

BEFORE THE GOVERNING BOARD OF THE
ANTELOPE VALLEY JOINT UNION HIGH SCHOOL DISTRICT

In The Matter Of The Accusation Against:

OAH No. 2009030584

Martha Alatorre, William Armstrong, Pablo Andrade, Valerie Bair, Walter Binns, William Bowers, Jessica Centonze, Matthew Cole, Clyresa Cooper, David Cooper, Karin Copus, Joseph Cox, Rosalia Crivello Marquez, Nancy Cuevas, Tinisha Deadmon, Alma Del Llano, Lloyd Dunn, David Dunstan, Tia Fackler, Kimberly Fields, Jon Fleming, Barron Gardner, Nathan Gilmore, Daniel Gorman III, Angela Grass, Jeremiah Griffey, Stacy Hardcastle, Jeanette Hjelm, William Holmes, Justin Holtfreter, Erica Isibue, Jada Jackson, Jennifer Jones, Meghann Judd, Bary Kauffman, Teresa Kindermann, Stella Konisek, Briana Laux, Tiffany Lee, Lisa Lintemoot, Eric Long, Matthew Lopez, Akilah Lyons-Moore, Frank Maestas, Cheryl Maghinay, Ronald McClinton, Indira Molina, Melonie Morgan, Marci Morris, Colleen Nua, Jessica Nish, Anna Marie Paliza, Kristine Parsons, Geraldine Pierce, Socorro Reyes, Ryan Rivas, Natalie Rodriguez, Garrett Root, Heather Roush, Christopher Saucke, Chad Shrou, Carol Smith, Perleen Smith, Joseph South, Alesia Stonerock, Susan Sztain-Edminister, Tenicia Takamatsu, Michelle Teare, Ada Tellez, Nena Thornburg, Michael Treanor, Joy Vierra, Paul Wagner, Leann Washington, Marcy Watton, Robert Watts, Shannon Williams, Milinda Wittkopf, and Theresa Young,¹

Respondents.

¹ On March 5, 2009, the District sent layoff notices to Respondents Martha Alatorre, Tia Fackler, Ronald McClinton, Jessica Nish, Kristine Parsons, Ryan Rivas, Natalie Rodriguez, Chad Shrou, Ada Tellez, Robert Watts and Shannon Williams, indicating that “as a university intern, and pursuant to Education Code section 44464, you do not have a right to a hearing to challenge the basis for this notice.” However, on April 6, 2009, following their requests for hearing, the District served these Respondents with the Accusation and blank Notices of Defense, and they submitted Notices of Defense.

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 24 and 28, and May 1, 2009, in Lancaster, California.

Howard Friedman and Carlos Villegas of Fagen, Friedman & Fulfrost, LLP, represented the Antelope Valley Union High School District (District). Michael R. Feinberg of Schwartz, Steinsapir, Dohrmann & Sommers, LLP, represented all Respondents except Walter Binns, Tinisha Deadmon, and Jada Jackson, who did not appear at the hearing.

Oral and documentary evidence was received. The matter was continued until May 8, 2009, to allow the submission of closing briefs.² Closing briefs were timely filed and marked for identification as District's Exhibit 16 and Respondent's Exhibit S. The record was closed, and the matter was submitted for decision on May 8, 2009.

FACTUAL FINDINGS

1. Complainant, David Vierra, filed the Accusation while acting in his official capacity as the Superintendent of the District.
2. Respondents are certificated employees of the District.
- 3(a). On February 18, 2009, the Governing Board (Board) of the District adopted Resolution 2008-09-20, which stated, in pertinent part:

WHEREAS, the [Board] has determined that it shall be necessary to reduce or discontinue the particular kinds of services of the District as itemized in Exhibit "A" at the close of the current school year; and

WHEREAS, it shall be necessary to terminate at the end of the 2008-2009 school year, the employment of certain certificated employees of the District as a result of declining enrollment and the reduction or discontinuance in particular kinds of services;

THEREFORE, BE IT RESOLVED that the Superintendent is direct to send appropriate notices to all employees whose services shall be terminated by virtue of this action.

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² All other statutory deadlines were continued for a similar number of days.

3(b). Exhibit A to Resolution 2008-09-20 listed the following particular kinds of services provided by the District which would be reduced and discontinued no later than the beginning of the 2009-2010 school year:

<u>Position</u>	<u>FTE</u> ^[3]
English	19.0
Math	13.0
Social Science	15.0
Science	
Biology	8.0
Chemistry	3.0
Geoscience	1.0
Foreign Language	
Spanish	8.0
German	.6
Physical Education	8.0
Behavioral Science (Health)	7.0
Business	2.0
Agriculture	1.0
Library Media Teacher	1.0
New Student Orientation Center	1.0
 Total FTE:	 87.6

4(a). On March 4, 2009, Board of the District adopted Resolution 2008-09-25, which stated, in pertinent part:

WHEREAS, the [Board] has determined that it shall be necessary to reduce or discontinue the particular kinds of services of the District as itemized in Exhibit “A” at the close of the current school year, and approve tie-breaking criteria attached as Exhibit “B” for use in the event affected employees have the same seniority date;

WHEREAS, it shall be necessary to terminate at the end of the 2008-2009 school year, the employment of certain certificated employees of the District as a result of declining enrollment and the reduction or discontinuance in particular kinds of services;

THEREFORE, BE IT RESOLVED that the Superintendent is direct to send appropriate notices to all employees whose services shall be terminated by virtue of this action.

³ FTE is “Full Time Equivalent.” One FTE is equal to five sections/classes.

4(b). Exhibit A to Resolution 2008-09-25 listed the following particular kinds of services provided by the District which would be reduced and discontinued no later than the beginning of the 2009-2010 school year:

<u>Position</u>	<u>FTE</u>
Social Science	<1.0>[⁴]
Home Economics	1.0
Art	4.0
Geoscience	.6
District Coordinators	
English	.8
Math	.4
Total FTE:	6.8

5. As indicated by its two resolutions, the Board determined that the declining enrollment and the reduction in services necessitated a decrease in the number of certificated employees at the close of the 2008-2009 school year by a corresponding number of FTE positions, and directed the Superintendent to notify the appropriate employees to implement the Board’s determination.

6(a). On March 5, 2009, the District gave notice to each Respondent of the potential elimination of his/her position for the 2009-2010 school year.

6(b). The layoff notices sent to Respondents Martha Alatorre, Tia Fackler, Ronald McClinton, Jessica Nish, Kristine Parsons, Ryan Rivas, Natalie Rodriguez, Chad Shrout, Ada Tellez, Robert Watts and Shannon Williams (collectively university intern Respondents), stated, in part, “as a university intern, and pursuant to Education Code section 44464, you do not have a right to a hearing to challenge the basis for this notice.”

7. All Respondents, including the university intern Respondents, timely submitted requests for hearing.

8. On April 6, 2009, the District served the Accusation on each Respondent, including the university intern Respondents.

9. On April 6, 2009, the District rescinded the March 5, 2009 layoff notices of: David Alvarez, Christopher Andrews, Conni Billes, Misty Bisby, Robin Calzada, Gary Dilbeck, Nicole Ellis, Scott Hampton, John Johnson, Jarod Larsen, Anthony Lawson, Lisa Lubin-McKendry, Carol Ann Marmom, Kyle McWhorter, Kristen Mintz, Sheron Nauzo, Patricia O’Keefe, Marco Reyes, Scott Rundblade, Rachel Taylor, John Viverito, and

⁴ The Board reduced the number of Social Science positions to be eliminated by 1.0 FTE, from 15.0 to 14.0.

Oxana Wehunt. Therefore, the Accusation was not served on these teachers, and they will be retained.

10. All Respondents, including the university intern Respondents, timely filed Notices of Defense to determine if there was cause for not reemploying them for the 2009-2010 school year.

11. The services set forth in Factual Findings 3 and 4 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue the identified particular kinds of services was neither arbitrary nor capricious, and constituted a proper exercise of discretion.

12. The reduction or discontinuation of particular kinds of services was related solely to the needs and welfare of the District and its pupils.

13(a). Respondent Teresa Kinderman (seniority date 8/6/07; preliminary credential in social science; CLAD certification) is the sole teacher employed to run the District's Welcome Center, which is being discontinued as 1 FTE of New Student Orientation Center. The Welcome Center is an orientation program for new students at Antelope Valley High School (AVHS) designed to address the needs of a highly transient population. All incoming freshmen at AVHS are typically tested before school begins to determine their needs and to create a class schedule to meet their needs. In April 2008, the Western Association of Schools and Colleges reviewed AVHS for school-wide accreditation, and the Welcome Center was considered as part of their three-year action plan.

13(b). The evidence did not establish that the discontinuation of the Welcome Center was arbitrary or capricious, or that it constituted an abuse of discretion by the Board.

13(c). The evidence did not establish that the Board's decision to discontinue the Welcome Center was not related to the needs and welfare of the District and its pupils.

14(a). At the hearing, the District initially presented evidence to establish that the termination of employment of certain certificated employees was based in part on a decline in average daily attendance (ADA).⁵ Mark Bryant (Bryant), Assistant Superintendent of Personnel for the District testified that the factors prompting the layoff of certificated personnel included the California budget crisis and how that affected the District's ability to meet its budgetary demands, as well as the decline in enrollment of 400 students (and the resultant over-staffing) during the current school year. According to Bryant, there was a

⁵ Additionally, in his opening statement, District counsel noted that layoffs were prompted by budgetary constraints and "to some extent a decline in average daily attendance," noting that 13 teaching positions were at issue.

diminution in ADA. He explained that ADA differs from enrollment in that enrollment is the number of students on the roll sheets for the District, and ADA refers to the average daily attendance for those students, which can be less than enrollment. Bryant pointed to documentation which he believed established a decline in ADA in the District. However, he admitted that nobody from the District formulated any percentage calculations regarding an ADA decline, and that the percentage in ADA decline was not presented to the Board. Instead, there was only discussion of a drop in enrollment. On the last day of the hearing, the District indicated that it would “not pursue the ADA portion” of the case.

14(b). After the ADA portion of the case was dropped, Bryant testified that, when determining how to remediate the budget problem, the District felt the need to recapture \$4,111,372 (see Resolution 2008-09-20; Factual Finding 3) and \$753,208 (see Resolution 2008-09-25; Factual Finding 4). Bryant analyzed the master schedules regarding PKS and determined the number of layoffs that would help to meet the budgetary shortfall. He admitted that declining enrollment over the past several years was a factor in the decision to adopt the Resolutions, and that declining enrollment often translates into a decline in ADA. However, he did not know what portion of the budgetary shortfall was related to ADA because “it was not part of the process.” According to Bryant, the District is “making other cuts to make up the difference” in the budgetary shortfall based on ADA decline.

14(c). Despite District counsel’s initial attempts to elicit testimony regarding a decline in ADA, the evidence established that the Board did not take into account any decline in ADA when it passed Resolutions 2008-09-20 and 2008-09-25, and the notices sent to Respondents do not refer to a decline in ADA as the basis for potential layoffs. The evidence established that, instead of a decline in ADA, the District took into account budgetary concerns and the decline in enrollment when determining the need for reduction of particular kinds of services, and considered both as bases for the reduction in particular kinds of services. The evidence did not establish that the District was required to specify which particular kinds of services and which corresponding FTEs were related to the District’s concerns regarding declining enrollment. (See Legal Conclusion 4.)

15. The Board 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.

16(a). The District maintains a Seniority List which contains employees’ seniority dates, current assignments, permanency description and credential and certificate information.

16(b). Teachers affected by the initial notice of potential layoff were provided an opportunity to review their information on file with the District (including their seniority date), starting in January 2009. Some teachers made inquiries and adjustments were made to the Seniority List.

17. At the hearing, the District stipulated that the seniority date for Respondent Nancy Cuevas should be changed from October 16, 2008, to October 6, 2008. Nevertheless, this does not affect her layoff notice status.

18. The substitute teacher hiring process has been identical for many years, and the process for hiring day-to-day substitutes does not differ from the process for hiring long term substitutes. Potential substitutes must fill out an application which indicates that the person is applying for a substitute teaching position. When the application process (transcripts, letters of reference, resume) and the clearance process is completed (fingerprinting and drug testing), and the teacher has obtained, at minimum, a 30-day emergency substitute teaching permit, the substitutes undergo substitute teaching training and are given a substitute teacher handbook. Substitutes are not given a start date until they receive an assignment. All prospective substitutes are posted in the “sub-finder” machine, which is utilized to find substitutes to replace absent teachers. The District does not hire anyone specifically as a long term substitute, but rather first hires the person as a day-to-day substitute. If the District knows a regular teacher will be absent more than 15 days, it informs the substitute teacher that he/she will receive long term substitute pay beyond the 15th day, and retroactive to the first day of the assignment. The regular substitute pay rate is \$130 per day (except at Little Rock High School, where it is \$140 per day), and the long term substitute pay rate is \$150 per day (except at Little Rock, where it is \$160 per day). The evidence established that it is the District’s typical practice to provide substitute teachers with notice of their classification as substitute teachers from the outset of their employment.

19. Respondent Meghann Judd challenged the seniority date assigned to her by the District. Respondent Meghann Judd began working as a day-to-day substitute in August 2007, and then served as a long term substitute from January 2008 until March 2008. She then began another long term substitute assignment teaching Spanish at a different school, and has remained in that assignment until the end of the year. Her seniority date is August 5, 2008, the date when she began working as a probationary employee. Although Respondent Meghann Judd argued that her seniority date should be the date she first worked with the District, this argument was not persuasive. Respondent Meghann Judd did not establish that her months of substitute teaching constituted at least 75 percent of the days in the prior school year or that her substitute service mandated an earlier seniority date. (See Legal Conclusion 5.) Therefore, the District properly determined the seniority date for Respondent Meghann Judd.

20. Respondent Akilah Lyons-Moore challenged the seniority date assigned to her by the District. Respondent Lyons-Moore began working as a long term substitute in January 2007, teaching geometry under a 30-day substitute teaching permit. Her seniority date is August 6, 2007, the date when she began working as a probationary employee, teaching Social Science under her preliminary credential in Social Studies. Although Respondent Lyons-Moore argued that her seniority date should be the date she first worked with the District, this argument was not persuasive. Respondent Lyons-Moore did not establish that her months of substitute teaching (which did not constitute at least 75 percent of the days in the prior school year) mandated an earlier seniority date. (See Legal

Conclusion 5.) Therefore, the District properly determined the seniority date for Respondent Lyons-Moore.

21. Respondent Milinda Wittkopf challenged the seniority date assigned to her by the District. Respondent Milinda Wittkopf worked as a substitute from November 14, 2007, until the end of the Fall 2007 semester. She did not work during the Spring 2008 semester. Her seniority date is August 4, 2008, the date when she began working as a probationary employee. Although Respondent Milinda Wittkopf argued that her seniority date should be the date she first worked with the District, this argument was not persuasive. Respondent Milinda Wittkopf did not establish that her months of substitute teaching (which did not constitute at least 75 percent of the days in the prior school year) mandated an earlier seniority date. (See Legal Conclusion 5.) Therefore, the District properly determined the seniority date for Respondent Milinda Wittkopf.

22. Respondent Pablo Andrade challenged the seniority date assigned to him by the District. Respondent Pablo Andrade began working as a long term substitute at Palmdale High School from August 2006 until September 2006. His seniority date is November 6, 2006, the date when he began working as a probationary employee. Although Respondent Pablo Andrade argued that his seniority date should be the date he first worked with the District, this argument was not persuasive. Respondent Pablo Andrade did not establish that his months of substitute teaching (which did not constitute at least 75 percent of the days in the prior school year) mandated an earlier seniority date. (See Legal Conclusion 5.) Therefore, the District properly determined the seniority date for Respondent Pablo Andrade.

23. Respondent Jessica Centonze challenged the seniority date assigned to her by the District. Respondent Jessica Centonze began working as a day-to-day substitute in the Fall of 2006. At the beginning of the Spring 2007 semester, she began a long term substitute assignment which she continued until the end of the school year. Her seniority date is July 23, 2007, the date when she began working as a probationary employee. Although Respondent Jessica Centonze argued that her seniority date should be the date she first worked with the District, this argument was not persuasive. Respondent Jessica Centonze did not establish that her months of substitute teaching constituted at least 75 percent of the days in the prior school year or that her substitute service mandated an earlier seniority date. (See Legal Conclusion 5.) Therefore, the District properly determined the seniority date for Respondent Jessica Centonze.

24. Respondent Ada Tellez challenged the seniority date assigned to her by the District. Despite the wording of its layoff notice to Respondent Tellez, stating that “as a university intern, and pursuant to Education Code section 44464, you do not have a right to a hearing to challenge the basis for this notice,” the District did not object to Respondent Tellez’s appearance and testimony at the hearing. In August 2007, Respondent Tellez began working under at 30-day substitute teaching permit, while waiting for issuance of her university intern credential. Her seniority date is October 4, 2007, the date when her intern credential was issued and she began working as a probationary employee. Although Respondent Tellez argued that her seniority date should be the date she first worked with the

District, this argument was not persuasive. Respondent Ada Tellez did not establish that her months of teaching under a substitute permit mandated an earlier seniority date. (See Legal Conclusion 5.) Therefore, the District properly determined the seniority date for Respondent Ada Tellez. (See also Legal Conclusion 6.)

25. Respondent Martha Alatorre challenged the seniority date assigned to her by the District. Despite the wording of its layoff notice to Respondent Alatorre, stating that “as a university intern, and pursuant to Education Code section 44464, you do not have a right to a hearing to challenge the basis for this notice,” the District did not object to Respondent Alatorre’s appearance and testimony at the hearing. Late in the first semester until the Spring of the 2005-2006 school year, Respondent Alatorre taught math under a 30-day substitute teaching permit. She was hired as long term substitute at the start of the 2006-2007 school year, teaching Spanish. Her seniority date is January 8, 2007, the date when her intern credential was issued and she began working as a probationary employee. Although Respondent Alatorre argued that her seniority date should be the date she first worked with the District, this argument was not persuasive. Respondent Martha Alatorre did not establish that her months of teaching under a substitute permit mandated an earlier seniority date. (See Legal Conclusion 5.) Therefore, the District properly determined the seniority date for Respondent Martha Alatorre. (See also Legal Conclusion 6.)

26. Respondent Kristine Parsons (Social Science teacher) challenged the seniority date assigned to her by the District. Despite the wording of its layoff notice to Respondent Parsons, stating that “as a university intern, and pursuant to Education Code section 44464, you do not have a right to a hearing to challenge the basis for this notice,” the District did not object to Respondent Parsons’s appearance and testimony at the hearing. On October 3, 2006, she began working as a long term substitute under a 30-day substitute permit, teaching World History (5 periods) until November 20, 2006. On that date, she did not work because the teacher whose assignment she was covering returned. On November 21, 2006, she began another long term substitute assignment, teaching Health (2 periods) and Opportunity (2 periods), until the end of December 2006. When school resumed in January 2007, she began another long term substitute assignment until February 16, 2007. Thereafter, she worked as a long term “roving substitute” until the end of the school year, with a break to take a long term substitute assignment from February 27, 2007, until March 23, 2007, and then resumed her “roving substitute” duties for the rest of the school year. As a roving substitute, she reported to the school site every date to receive her daily assignment. Her seniority date is July 31, 2007, the date when she began working as a probationary employee. Respondent Kristine Parsons’s argument that her seniority dates should be the date she first worked with the District was persuasive. Respondent Parsons established that her months of long term substitute teaching constituted at least 75 percent of the days in the prior school year, mandating her earlier probationary date. (See Legal Conclusion 5(a).) Therefore, the proper seniority date for Respondent Kristine Parsons is October 3, 2006. Nevertheless, this does not affect her layoff status, given her status as a university intern. (See Legal Conclusion 6.)

27. Respondent Stacy Hardcastle challenged the seniority date assigned to her by the District. Her seniority date is August 6, 2007, the date when she began new teacher in-

service for the District as a probationary employee. She was compensated for her new teacher in-service, and it was mandatory training for her employment with the District. She is aware that other teachers have earlier seniority dates than hers based on various voluntary training sessions that they completed but she did not. Respondent Stacy Hardcastle argued that, unless it is labeled mandatory, training should not be included to determine seniority dates. Respondent Stacy Hardcastle did not establish that she was entitled to an earlier seniority date. Therefore, the District properly determined the seniority date for Respondent Stacy Hardcastle.

28(a). Respondent Jon Fleming challenged the seniority date assigned to him by the District. His seniority date is January 24, 2005, when he was re-employed as a probationary employee of the District. He was first employed by the District in August 1999 as a Social Studies teacher under an emergency credential in Social Studies, renewable for up to five years. He remained with the District for the 1999-2000, 2000-2001, 2001-2002, 2002-2003 and 2003-2004 school years, teaching as a temporary employee under the emergency credential. In October 2004, his emergency credential in social studies expired after he failed to pass his subject matter competency test. The day his credential expired, he was called into the District office and was told that he could resign and be rehired, or he would be terminated. He chose to resign, and was immediately rehired as a long term substitute for his own class under an emergency substitute credential. On December 1, 2004, he obtained a preliminary vocational education credential, and at the start of the Spring 2005 semester, he began teaching computer classes in the Information Systems Academy (ISA). He currently teaches Introduction to Information Systems (2 sections), Informational Basic Computer Programming (1 section), Web Management (1 section) and Hardware Repair (1 section).

28(b). Following his resignation and re-employment, Respondent Fleming's date of employment is the date on which he first rendered paid service in a probationary position. (See Legal Conclusion 7.) Respondent Fleming did not establish that he should have been assigned an earlier seniority date. Therefore, the District properly determined the seniority date for Respondent Jon Fleming.

29. Respondent Jeremiah Griffey (English teacher) challenged the seniority date assigned to him by the District. Respondent Jeremiah Griffey began working as a long term substitute on August 21, 2006. After three to four weeks as a long term substitute, he remained as a "roving substitute," reporting for duty every day, until the last two months of the school year, when he served in a long term substitute assignment for the remainder of the school year. His seniority date is July 31, 2007, the date when he began working as a probationary employee. He performed the duties normally required of a certificated employee beginning in August 2006, until the present. Respondent Jeremiah Griffey's argument that his seniority date should be the date he first worked with the District was persuasive. Respondent Jeremiah Griffey established that his months of long term substitute teaching and daily "roving substitute" duty constituted at least 75 percent of the days in the prior school year, mandating his earlier probationary date. (See Legal Conclusion 5(a).) Therefore, the proper seniority date for Respondent Jeremiah Griffey is August 21, 2006.

30. Respondent Tiffany Lee (Math teacher) challenged the seniority date assigned to her by the District. Her seniority date is August 6, 2007, the date when she began working as a probationary employee. Prior to that, Respondent Tiffany Lee began working as a long term substitute on August 13, 2006, teaching under a 30-day substitute teaching permit, renewable for up to one year. Although she was classified as a long term substitute while obtaining her subject matter competency (achieved in Algebra in October 2006 and in Geometry in March 2007), she was hired from the outset to fill a vacancy at Eastside High School. She performed the duties normally required of a certificated math teacher beginning August 13, 2006, until the present. Respondent Tiffany Lee's argument that her seniority dates should be the date she first worked with the District was persuasive. Respondent Tiffany Lee established that her months of long term substitute teaching constituted at least 75 percent of the days in the prior school year, mandating her earlier probationary date. (See Legal Conclusion 5(a).) Therefore, the proper seniority date for Respondent Tiffany Lee is August 13, 2006.

31. The District used its Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the services being reduced.

32. The District determined that nobody less senior than Respondents was being retained to render services Respondents are certificated and competent to render.

33(a). Respondent William Armstrong holds a single subject credential in art and a preliminary vocational education teaching credential in multimedia production. He teaches Visual Communications (3 sections) and ROP courses in Media Design (1 section) and in Video Production (1 section), which are all considered by the District as part of the art curriculum. Respondent Armstrong challenges the reduction of his FTE as a reduction of 1.0 FTE in Art, asserting that he is in the industrial technology department and does not teach art.

33(b). Respondent Marcy Watton holds a preliminary credential in art. She teaches Multi-Media Contemporary Design (6 sections). Her classes are taught on computers, using mostly an Adobe suite of software, a 3D animation program and a video editing program. Her students have displayed their art in art shows and in the District museum. She is familiar with the school's coursework description book and understands that courses in Multi-Media Design satisfy the University of California and California State University graduation requirements for art.

33(c). The District has determined that the Multi-Media Contemporary Design courses and the Visual Communications courses are considered art courses within the District's curriculum. Neither Respondent Armstrong nor Respondent Watton has established that the courses they teach should not be considered art for purposes of reduction of particular kinds of service.

34. Respondent Jon Fleming (probationary employee; seniority date 1/24/05) teaches Introduction to Information Systems (2 sections), Informational Basic Computer

Programming (1 section), Web Management (1 section) and Hardware Repair (1 section) under his preliminary vocational education credential. He asserted that he should be able to bump junior tenured employee Duane Robertson (seniority date 10/4/05), who teaches art classes in Multi-Media Contemporary Design under a clear single subject business credential and vocational education credential. Respondent Fleming did not establish that he was credentialed and competent to bump Duane Robertson, nor did he establish that, as a probationary employee, he should be retained while a tenured employee is laid off. Consequently, Respondent Fleming cannot bump junior employee Duane Robertson. (See Legal Conclusions 8 and 9.)

35(a). 21 English teachers received layoff notices, resulting in the over-noticing of two English teachers.

35(b). Four of the April 6, 2009 rescission notices pertained to English FTEs: Christopher Andrews, Misty Bisby, Gary Dilbeck, and Oxana Wehunt.⁶

35(c). The next two most senior English teachers should be retained. They are: Jeremiah Griffey (new seniority date 8/21/06) and Carol Smith (seniority date 8/21/06).

36(a). 14 Math teachers received layoff notices, resulting in the over-noticing of one Math teacher.

36(b). Five of the April 6, 2009 rescission notices pertained to Math FTEs: Lisa Lubin-McKendry, John Johnson, Robin Calzada, Scott Hampton and Kyle McWhorter.

36(c). The next most senior Math teacher should be retained: Tiffany Lee (new seniority date 8/13/06.)

37(a). 17 Social Science teachers received layoff notices, one of which taught only .4 (2 sections) of Social Science, resulting in the over-noticing of two Social Science teachers, and .6 (3 sections) of another Social Science teacher's assignment.

37(b). Four of the April 6, 2009 rescission notices pertained to Social Science FTEs: Anthony Lawson, Sheron Nauzo, David Alvarez and John Viverito.

37(c). 2.6 FTEs of the next most senior Social Science teachers (who are not university interns) should be retained: William Holmes (1.0 FTE), Kimberly Fields (1.0 FTE), and Joseph South (.6 FTE, but .4 may be subject to layoff).

38. Two of the April 6, 2009 rescission notices pertained to Biology FTEs: Marco Reyes and Kristen Mintz.

⁶ None of the rescission notices were issued to reduce the over-noticing.

39. Two of the April 6, 2009 rescission notices pertained to Chemistry FTEs: Nicole Ellis and Rachel Taylor.

40. One of the April 6, 2009 rescission notices pertained to a Spanish FTE: Jarod Larsen.

41(a). 11 Physical Education teachers received layoff notices, one of which taught only .4 (2 sections) of Physical Education, resulting in the over-noticing of two Physical Education teachers, and .6 (3 sections) of another Physical Education teacher's assignment.

41(b). Two of the April 6, 2009 rescission notices pertained to Physical Education FTEs: Conni Billes and Scott Rundblade.

41(c). 2.6 FTEs of the next most senior Physical Education teachers (who are not university interns) should be retained: Eric Long (.4 FTE), Colleen Nua (1.0 FTE), Matthew Lopez (1.0 FTE), and Briana Laux (.2 FTE, but .8 may be subject to layoff).

42. Two of the April 6, 2009 rescission notices pertained to Health FTEs: Carol Ann Marmon and Patricia O'Keefe.

43. Although Business is being reduced only two FTEs, three individuals were given notice, resulting in the over-noticing of one teacher. The most junior employee of those given notice was an adult education teacher, Joy Vierra. Although she is not a secondary education Business teacher, and not subject to the current reduction in force, she was given notice because she is the wife of the Superintendent and the District did not want to give the impression of any partiality. The District acknowledged that she was over-noticed, and that she should not be laid off. However, the District refused to withdraw the Accusation against her and insisted that the issue be decided by an impartial third party. The evidence established that Respondent Joy Vierra is not subject to layoff and that the Accusation against her should be dismissed.

44(a). Several Respondents provide services to the District outside the scope of the particular kinds of services identified for reduction

44(b). Respondent Theresa Young teaches .8 FTE German, and only .6 FTE is being reduced. The District agreed that she would be retained for .2 of her assignment.

44(c). Respondent Jessica Centonze teaches English (.6 FTE) and AVID (.4 FTE).⁷ Although .6 of her FTE is being reduced, she should be retained for .4 of her assignment.

⁷ Advancement Via Individual Determination (AVID) is an elective class that provides additional services and support in certain subject areas. There is no particular credential requirement to teach AVID.

44(d). Respondent David Dunstan teaches English (.2 FTE), ELD (.6 FTE) and AVID (.2 FTE). Although .2 of his FTE is being reduced, he should be retained for .8 of his assignment.

44(e). Respondent Stella Konisek teaches Social Science (.4 FTE) and Psychology (.6 FTE). Although .4 of her FTE is being reduced, she should be retained for .6 of her assignment.

44(f). Respondent Alma Del Llano teaches Biology (.4 FTE) and AVID (.6 FTE). Although .4 of her FTE is being reduced, she should be retained for .6 of her assignment.

44(g). Respondent Eric Long teaches Health (.4 FTE), Physical Education (.4 FTE which will be retained due to over-noticing) and AVID (.4 FTE). Although .4 of his FTE is being reduced, and .4 is being retained due to over-noticing, he should be retained for the remaining .4 of his assignment.⁸

44(h). Respondent Joseph Cox teaches Foods (.4 FTE) and is a “Rover,” or roving substitute, for .6 FTE. As part of the reduction in Home Economics, .4 FTE of his assignment is being reduced. However, Respondent Joseph Cox did not establish that the District must retain him to provide the remaining .6 FTE as a roving substitute.

44(i). Several of the English and Math teachers also teach “support” or “CAHSEE” for portions of their assignment. The support classes are subject-specific English and Math classes taught to support the student’s regular class in that subject area, and CAHSEE is taught to help the students pass the California High School Exit Examination in English or Math. Therefore, these classes, as taught by the English and Math teachers are considered to be English and Math classes for purposes of calculating the teachers’ FTEs, and the English and Math teachers who are subject to layoff will not be retained to teach these portions of their assignments.

45. Respondent Soccoro Reyes (seniority date 8/8/06; #210 on Seniority List) teaches Spanish and has a preliminary credential in Spanish and EL/SDAIE certification. She was noticed for layoff due to reduction in Spanish services. Anna Maldonado (seniority date 8/8/06; #209 on Seniority List) teaches ELD and has an intern credential in Spanish and EL/SDAIE certification. Maldonado was not noticed for layoff, since her assignment, ELD (1.0 FTE) was not part of the particular kinds of services that were reduced. However, Respondent Soccoro Reyes is certificated and competent to teach the ELD classes that Maldonado teaches. Furthermore, Maldonado and Respondent Soccoro Reyes have the same seniority date, and Respondent Soccoro Reyes holds a preliminary credential as opposed to Maldonado’s intern credential. Therefore, if the tie breaking criteria had been applied to these two teachers, Respondent Soccoro Reyes would have been listed as more senior to Maldonado. Given the foregoing, Respondent Soccoro Reyes could have “bumped”

⁸ Five sections/classes equal 1.0 FTE. Some teachers teach six sections.

Maldonado, and the Accusation against Respondent Soccoro Reyes should be dismissed. (See Legal Conclusions 8 and 9.)

46. Respondent Rosalia Crivello-Marquez (seniority date 9/6/07; #61 on Seniority List) teaches English (1.0 FTE) and is subject to layoff due to reduction in English services. Respondent Crivello-Marquez holds a preliminary credential in English and a credential that authorizes her to teach Special Education / Mild to Moderate Disabilities. Her Special Education credential authorizes her to bump junior employees teaching Special Education /Mild to Moderate Disabilities who were not noticed for layoff. However, the District did not allow her to bump any of these junior Special Education teachers. Consequently, the Accusation against Respondent Crivello-Marquez should be dismissed. (See Legal Conclusions 8 and 9.)

47. No certificated employee junior to any Respondent was retained to perform any services which any Respondent was certificated and competent to render.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1 through 10.)

2. The services listed in Factual Finding 3 are each determined to be particular kinds of services within the meaning of Education Code section 44955. (Factual Findings 3, 4 and 11.)

3. Cause exists to reduce the number of certificated employees in 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 44955. (Factual Findings 11 and 12.)

4(a). Education Code section 44955, subdivision (b), provides, in pertinent part:

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, 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. (Emphasis added.)

4(b). In effecting a reduction in force based on a decline in ADA, a board must first determine that the ADA in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years. The Board did not specify this determination, and did not take into account any decline in ADA when it passed Resolutions 2008-09-20 and 2008-09-25. The notices sent to Respondents do not refer to a decline in ADA as the basis for potential layoffs. Consequently, at the hearing, the District appropriately withdrew ADA as a basis for any reduction in force.

4(c). Respondents argue the District's entire layoff decision is invalid because part of its decision-making included the anticipated reduced revenue from declining enrollment. Respondents maintain that, as a result of the Board's failure to identify that portion of the proposed layoff attributable to a decline in ADA, either the entire case should be dismissed, since the Administrative Law Judge (ALJ) cannot ascertain the extent to which the proposed layoff is based on ADA, or at the very least 19 of the Respondents should be dismissed. Respondents' argument is not persuasive.

4(d). In this case, the weight of the evidence established that the Board's layoff decision was caused by overall budget concerns and not a simple reduction in ADA. The evidence established that the District was primarily concerned about the reduced State funding for the 2009-2010 school year. While the District was also concerned about declining enrollment, it did not undertake to conduct the layoff pursuant to the declining ADA provisions of the statute and, therefore, did not make the requisite comparative ADA decline calculations. Rather, as the statute permits, the Board adopted resolutions focused on reduction of particular kinds of services as the basis for the layoff. Consistent with this decision, the notices sent to Respondents refer to the declining enrollment and the reduction in particular kinds of services. Thus, the reason for the layoff, i.e. the reduction or elimination of particular kinds of services, was correctly stated in the pertinent notices. There is nothing in Education Code section 44955 prohibiting an expected decline in student attendance from being one factor of many in the overall decision to reduce or eliminate particular kinds of services. Nothing in that statute places any limitations on the reason(s) a district may have for the reduction or discontinuation of a particular kind of service, nor have Respondents provided any authority or persuasive argument to require the District to undertake the layoff on grounds of a decline in ADA merely because of concerns about declining enrollment.

5. Education Code section 44918 (Substitute or temporary employee deemed probationary employee; reemployment rights) provides, in pertinent part:

(a) 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. (Emphasis added.)

6(a). Education Code section 44464 provides:

An internship credential shall be valid only as long as the holder is in good standing in the teacher internship program of the district that makes the request, notwithstanding any provision of Section 44463, and the rights provided by Sections 44948 and 44949 shall not be afforded to interns.

6(b). As stated in the March 5, 2009 layoff notices sent to university intern Respondents Martha Alatorre, Tia Fackler, Ronald McClinton, Jessica Nish, Kristine Parsons, Ryan Rivas, Natalie Rodriguez, Chad Shroul, Ada Tellez, Robert Watts and Shannon Williams, “as a university intern, and pursuant to Education Code section 44464,” they did not have any right a hearing to challenge the basis for the layoff notice. Although the District still served the university intern Respondents with Accusations and allowed them to appear and testify at the hearing, Section 44464 is clear that such rights “shall not be afforded to interns.” Consequently, university intern Respondents Chad Shroul, Ronald McClinton, Shannon Williams, Robert Watts, Natalie Rodriguez, Martha Alatorre, Ada Tellez, Kristine Parsons, Tia Fackler, Jessica Nish and Ryan Rivas cannot contest their layoff notices.

7(a). Education Code section 44848 provides:

When any certificated employee shall have resigned or been dismissed for cause and shall thereafter have been reemployed by the board, his date of employment shall be deemed to be the date on which he first accepted reemployment (if reemployed before July 1, 1947) or rendered paid service (if reemployed after June 30, 1947) after his reemployment.

7(b). Education Code section 44845 (Employment dated from first acceptance of paid service in probationary position) 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.

ORDER

I. The Accusations served on the following Respondents are dismissed: Jeremiah Griffey, Carol Smith, Tiffany Lee, William Holmes, Kimberly Fields, Soccoro Reyes, Joy Vierra, Rosalia Crivello-Marquez, Colleen Nua, Matthew Lopez, Joseph South (.6 FTE Social Science), Eric Long (.4 FTE Physical Education and .4 AVID), Briana Laux (.2 FTE Physical Education), Theresa Young (.2 FTE German), Jessica Centonze (.4 FTE AVID), David Dunstan (.6 FTE ELD and .2 FTE AVID), Stella Konisek (.6 FTE Psychology, and Alma Del Llano (.6 FTE AVID).

II. The Accusations served on the following Respondents are sustained: Chad Shrouf, Ronald McClinton, Shannon Williams, Robert Watts, Natalie Rodriguez, Martha Alatorre, Ada Tellez, Kristine Parsons, Tia Fackler, Jessica Nish, Ryan Rivas, William Armstrong, Pablo Andrade, Valerie Bair, Walter Binns, William Bowers, Jon Fleming, Matthew Cole, Clyresa Cooper, David Cooper, Karin Copus, Nancy Cuevas, Tinisha Deadmon, Lloyd Dunn, Barron Gardner, Nathan Gilmore, Daniel Gorman III, Angela Grass, Stacy Hardcastle, Jeanette Hjelm, Justin Holtfreter, Erica Isibue, Jada Jackson, Jennifer Jones, Meghann Judd, Bary Kauffman, Teresa Kindermann, Lisa Lintemoot, Akilah Lyons-Moore, Frank Maestas, Cheryl Maghinay, Indira Molina, Melonie Morgan, Marci Morris, Anna Marie Paliza, Geraldine Pierce, Garrett Root, Heather Roush, Christopher Saucke, Alesia Stonerock, Susan Sztain-Edminister, Tenicia Takamatsu, Michelle Teare, Nena Thornburg, Michael Treanor, Paul Wagner, Leann Washington, Marcy Watton, Milanda Wittkopf, Joseph Cox, Perleen Smith, Joseph South (.4 FTE Social Science), Eric Long (.4 FTE Health), Briana Laux (.8 FTE Physical Education), Theresa Young (.6 FTE German), Jessica Centonze (.6 FTE English), David Dunstan (.2 FTE English), Stella Konisek (.4 FTE Social Science), Alma Del Llano (.4 FTE Biology). Notice may be given to those Respondents before May 22, 2009, that their services will be reduced or terminated for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services as indicated.

Dated: May 13, 2009

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings