upon it*; and (5) *the party must have been induced to act upon it* [citations]. Where one of these elements is missing there can be no estoppel. (Italics in original.)

There was no evidence to establish that respondents Kenyon and DuPriest made representations or concealed material facts with the intention that the District would rely upon those representations or concealments to its detriment. Respondent Kenyon's concerns regarding her seniority date were brought to the District's attention within one month after Mr. Alfano conducted the informational meeting and provided the Seniority List, and almost immediately after respondent Kenyon received her Notice of Recommended Layoff. Any failure of respondents Kenyon and DuPriest to continue to pursue their seniority date challenges directly with the District prior to the hearing was induced by the District's rejection of respondent Kenyon's challenge in the March 12, 2009 email (Findings 7 and 8). (*Bakersfield Elementary Teachers Association v. Bakersfield City School District (Bakersfield)* (2006) 145 Cal.App.4th 1260, 1275-1276.)

The District rescinded Notices of Recommended Layoff *after* having being informed that respondent Kenyon had concerns about her seniority date and *before* the hearing in this matter was held and a final decision was issued. There was no evidence to indicate that the District notified either respondent Kenyon or respondent DuPriest that it intended to rescind any Notices of Recommended Layoff before it made its rescissions. Even if the District may have received PAT's "sign off" on the Seniority List, the union could not waive rights held by respondents without respondents' express consent, which the union did not have. By

rescinding Notices of Recommended Layoff before the hearing was conducted and the final decision was issued, the District assumed the risk that the information upon which it based its rescission determinations might later be found to be inaccurate, and that it might be ordered to rescind more Notices of Recommended Layoff than it wished. In sum, the District did not establish that the doctrine of equitable estoppel applies in this case to prevent respondents Kenyon and DuPriest from challenging the seniority dates that the District assigned to them on the Seniority List.

11. In support of its position, the District relied upon *Campbell Elementary School Teachers Association v. Abbott (Campbell)* (1978) 76 Cal.App.3d 796. The relevant facts in *Campbell* were as follows: A teacher had two credentials, a counseling credential and a teaching credential. In 1972, she brought both credentials to the county board of education for recording. Due to a clerical error, the county board of education recorded only the counseling credential, but not the teaching credential. The teacher learned of this error on May 12, 1975, the day her district's governing board issued its final notice of termination to her. The teacher recorded her teaching credential on May 13, 1975, and brought it to her district's governing board. The court ruled that the governing board did not have to consider the teacher's late-filed credential. As the court explained, the "governing board is not to be held responsible for the fact that [the teacher] recorded her credential *after* all notices had been sent, a hearing held, and a decision rendered." (*Id.* at p. 815. Italics added.)

This case is distinguishable from *Campbell*. In this case, respondents Kenyon and DuPriest raised their concerns about their seniority dates *before* a hearing was held or a decision rendered. One of the fundamental purposes of the hearing and decision in this matter is to determine whether the District's Seniority List is correct. Respondents Kenyon and DuPriest raised their challenges to the District's Seniority List in a sufficiently timely manner to address them at the hearing and in this proposed decision. The District's arguments to the contrary are without merit.

#### *Respondents Kenyon's and DuPriest's Seniority Dates*

12. On the Seniority List, the District designated respondent Kenyon's seniority date (i.e., first day of paid service in a probationary position<sup>2</sup>) as August 9, 2007. It designated respondent DuPriest's seniority date as September 4, 2007. Respondents Kenyon and DuPriest challenge these seniority dates. As explained below, their challenges are persuasive.

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<sup>2</sup> 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."

13. Respondent Kenyon first began working full-time for the District on July 9, 2007, teaching fourth grade at Northmead Elementary School (Northmead).<sup>3</sup> She is still teaching in the same position at Northmead in which she started on July 9, 2007. She worked the entire 2007-2008 school year. She was not subject to layoff in 2008.

14. When respondent Kenyon was first hired by the District to teach full-time as a fourth grade teacher, although she had completed all the course work and testing for her credential, the final grade for her RICA<sup>4</sup> had not been received and, as a result, the paperwork for her credential had not been completed. The Northmead school principal told respondent Kenyon that she could start teaching as a substitute until her test results were received and her credential was issued. When she began teaching on July 9, 2007, she had a 30-day emergency substitute permit issued by the county.

15. The Commission on Teacher Credentialing (CTC) issued respondent Kenyon a Preliminary Multiple Subject Teaching Credential with a Physical Education Supplementary Authorization, valid from July 26, 2007, to August 1, 2012. She brought a copy of her credential to the District's office soon after she received it. She was informed that she had to have her credential recorded. She recorded her credential with the Stanislaus County Superintendent of Schools Office on August 8, 2007, and submitted a copy of her recorded credential to the District on August 9, 2007.

16. On August 10, 2007, respondent Kenyon entered into a Contract for Temporary Certificated Employment with the District (Kenyon Contract). The opening paragraph of the Kenyon Contract states that respondent Kenyon was "hereby notified that at a meeting of the Governing Board of the Patterson Joint Unified School District held on August 20, 2007, you were elected to serve in a full/~~part~~-time position as a temporary certificated employee for the period of July 1, 2007 to June 30, 2008." (Strikethrough in original.) Paragraph 3 of the conditions of the Kenyon Contract states, "Your services in the above-named position will begin 8/9/07 and will end June 27, 2008." During the hearing, the District did not explain the multiple inconsistencies in the Kenyon Contract's dates.<sup>5</sup>

17. At the hearing, the District explained that respondent Kenyon was retained as a temporary employee because she was hired to "backfill" for a fourth grade teacher, who was reassigned to teach as a reading coach, a categorically funded position.

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<sup>3</sup> Respondent Kenyon testified that she actually began working the day before – July 8, 2007 – setting up her classroom, but she could not remember whether she was paid for that day.

<sup>4</sup> "RICA" stands for Reading Instruction Competence Assessment.

<sup>5</sup> There was no issue raised at the hearing about whether the District had properly designated respondent Kenyon as a temporary employee because she entered into her temporary contract after she had started teaching. (*Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911.) Because this issue was not raised at the hearing, it will not be addressed in this proposed decision.

18. Sometime in 2009, on an exact date not established by the evidence, Mr. Alfano asked Ms. Davidson whether the union would have any objection to the District granting probationary status to temporary employees who were working in categorically funded positions or backfilling for teachers who had been reassigned to categorically funded positions. When the union had no objection, the District reclassified these employees. As confirmed in Mr. Alfano's March 12, 2009 email to Ms. Davidson (Finding 7), in 2009, respondent Kenyon was retroactively made a probationary employee by Governing Board action.

19. Although the District retroactively made respondent Kenyon a probationary employee, it designated her seniority date as August 9, 2007, the date it received a copy of her recorded credential. The District argued that from July 9 to August 9, 2007, respondent Kenyon was a substitute teacher employed by the county. The District did not submit any documentary evidence to support this argument.

20. Respondent DuPriest's circumstances are similar to respondent Kenyon's. Respondent DuPriest first worked for the District as a day-to-day substitute from September 2006 to February 2007. From February through June 2007, she worked at Del Puerto High School as a short-term staff permit holder.

21. In July 2007, the principal of Las Palmas Elementary School (Las Palmas) offered respondent DuPriest a full-time position as a probationary teacher, teaching fifth grade for the 2007-2008 school year. When respondent DuPriest was offered the position, although she had completed all her course work and testing, she did not have her credential because her college had not submitted the necessary paperwork. On July 17, 2007, Barbara McClesky, Administrative Assistant – Human Resources for the District, drafted a letter to be given to respondent DuPriest's college and the county, which stated, "This is to advise that Julie DuPriest has been offered employment with our school district as an elementary teacher for the 2007-2008 school year. Our school starts on August 2, 2007. It would be appreciated if you could put a rush on processing her credential."

22. On August 2, 2007, respondent DuPriest began teaching fifth grade at Las Palmas. Although she was offered a probationary position, because her credential had still not been processed by the first day of school, she was informed that she had to start as a substitute teacher until her credential was issued. She began working as a fifth grade teacher at Las Palmas on that date under a 30-day emergency waiver.

23. The CTC issued a Preliminary Multiple Subject Teaching Credential to respondent DuPriest, valid from August 29, 2007, to September 1, 2012. Respondent DuPriest delivered a copy of her credential to the District on September 4, 2007. She was not initially aware, however, that she was responsible for getting her credential recorded. On October 5, 2007, she recorded her credential at the Stanislaus County Superintendent of Schools Office, and submitted a copy of her recorded credential to the District.

24. On September 11, 2007, the District entered into a Certificated Probationary Employee Contract (DuPriest Contract) with respondent DuPriest. The opening paragraph of the DuPriest Contract states that she was “hereby notified that at a meeting of the Governing Board of the Patterson Joint Unified School District held on August 6, 2007, you were elected to serve in a full/~~part~~-time position as a probationary certificated employee for the period of July 1, 2007 to June 30, 2008.” (Strikethrough in original.) Paragraph 3 of the conditions of the DuPriest Contract states, “Your services in the above-named position will begin Sept. 4, 2007 and will end June 24, 2008.” During the hearing, the District did not explain the multiple inconsistencies in the DuPriest Contract’s dates.

25. At the hearing, the District explained that it designated respondent DuPriest’s seniority date as September 4, 2007, because it received a copy of her credential on that date. It argued that from August 2 to September 4, 2007, respondent DuPriest was a substitute teacher employed by the county. The District did not submit any documentary evidence to support this argument. Respondent DuPriest, however, submitted a paycheck stub, which shows the District as both her work and pay location, and the District submitted a “Patterson Unified School District Substitute Claim,” which shows that respondent DuPriest’s principal, on September 4, 2007, approved respondent DuPriest’s claim for substitute pay from August 2 through August 31, 2007. Both of these documents appear to indicate that the District was respondent DuPriest’s employer during that period.

26. The District contends that it could not classify respondents Kenyon and DuPriest as probationary employees before CTC issued their credentials. The District’s contention is not persuasive.

27. In *California Teachers Association v. Governing Board of Golden Valley Unified School District (Golden Valley)* (2002) 98 Cal.App.4th 369, 377, the Fifth District Court of Appeal (Fifth District) addressed whether a teacher with an emergency permit could be classified by a school district as a probationary employee:

The Education Code does not explicitly resolve this dispute. On one hand, the statutory provisions do not explicitly prohibit a teacher with an emergency permit from being classified as a probationary employee. On the other hand, no statutory provision explicitly delineates how teachers with emergency permits should be classified. (Footnote omitted.) Consequently, we must determine whether the general rule set forth in section 44915 concerning when a teacher should be classified as a probationary employee applies to a teacher with an emergency permit.<sup>6</sup>

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<sup>6</sup> Education Code section 44915 provides:

Governing boards of school districts shall classify as probationary employees, those persons employed in positions requiring certification qualifications for the school year, who have not been classified as permanent employees or as substitute employees.

After reviewing numerous provisions of the Education Code and the relevant legislative history, the court construed Education Code section 44915 “to allow a teacher serving under an emergency permit to be classified as a probationary employee.” (*Golden Valley, supra*, 98 Cal.App.4th at pp. 382-383.)

In *Bakersfield, supra*, 145 Cal.App.4th at p. 1299, the Fifth District explained its decision in *Golden Valley* as follows:

We could not have held in *Golden Valley* that emergency-permitted teachers must be classified as probationary employees because, as we have said, their classification, and the classification of all other certificated employees (with the single exception of district interns), is not determined by what type of credential or certification they have. If a certificated employee occupies a position the Education Code defines as temporary, he or she is a temporary employee; if it is not a position that requires temporary classification (or permanent or substitute), he or she is a probationary employee. (§ 44915.) The Code grants school districts no discretion to deviate from this statutory classification scheme. (*Eureka Teacher’s Assn. v. Board of Education* (1988) 202 Cal.App.3d 469, 474 [school district’s control over teacher classification ends where the rights afforded teachers by the Education Code begins].)

In *Bakersfield, supra*, 145 Cal.App.4th at p. 1301, the court held that a school district could not classify teachers as temporary employees based solely on the fact that they did not yet hold a credential:

In summary, we hold the District’s policy for classifying teachers and counselors as temporary employees, insofar as it is based on the fact they hold something less than a preliminary or professional (clear) credential, is invalid. We hold further that the District may classify as temporary employees only those persons who, by virtue of the position they occupy or the manner of service they perform, are defined or described as temporary employees in the Education Code. All certificated employees who are not so classified as temporary employees, and who are not properly classified under the Code as permanent or substitute employees, must be classified as probationary employees (§ 44915) and must be accorded the rights of probationary employees as provided in the Code, including the right to accrue seniority (§ 44845) and the rights to notice and a hearing in the event of a workforce reduction (§§ 44949, 44955).

When respondents Kenyon and DuPriest began as teachers, the District classified them as substitutes solely because CTC had not yet issued their credentials and they were working under emergency permits. Education Code section 44918, subdivision (a), provides:

Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year.

Respondents Kenyon and DuPriest worked the entire 2007-2008 school year as certificated employees in the District, and were employed as probationary employees for the 2008-2009 school year. Under the provisions of Education Code section 44918, subdivision (a), and the reasoning of the Fifth District in *Golden Valley* and *Bakersfield*, the District must correct the seniority dates assigned to respondents Kenyon and DuPriest on the Seniority List to the first days they began working in their current positions. Respondent Kenyon's seniority date must be corrected to July 9, 2007. Respondent DuPriest's seniority date must be corrected to August 2, 2007.

28. As set forth in the Bumping Chart submitted by the District, the District rescinded all the Notices of Recommended Layoff it had served on elementary school teachers who have multiple subject teaching credentials and seniority dates of August 2, 2007, or earlier. It also rescinded the Notices of Recommended Layoff for four elementary school teachers who have seniority dates of either August 9, 2007, or October 2, 2008, and hold a BCLAD (Bilingual, Crosscultural, Language and Academic Development certificate), which authorizes them to teach in the District's dual language immersion program, which has vacant positions.<sup>7</sup>

29. When respondent Kenyon's seniority date is corrected to July 9, 2007, it is clear from the District's Bumping Chart that the District will be retaining more junior employees to perform services that respondent Kenyon is certificated and competent to render. Consequently, the District must rescind respondent Kenyon's Notice of Recommended Layoff.

30. The situation with respondent DuPriest is more complex. Respondent DuPriest holds a CLAD (a Crosscultural, Language, and Academic Development certificate),

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<sup>7</sup> Education Code section 44955, subdivision (d)(1), permits a school district to deviate from terminating a certificated employee in order of seniority when it "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."

but not a BCLAD. As set forth in Finding 28, from the Bumping Chart, it appears that the District rescinded all the Notices of Recommended Layoff that it had served on the other elementary school teachers in the District who have a seniority date of August 2, 2007, but do not possess a BCLAD. The evidence presented at the hearing was not clear as to how the tie-breaking criteria set forth in the PKS Resolution would be applied when respondent DuPriest is considered with these other teachers. If, after application of the tie-breaking criteria, respondent DuPriest is deemed to be more senior than any of these other teachers, her Notice of Recommended Layoff must also be rescinded.

31. There was no evidence presented at the hearing to compel the rescission of respondent Villalobos's Notice of Recommended Layoff.

32. There was no evidence that the District proposes to reduce any services that are mandated by state or federal laws or regulations below the mandated levels.

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

34. Except as set forth in Findings 29 and 30 regarding respondents Kenyon and DuPriest, there was no other evidence to indicate that the District is retaining junior employees to render services that more senior respondents are certificated and competent to perform.

35. 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 Education Code sections 44949 and 44955.

2. The services identified in the PKS Resolution are particular kinds of services that may be reduced or discontinued under Education Code section 44955. The Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. 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. Cause exists to reduce certificated employees of the District due to the reduction or discontinuance of particular kinds of services. Except with regard to respondents Kenyon and DuPriest, the District properly identified the certificated employees to be laid off as directed by the Governing Board.

4. Except with regard to respondents Kenyon and DuPriest, no junior certificated employee is scheduled to be retained to perform services that a more senior respondent is certificated and competent to render.

5. As set forth in Finding 27, given the provisions of Education Code section 44918, subdivision (a), and the reasoning of the Fifth District in *Golden Valley* and *Bakersfield*, the District incorrectly determined the seniority dates assigned to respondents Kenyon and DuPriest on the Seniority List. Respondent Kenyon's seniority date must be corrected to July 9, 2007. Respondent DuPriest's seniority date must be corrected to August 2, 2007.

6. As set forth in Finding 29, the District is retaining more junior employees to perform services that respondent Kenyon is certificated and competent to perform. Consequently, the District must rescind the Notice of Recommended Layoff served on respondent Kenyon.

7. As set forth in Finding 30, the District must apply the tie-breaking criteria set forth in the PKS Resolution to determine whether the District is retaining any more junior employees with the same seniority date to perform services that respondent DuPriest is certificated and competent to perform. If, after application of the tie-breaking criteria, the District determines that respondent DuPriest is more senior than any of the other employees who have the same seniority date but do not possess a BCLAD, and whose Notice of Recommended Layoff have been rescinded, the District must rescind respondent DuPriest's Notice of Recommended Layoff.

8. Except as provided in Findings 29 and 30 and Legal Conclusions 6 and 7, cause exists to give notice to respondents that their services will be reduced or will not be required for the 2009-2010 school year because of the reduction and discontinuance of particular kinds of services.

#### RECOMMENDATION

1. Cause exists for the reduction of 34.5 full-time equivalent certificated positions at the end of the 2008-2009 school year.

2. Natalie Kenyon's seniority date shall be corrected to July 9, 2007, and the Notice of Recommended Layoff issued to Ms. Kenyon shall be rescinded.

3. Julie DuPriest's seniority date shall be corrected to August 2, 2007. The District shall apply the Governing Board's tie-breaking criteria, as set forth in the PKS Resolution, to Ms. DuPriest and the other District employees who have the same seniority date but who do not possess a BCLAD, and whose Notices of Recommended Layoff have been rescinded. If, after application of the tie-breaking criteria, any of these employees are

deemed to be more junior than Ms. DuPriest, Ms. DuPriest's Notice of Recommended Layoff shall be rescinded.

4. Except as set forth in Recommendations 2 and 3, notice may be given to respondents that their services will be reduced or will not be required for the 2009-2010 school year. Notice shall be given in inverse order of seniority.

DATED: May 5, 2009

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KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings