

BEFORE THE  
GOVERNING BOARD OF THE  
TWIN RIVERS UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter of the Reduction In Force of:

CERTAIN CERTIFICATED PERSONNEL  
EMPLOYED BY THE TWIN RIVERS  
UNIFIED SCHOOL DISTRICT,

Respondents.

OAH No. 2009030049

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on April 15, 16, 28 and 29, 2009, in Sacramento, California.

Douglas Green, Attorney at Law, appeared on behalf of the Twin Rivers Unified School District.

A. Eugene Huguenin, Jr., Attorney at Law, and Margaret Geddes, Attorney at Law, appeared on behalf of all but seven respondents. The seven unrepresented respondents did not appear.<sup>1</sup>

Evidence was received and submission of the matter was deferred pending receipt of additional written argument. The District and respondents filed post-hearing briefs on May 1 and 2, 2009.<sup>2</sup> The case was thereafter submitted for decision.

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<sup>1</sup> The seven unrepresented and non-appearing respondents include: Jane Fanucci, Jasmin Garcia, Sara Gertz, Maryanne Goldsmith, Thomas Guzman, Gina Ripley and Seth Tosta.

<sup>2</sup> The District filed a Post-Hearing Brief, "Twin Rivers Unified School District's Closing Arguments for the April 15-16, and 28-29, 2009 Hearings," and a document entitled "A.B. 1802 Junior & High School Counseling Program." These were marked collectively as Exhibit R for identification. The District separately submitted, via email, a list containing the names of four non-reelected employees, and did so because this was considered private personnel information that it did not wish to include in its Closing Argument. This email was not made part of the record. Respondents filed a Post Hearing Brief that was marked as Exhibit 28 for identification.

## FACTUAL FINDINGS AND DISCUSSION

1. Patty Smart is the Associate Superintendent for Human Resources of the Twin Rivers Unified School District (District). The actions of Ms. Smart, and the actions of the District Governing Board, were taken in their official capacities.

2. Respondents are permanent or probationary certificated employees of the District. On March 2, 2009, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would be reduced or would not be required for the 2009-2010 school year. Each written notice set forth the reasons for the recommendation and noted that the District Governing Board had passed a Resolution reducing the certificated staff by 323.35 full-time equivalent (FTE) positions. Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

3. The Superintendent made and filed Accusations against respondents. The Accusations with required accompanying documents and blank Notices of Defense were timely served on respondents. Respondents timely filed Notices of Defense to the Accusation. Each respondent identified in ATTACHMENT A to this Decision timely filed a Notice of Defense to the Accusation, either in person or through counsel.

4. On February 26, 2009, at a regular meeting, the District Governing Board was given notice of the Superintendent's recommendations that certificated employees holding 323.35 FTE positions be given notice that their services would be reduced or not required for the next school year and stating the reasons for that recommendation.

5. On February 26, 2009, the District Governing Board determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching and other certificated services affecting employment of 323.35 FTE positions. The District Governing Board adopted Resolution No. 96 providing for the reduction or elimination of the following particular kinds of services (PKS):

<u>Services</u>	<u>Equivalent Positions</u>
Certificated Administrative Services	12.2
Site Administration	7.0
Adult Education Administration	2.0
Psychology Management	8.25
Instructional Support	75.8
Curriculum Support	5.0
Library Media Services	8.0
Math Coaching	1.0
English Language Support Services	17.2
Technology Coaching	.5

<u>Services</u>	<u>Equivalent Positions</u>
Staff Development	2.0
Categorical Services	2.0
Elementary Counseling	6.3
Outreach Services/Student Services	9.0
Work Experience - Counseling	1.0
Academic Counseling	4.0
Social Work	3.0
Tobacco Use Prevention Education/Safe & Drug Free Schools & Communities Services	1.0
After School Education & Safety Program	1.0
Music Services	4.0
Physical Education Services	6.5
Starbase Instruction	1.0
Math Instruction	6.0
Social Science Instruction	3.6
English Instruction	5.0
Woodshop Instruction	1.0
Auto Mechanic/Drivers Education	1.0
Bilingual Instruction	2.0
Grades 7/8 Social Science/ELA Instruction	1.0
Grades 7/8 Math/Science Instruction	1.0
Grades 7/8 Science Instruction	2.0
Spanish Instruction	1.0
7 <sup>th</sup> grade Self Contained Instruction	1.0
Life Science Instruction	1.0
Business Instruction	1.0
Head Start/Preschool Services	4.0
Elementary Classroom Instruction	115.0
<b>Total</b>	<b>323.35 FTE</b>

6. The District began operations in July 1, 2008, after the consolidation of three elementary school districts and one high school district.<sup>3</sup> It was created as a result of approval of a measure in November 2007, merging the four districts. The District serves approximately 27,000 preschool through adult education students in northern Sacramento County. The District represented that by the very nature of this reorganization, it had an excess of personnel that “it could not afford.” Because under the Education Code the jobs of

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<sup>3</sup> The three elementary school districts included North Sacramento School District, Del Paso Heights School District and Rio Linda Union School District. The high school district was the former Grant Joint Union High School District.

classified employees are protected for two years after unification, efforts to become fiscally solvent through layoffs fell solely on the certificated employees.<sup>4</sup>

The Governing Board's resolution to reduce or discontinue particular kinds of services was made in anticipation of decreased revenues to the District occasioned by the Governor's state budget. Kate Ingersoll, the District's budget services director, noted that the proposed reductions are necessary for the District to remain solvent.

7. At the time of hearing the District indicated that it would no longer be eliminating Bilingual Instruction by 2.0 FTE. These are two core classes that will continue to be provided next school year. As a result, the PKS reductions in Resolution 96 were reduced by 2.0 FTE.

8. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of paid service), status as tenured, probationary or temporary, and current assignments. Status, credential and authorization data were obtained from the District's records and employees were given the opportunity to correct errors in the seniority list. All certificated employees were sent a letter in January 2009, inviting them to correct their seniority date and any other information contained in their individual personnel information on file with the District.

Ms. Smart and other District employees were responsible for implementation of the technical aspects of the layoff. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether these employees held credentials in another area, were entitled to be "skipped" pursuant to the Governing Board's Resolution, or could "bump" into positions held by junior District employees.

9. Prior to hearing, the District rescinded the notices to 89 persons. Approximately 44 of the rescissions were due to positively assured attrition (retirements), and the balance were due to an increase in the number of mostly elementary classes to be conducted next year.<sup>5</sup> During the hearing on April 15 and 16, 2009, the District rescinded its preliminary notices of layoff to the following respondents: Cynthia Anderson, Sandra Bunch, Mary Castellanos, H. Lanard German and Victor Umeh. A number of respondents, formerly with the Rio Linda School District, had their seniority dates changed from August 17, 2006, to August 8, 2006, after demonstrating that they attending mandatory in-service conducted by the Rio Linda School District for new employees on August 8, 2006, and were paid for doing so. The District rescinded layoff notices to them at the time of

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<sup>4</sup> Education Code section 45121 provides: "Persons employed in positions not requiring certification qualifications in districts, all or part of whose territory is included in a unification of districts, shall continue as employees of the unified school district for not less than two years, and shall not, by reason of any unification, be deprived of any benefit which they would have had had the unification not taken place."

<sup>5</sup> The District currently has a number of combination classes (e.g. Grades 1<sup>st</sup>/2<sup>nd</sup> or 5<sup>th</sup>/6<sup>th</sup>) that it will decouple and teach as separate classes for each grade, increasing the number of elementary classes.

hearing. On April 28, 2009, the District rescinded its notice to Wendy Ichikawa. A complete list of employees for whom notices have been rescinded is contained in ATTACHMENT B to this decision.

#### Layoff Procedures Followed – Skipping Issues

10. Board Resolution No. 96 provided that the District has the need to retain certain certificated employees who possess certain credentials and which more senior employees do not possess. The Superintendent was authorized to deviate from terminating certificated employees in order of seniority in instances where they are currently assigned to teach specific courses and will be assigned to teach those courses again for the next school year and more senior employees do not possess the same specialized training and experience related to the course.

The skipped individuals under Board Resolution 96 include those who are:

- a. Certificated employees with special education certifications who are currently using those certifications. Said certificated employees who possess and are currently using special education credentials shall not be displaced by more senior employees unless those more senior employees possess the appropriate special education credential, training, competency, and experience to perform those special education services.
- b. Certificated employees with bilingual skills who are currently using those skills. Said certificated employees who possess and are currently using bilingual skills shall not be displaced by more senior employees unless those more senior employees possess the appropriate skills, training, competency, and experience to perform those services.
- c. Certificated employees with necessary certification to teach at the secondary level such that the District may maintain its current academic departments at legally required levels. Said certificated employees who possess and are currently using said credentials shall not be displaced by more senior employees unless those more senior employees possess the appropriate credential, training, competency, and experience to perform those services.

11. With regard to bilingual skills, the District applied the PKS Resolution skipping language only to those teachers who are required to use their bilingual skills as part of their jobs. The District retained those certificated employee whose bilingual skills were a requirement for their respective assignments. It did not apply the skipping criteria to those

teachers employed in jobs that did not require them to possess bilingual skills, even if they regularly used their bilingual skills in their positions.

Respondents contend that Resolution No. 96 does not identify possession of a specific credential required to support its “bilingual skills” skipping criteria. They believe the District, without authorization by the Board or by Education Code section 44955, subdivision (d)(2), improperly limited the bilingual skills skipping criteria to only those employees required by their assignment to use bilingual skills. The District notes that for it to have applied the criteria in any other way would force it into impossibly subjective decisions about how effective and necessary each employee’s bilingual skills were to a particular assignment. The District also believes that to do otherwise would be in violation of California law should it impermissibly use the mere possession of bilingual skills as a skipping criterion.

12. The District is correct. In *Alexander v. Board of Trustees of the Delano Joint Union High School District*, (1983) 139 Cal.App.3d 567, the district retained teachers having Spanish speaking skills, and dismissed junior teachers whose employment had never before required bilingual ability. The court noted that at the time the district acted in this manner there were sections of the Education Code providing for the phasing-in of bilingual education programs and that bilingual competency requirements appeared to be limited to these specially designed programs. (*Id.* at p. 575.) The court was troubled by the fact that junior teachers who possessed Spanish language skills were skipped even though they were not employed to teach classes in the formal bilingual program. (*Id.* at p. 576.) In this case, the District’s decision to limit skipping criteria to those teachers who are *required* to have bilingual skills in their position is consistent with *Alexander*.

A substantial number of teachers and counselors in this case testified to the critical need and demand for their bilingual skills. Some have students who speak only Spanish. Others, because they are bilingual, have a higher proportion of Spanish-speaking students placed in their classrooms. Some are regularly asked by administrators to assist with translation during meetings. Many communicate solely in Spanish with parents. They also translate written materials for the benefit of parent and students, and are called upon to use their bilingual skills in and out of classroom settings. Yet, until the District requires bilingual competency for their specific teaching assignment, it was not unacceptable for these teachers not to be skipped under the criteria set forth in Resolution No. 96.

#### Competency and Experience Criteria – Bumping Issues

13. *Bumping Into Secondary Positions.* Under Education Code section 44955, subdivision (b), the services of no permanent employee may be terminated while a less senior employee is retained to render a service which the permanent employee is “certificated and competent to render.” This section affords “bumping” rights for senior certificated and competent employees. Subdivision (d) of section 44955, added to the statute in 1983, provides that notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority when:

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.

14. In determining whether elementary teachers or counselors could move into secondary positions, the District determined that competency is measured by experience in performing the duties of the position within the last five years. This determination was made during the course of discussions in early 2009 between Dr. Ramona Bishop, Associate Superintendent of Curriculum and Academic Achievement, Dr. Shelley Jones, District Coordinator of Curriculum, and Patty Smart. It was not reduced to a writing, or referenced in the Resolution No. 96.

A number of elementary school teachers hold multiple subject credentials, including supplemental authorizations, allowing them to teach secondary positions (Grades 7 – 8) in the coming school year.<sup>6</sup> Others hold a single subject credential, authorizing service in departmentalized or self contained classes in grades K-12.<sup>7</sup> Certain respondents serve in elementary programs, but hold service credentials in counseling and social services, authorizing service in grades K-12.<sup>8</sup> Respondents Klier and Press-Dawson hold a standard elementary K-9 teaching credential, authorizing services in grades K-9. In each case, because these respondents do not meet the requirement of secondary experience within the last five years, the District proposes to terminate their employment and not allow them to bump into secondary positions occupied by junior certificated employees.

15. The District explained its rationale. First, the District favors a single subject credential over a supplemental authorization at the secondary level. This speaks to the need for a teacher to have specialized in a particular subject area to impart specific knowledge and teaching, and the District's belief that persons with a multiple subject credential, including a supplementary authorization, have limited specialization in a particular content area. Second, the District noted that having a person with a multiple subject credential, including authorization, at a secondary site limits the options site administrators have in placing the teacher into the master schedule. This is particularly true if the teacher is placed at a high school, where the site administrator would not be able to place students into needed courses above grade 9. District curriculum specialist Anna Trunnell suggested that assigning a teacher with a 9<sup>th</sup> grade only credential to a high school would make it difficult for the

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<sup>6</sup> Respondents Arias, Ball, Bricker, Carslake, Chambliss, Cottrell, Cross, Daniels, Dhaliwal, Evans, Franklin, Gleeson, Grady, Harback, Hernandez, Holmes, Khoury, Kigar, Lyons, Mills, Mlakar, Newberry, Peyton, Pounds, Sharma, Somma and Starrh hold multiple subject credentials with supplementary authorizations.

<sup>7</sup> Respondents Arias, DeRossett, Mlakar and Tilton each hold a single subject credential.

<sup>8</sup> Respondents Early, Press-Dawson, Price, Salazar, Cole and Wright hold these credentials.

principal to fit that teacher into the master schedule, and that a teacher with a multiple subject credential would not typically keep up with curricular developments. She conceded that a teacher could be assigned freshman classes only, and other faculty could be assigned grades 10 – 12.

The District further noted that many of its secondary schools are in Program Improvement, and are under the new provisions of Highly Qualified Teachers and No Child Left Behind. The District believes that it is held accountable, and is governed by language specifying that inexperienced or out of field teachers not be placed at a low performing school. Finally, the District noted that the schedule and teaching preparation at a secondary site differs from elementary school. The differences include teachers having to be prepared to teach multiple groups of students over multiple periods. The District also noted that content standards for a given subject change, with increasing specialization and focus. Notably, all secondary sites are implementing research-based approaches to education that have been developed within the past five years, putting newly assigned teachers to the secondary system at a disadvantage. Finally, District curriculum specialist Dr. Shelly Jones opined that secondary students were different and presented new challenges such as being larger, more manipulative and physically menacing than elementary age students.

16. With regard to elementary counselors moving to the secondary level, the District noted that site administrators rely heavily upon their knowledge and expertise to extract and analyze student assessment data from the District’s data and attendance system (“AERIES”) which is used for targeted interventions in curriculum and instructions decisions.

Brenda Kendall is the District’s Director of Achievement Pathways, and is responsible for adult education and counselors. She does not believe that individuals working in elementary education holding a PPS credential are qualified, without more, to be counselors at the secondary level. Ms. Kendall noted that the junior and high school counseling model is “definitely different,” especially given the academic counseling that now focuses on the American school counselors model and the A.B. 1802 junior and high school counseling program. This particular legislation mandated that California schools make certain that they address the needs of students with documentation and data driven techniques, and it now includes an individualized review of each student’s (grades 7- 12) academic and department records annually. Ms. Kendall believes the goal of A.B. 1802 is to increase graduation rates. The District provided AERIES training for all of its counselors on December 8 and 9, 2008, to the end that they would become better equipped to help students enter the California State University and the University of California systems. Ms. Kendall believes that the current program is really working and moving “in a direction of success for our students.” She fears that it would be “moving backwards” if the District started all over again training new counselors in the American school counselors model.

The District contends that it is a “major paradigm” shift for an elementary counselor who has not worked in the secondary level to transition to junior and high school counseling, where a counselor’s focus is not only on social-emotional issues but on academic and career

goals as well. It also argued that AERIES training is expensive and that schools will suffer for at least two years if each site has up to three inexperienced counselors.

17. Respondents disagree on many levels. They point to the inconsistency of having a five-year experience requirement applied to them when bumping into secondary teaching positions, but not having the same experience requirement apply to District administrators serving in non-teaching positions who are bumping into elementary school positions. Similarly, respondents note that the District does not apply its 5-year “competence standard” when hiring new personnel into secondary positions.

Respondents also complain that the standard is arbitrary and unfair. Prior to July 1, 2008, respondents now teaching or working in elementary programs of the District were employed in predecessor elementary school districts that did not offer those able to teach secondary subjects, or provide service in secondary settings, the opportunity to do so. All the junior high and high school program were operated by the high school district prior to July 1, 2008.

A number of individual teachers offered testimony rebutting the District’s suggestion that elementary school teachers could not comfortably transition into secondary school assignments, or maintain currency in the subject area of their supplementary authorization. Respondents Cross, Chambliss, Daniels and Zampieri provided compelling testimony in this regard. Similar testimony regarding transition to secondary counseling was provided by respondents Salazar and Press-Dawson.

18. Respondents have established that they are certificated and competent under Education Code section 44955, subdivision (b), to teach or perform at the secondary level. However, the Education Code recognizes that the District may have special needs for personnel to teach or provide counseling at the secondary level that go beyond “base qualifications.” (Ed. Code, § 44955, subd. (d)(1); *Bledsoe v. Biggs Unified School District*, 170 Cal.App.4th 127.) In this case the District has imposed a 5-year secondary experience requirement as a precondition to bumping into secondary positions. This falls well within the “special training and experience” requirement contemplated under subdivision (d)(1) of Education Code section 44955.

In *Bledsoe*, the court found that even though a certificated employee who had worked for the District nine years teaching English and social science to seventh and eighth grade students was senior to two junior teachers assigned to teach in the district’s community day school, the district could properly retain junior employees possessing special training and experience necessary to teach that course of study. Importantly, although the court found that Mr. Bledsoe was “certificated and competent to teach community day school for purposes of section 44955, subdivision (b),” the analysis did not end there. (*Id.* at p. 137.) Mr. Bledsoe had rather strong credentials. He held multiple credentials, was highly qualified for purposes of No Child Left Behind in multiple subjects, took 15 units of psychology and sociology in college, had taught for a year in the mornings at a juvenile hall, had taught for a semester at a community day school, and had worked for two summers during college at a

county boys camp. Yet, Mr. Bledsoe had not received any training in crisis intervention within the last five years and, other than in-service programs, had no training in drug abuse recognition. He had last worked in a community day school in 1995, and he had “no recent experience within the last five years teaching in a self-contained classroom, which would be analogous to a community day school classroom.” (*Id.* at p. 142.)

19. Here, it was within the discretion of the District to impose a five-year secondary experience requirement. It is consistent with the District’s special need to have personnel with such experience teach secondary courses and/or provide secondary counseling services. The District has demonstrated such need and articulated its rationale as noted in Findings 15 and 16. It was not an abuse of discretion for the District to go beyond base qualifications regarding respondents who are otherwise certificated and competent to teach or provide services at the secondary level under Education Code section 44955, subdivision (b), and to impose an additional five-year experience requirement under subdivision (d)(1).

However, the District’s determination not to allow teachers holding supplementary authorizations to teach ninth grade courses at the secondary level was not demonstrated to be necessary. While assigning a teacher with a 9<sup>th</sup> grade only credential to a high school would make it difficult for the principal to fit that teacher into the master schedule, the teacher could still be assigned freshman classes only, and other faculty could be assigned grades 10 – 12. Elementary teachers holding supplementary authorizations, and who meet the five-year secondary experience requirement, should be allowed to bump into secondary positions for which they are certificated and competent to fill.

### Seniority Issues

20. *Respondents in Categorically Funded Programs.* Respondents Brooke, Dhaliwal, Early, Fox-Morgan, Freeman, Lubin, Press-Dawson, Price and Salazar seek classification at the least as probationary employees. They were largely employed by the District in positions (e.g. Outreach Services/Student Services) funded by categorical funds. The District issued them preliminary notices of layoff, but classified them as temporary, and like other temporary employees excluded them from the seniority list. The District did so in reliance upon language in Education Code section 44909, which provides that service under a categorically funded project “shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee.” (Ed. Code, § 44909.) The District also relies upon its employment agreements with respondents which it avers provides that they would be temporary employees.

Respondents correctly note that California courts have confirmed the narrow parameters for circumstances in which school districts may classify a certificated employee as temporary under the Education Code, and therefore deny them due process before separation from employment, including layoff pursuant to Education Code sections 44955 and 44949. School districts have no discretion to deviate from the Education Code classification scheme for certificated employment, and if an employee’s circumstances do

not fall within narrow statutory grounds for classification as temporary, then Education Code section 44495 mandates districts to classify the employee as probationary. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2007) 145 Cal.App.4th 1260; *CTA v. Vallejo City Unified School District* (2007) 149 Cal.App.4th 135.) Thus, probationary status becomes the default classification where a certificated employee does not fall within the more narrowly construed statutes defining temporary status. And certificated employment with a school district begins on the first day of paid service by the employee.

The language in section 44909 relied upon by the District in classifying respondents as temporary merely creates an exception to the general rule that service in a probationary position is creditable for attainment of permanent status. It does not compel the District to classify respondents as temporary or to remove their names from the District's seniority list. Education Code section 44909 does provide that certificated teachers in categorically funded positions may be terminated without regard to other requirements respecting termination of probationary or permanent employees, but this applies only "at the expiration of the contract or specially funded project." Ms. Smart testified that the Outreach funding would still be there, but due to reorganization and the District's obligation to retain classified employees in the program, there would be insufficient funds to retain respondents. This is not tantamount to categorical program elimination, or expiration of the contract or specially funded project.

For all these reason, respondents employed in District categorically funded programs that will be continuing next school year are entitled to be classified as something other than temporary for purposes of these layoff proceedings, and accounted for on the District's seniority list.

21. *Respondents with Service in Multiple Districts.* Respondents Ranagan, Daniels, Baxter, Michelman and Thiesen all have a history of service in more than one of the four predecessor districts prior to the July 1, 2008 merger. At the time of the merger, certificated employees were assigned the identical seniority date on file with the district that employed them immediately preceding the merger. The above named respondents wish to tack on service from more than one of the four predecessor districts in determining their District seniority. For example, Ron Ranagan worked as a sixth grade teacher in the Del Paso Heights School District for the 2006/2007 and 2007/2008 school years. He has a District seniority date of August 16, 2006, reflecting this service. However, Mr. Ranagan also worked the three prior school years with the North Sacramento School District dating back to 2003, before he transferred to the Del Paso Heights School District. He believes his District seniority date should be August 19, 2003, because both the Del Paso Heights and North Sacramento School Districts were part of the consolidation.

These five respondents are not entitled to additional tacking for service in multiple districts. At the time of unification all certificated employees were "reemployed" by the District, and accorded District seniority from their immediate predecessor district. They did not lose seniority as a result of the consolidation. Were they accorded additional credit for service in multiple predecessor districts, it would place them in an even better position than what they enjoyed prior to July 1, 2008. In the absence of Education Code provisions and



- b. Desiree Brooke August 12, 2008
- c. Constance Earley September 1, 1983
- d. Linda Freeman September 15, 2008
- e. Diane Loyola October 30, 1992
- f. Terry Press-Dawson August 23, 2004
- g. Connie Price September 7, 1999
- h. Tanya Salazar August 14, 2001

At the time of time of the April 28 hearing date the District made the following adjustment to an individual's seniority date:

Sarah Lovell August 16, 2006

Individual Skipping/Bumping/Seniority Issues - Secondary

24. Asha Johnny Warrior is a math teacher with a District seniority date of November 26, 2007. She was bumped by Randy Orzalli. Mr. Orzalli was in a certificated administrative services position (Communications) that was eliminated. He is senior to Ms. Warrior. Both hold math credentials. The District prepared a bumping list organized around each PKS reduction (Exhibit H). Seven individuals are listed as corresponding to the 6.0 FTE reduction in Math Instruction. All seven are junior to Ms. Warrior.

25. Steve Rock has District seniority date of October 9, 1981. He holds a life credential, single subject music. His position as an elementary traveling music teacher is being eliminated. He is senior to several secondary school music teachers. He can provide instruction for piano and smaller instruments typically used by elementary school age students. He has taught 27 years at the elementary level, but is confident that he can also provide secondary level instruction. The District applied the five-year secondary experience criteria in determining that he could not bump junior certificated employees in secondary school positions. (Findings 14 and 15.)

26. Jonathan Young has a District seniority date of August 11, 2008. He also wishes to have his earlier service from January 22, 2008, counted when he worked as a long-term substitute for a teacher on maternity leave who eventually resigned. Tacking of service would not apply here because he did not work as a long-term substitute for the required 75 percent of the school year.

27. Deborah Daniels wishes to be skipped under the District's bilingual criteria. Nearly half of her class speaks Spanish. She teaches in a standard fifth grade classroom and is not required to have a BCLAD. She did not fall under District skipping criteria. (Findings 11 and 12.)

28. Kulwinder Dhaliwal wishes to be skipped under the District's bilingual criteria. She teaches in a standard fifth grade classroom and is not required to have a BCLAD. She did not fall under District skipping criteria. (Findings 11 and 12.)

29. Carrie McCoy has a District seniority date of September 24, 2007. The District bumping chart shows that she is being bumped by Robert Daniel. In fact, Robert Daniel's position (Categorical Services) is being eliminated and he is bumping John Coder. Mr. Coder is senior to Ms. McCoy and holds a single subject credential in foundational level math. The District believes this credential authorizes him to teach Algebra I, II and Geometry, allowing him to bump into Ms. McCoy's position.

30. Tessa McGarr wishes to be skipped under the District's bilingual criteria. She is an English support teacher providing bilingual English language support services. Her position does not require her to have a BCLAD. She did not fall under the District's skipping criteria. (Findings 11 and 12.)

31. Cynthia Corral is a physical education teacher at Grant High School. She is being bumped by Jimmy Durham, who has taught drivers education since 1991. She does not believe that he is competent to teach physical education. Mr. Durham holds a single subject credential to teach physical education. Ms. Smart noted that the five-year experience criteria was not applied to teachers being reassigned from one secondary position to another, or for those teachers crossing over from secondary to elementary instruction. It only applied to those certificated employees moving from an elementary to a secondary assignment.

32. Nadia Wahdan wishes to be skipped under the District's bilingual criteria. She is an outreach consultant. Her position does not require her to have a BCLAD. She did not fall under the District's skipping criteria. (Findings 11 and 12.)

Ms. Wahdan also believes that her seniority date should be August 23, 2006, instead of August 22, 2007. She worked the 2006-2007 and the 2007-2008 school years as a temporary employee. She was released from employment in March 2008, and hired as a probationary 2 counselor on July 1, 2008. At that time she was credited with one year service for the time that she worked as a temporary employee. The District seniority date is correct.

The District advised that Ms. Wahdan's layoff notice has been rescinded.

#### Individual Skipping/Bumping/Seniority Issues – Elementary

33. Meghan Whitaker is a fifth grade teacher at Fairbanks Elementary School. She would like to bump into either of two middle school science positions currently assigned to junior employees. Her seniority date is August 16, 2007. Ms. Whitaker holds a clear multiple subject credential. She does not have a supplementary authorization for science, or a single subject credential that would authorize her to teach science at the secondary level.

34. The following teachers, though certificated and competent under Education Code section 44955, subdivision (b) to teach courses at the secondary level, do not meet the five-year experience requirement that the District properly imposed under subdivision (d) of section 44955 (Finding 19): Elizabeth Arias, Michelle Bricker, Andrea Cottrell, Stephanie

Carslake, Autumn Grady, Jennifer Holmes, Tessa McGarr, Donald Pounds, and Carly Starhh.

35. Leanne Rae believes that she is certificated and competent to bump into a position held by Phoebe Thornton. Ms. Rae is mistaken. Ms. Thornton's District seniority date is August 31, 2007, making her senior to Ms. Rae.

36. Diane Loyola has a District seniority date of October 15, 1992, and is a program specialist with the Student Services Department. She assists in the processing of expulsion referrals for the District. Alejandro Gutierrez has a District seniority date of August 9, 1993. Ms. Loyola would like to bump into his position. Rudy Puente is the District's Director of Student services and he supervises both Ms. Loyola and Mr. Gutierrez. He noted that Mr. Gutierrez has worked in his current capacity as child welfare attendance counselor for at least 15 years, and has processed over a thousand expulsions whether through readmissions, expulsion placements or county probation placements. He has also done trainings on due process and expulsion proceedings, and holds the District expulsion hearings. He noted that Ms. Loyola has worked about a half year in a somewhat similar position, and has only started working on secondary level cases within the six to eight weeks prior to hearing. He does not believe that she is competent to bump into the position held by Mr. Gutierrez. Mr. Puente concedes that Ms. Loyola is expected to handle high school expulsion cases this year, that she is being coached and trained by Mr. Puente, and that she is progressing in her current position.

Ms. Loyola is certificated and competent to perform the duties currently assigned to Mr. Gutierrez. This will be more so as she continues working through this school year under the guidance and tutelage of Mr. Gutierrez. Although Mr. Gutierrez is obviously more experienced in processing student expulsions for the District, the District has not demonstrated that Ms. Loyola does not also have the special training and experience necessary to provide those services. She is entitled to bump into the position held by Mr. Gutierrez.

37. Etelvina Hernandez holds a clear multiple subject credential with a BCLAD. She wishes to be skipped under the District's bilingual criteria. She is a fourth grade teacher and believes that her assignment requires her to have a BCLAD. This is not the case. Ms. Smart confirmed that Ms. Hernandez is not required to have a BCLAD, and therefore she did not fall under District skipping criteria. (Findings 11 and 12.)

38. Dan Chambliss holds a clear multiple subject credential with a supplementary authorization to teach English. His District seniority date is November 7, 2006. There are a number of junior teachers who were retained in secondary positions he is certificated and competent to teach. Mr. Chambliss previously taught seventh grade at Wood Middle School (2005-2006) in the Sacramento City Unified School District, and ninth grade at Luther Burbank High School (2003-2005). Although he meets the District's five-year secondary experience requirement, his supplementary authorization does not allow him to teach above

the ninth grade level. Mr. Chambliss should be allowed to bump junior teachers at the secondary level through ninth grade only.

39. Mary Michelman believes her District seniority date is incorrect because she was not credited for attending a mandatory meeting on June 21, 2007, that she believes was a paid date of service. Ms. Smart determined that this was not a paid day of service. Ms. Michelman's seniority date should not be changed.

40. The following certificated employees (Outreach Consultants, Elementary School Counselor, English Learner Support Teacher) holding PPS credentials, though certificated and competent under Education Code section 44955, subdivision (b) to perform services at the secondary level, do not meet the five-year experience requirement that the District properly imposed under subdivision (d) of section 44955: Constance Early, Tara Jacobs, Terry Press-Dawson, Connie Price, Tania Salazar, and Rose Wright. (See Finding 19.)

41. Donato Nesta wishes to be skipped under the District's bilingual criteria. He is a third grade teacher. His position does not require him to have a BCLAD. He did not fall under District skipping criteria. (Findings 11 and 12.)

42. Nancy Thao wishes to be skipped under the District's bilingual criteria. She is a first grade teacher and is bilingual in Hmong. She holds a BCLAD, but her position does not require her to have one. Ms. Thao did not fall under District skipping criteria. (Findings 11 and 12.)

43. Elizabeth Arnbrusten wishes to be skipped under the District's bilingual criteria. She is a sixth grade teacher. She holds a multiple subject credential with an English Learner Authorization (ELA). She is bilingual Spanish. Her position does not require her to have a BCLAD, and she did not fall under District skipping criteria. (Findings 11 and 12.)

44. Hillary Beckmeyer wishes to be skipped under the District's bilingual criteria. She is a third grade teacher. She holds a multiple subject credential with an ELA. She is bilingual Spanish. Her position does not require her to have a BCLAD, and she did not fall under District skipping criteria. (Findings 11 and 12.)

Ms. Beckmeyer attended new hire training on August 1, 2007. She indicates that the District paid for her to attend this three-day training. Her District seniority date should be changed from August 15, 2007, to August 1, 2007.

45. The parties stipulated that Roberta Coker, Danielle Holaday and Anna Olagues wish to be skipped under the District's bilingual criteria, use their bilingual skills in their classroom and other work settings, but are in regular classroom assignments not requiring them to have a BCLAD. They do not fall under District skipping criteria. (Findings 11 and 12.)

## Other Matters

46. The District provided names of certain junior employees referenced by respondents as providing services that they were credentialed and competent to provide. Several of these employees also received preliminary layoff notices, including: Ashley Purdy, Beth Williams, Alison Autrand, Matt Huddleston and Megan Sheridan. The District also provided names of four junior employees who were non-re-elected.

47. With due consideration and adjustments made for the matters noted above, no permanent or probationary certificated employees junior to respondents are being retained to perform a service which respondents are certificated and competent to render. Those certificated employees junior to respondents being retained will provide services which respondents are not certificated and competent to perform.

## LEGAL CONCLUSIONS

1. The District employees receiving notices that their services would not be required next year have rendered valuable services to the District.

2. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

3. The services identified in Board Resolution No. 96 are particular kinds of services that could 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 exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

4. A District may reduce services within the meaning of Education Code 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.)

5. Education Code section 44955 provides in pertinent part:

(b) Whenever in any school year ... whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, ...or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions 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.

6. Education Code section 44955 provides that when certificated employees face layoffs due to reduction or elimination of PKS, 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 intent of the Legislation is clearly to prevent Districts from laying off senior teachers while retaining junior teachers. Education Code section 44955, subdivision (c) provides in pertinent part:

Services of such employees shall be terminated in the inverse of the order in which they were employed... The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render...

7. As set forth in Factual Finding 7, the District has reduced the number of PKS reductions by 2.0 by reason of retaining two Bilingual Instruction positions. The total PKS reductions should be adjusted from 323.35 FTE, to 321.35 FTE. The District has further rescinded notices of layoff to the certificated employees listed in Attachment B. (See Finding 9.)

8. As set forth in the Factual Findings the District has considered, provided a reasonable explanation for, or made corrections to seniority dates for respondents. (See Findings 20 through 23, 26, 32, 39 and 44.)

9. As set forth in Factual Findings 10 through 12, the District applied the PKS Resolution skipping language only to those teachers who are required to use their bilingual skills as part of their jobs. The District retained those certificated employee whose bilingual skills were a requirement for their respective assignments. It did not apply the skipping criteria to those teachers employed in jobs that did not require them to possess bilingual skills, even if they regularly used their bilingual skills in their positions. There was no evidence that the District abused its discretion in doing so. Until the District requires bilingual competency for their specific teaching assignment, it was not unacceptable for these teachers not to be skipped under the criteria set forth in Resolution No. 96.

10. As set forth in the Factual Findings, the District applied bumping and skipping rules with some consistency, and generally allowed bumping based upon the more senior employee holding a credential or authorization to teach the assignment of the less senior teacher. The District improperly disallowed Dan Chambliss and Diane Loyola from bumping into positions they are certificated and competent to perform. (Findings 36 and 38.) The District otherwise articulated the rationale for its skipping and bumping rules (Findings 10 through 19) and properly applied them, along with tie break criteria, when the process so required.

11. Cause exists for the reduction of the particular kinds of services and for the reduction of full-time equivalent certificated positions at the end of the 2008-2009 school year pursuant to Education Code sections 44949 and 44955. Therefore, and except as otherwise noted above, cause exists to give respondents notice that their services will be reduced or will not be required for the ensuing 2009-2010 school year.

## ORDER

Cause exists for the reduction of 321.35 full-time equivalent certificated positions at the end of the 2008-2009 school year. After making the adjustments set forth in the Factual Findings and Legal Conclusions, notice shall be given to remaining respondents that their services will be reduced or will not be required for the ensuing school year, 2009-2010, because of the reduction and discontinuance of particular kinds of services.

DATED: May 6, 2009

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JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings