

BEFORE THE  
GOVERNING BOARD  
OROVILLE JOINT UNION HIGH SCHOOL DISTRICT  
COUNTY OF BUTTE  
STATE OF CALIFORNIA

In the Matter of the Reduction or Elimination  
of Particular Kinds of Services and the  
Employment Status of:

CERTAIN CERTIFICATED EMPLOYEES  
OF THE OROVILLE JOINT UNION HIGH  
SCHOOL DISTRICT,

Respondents.

OAH No. 2009031010

**PROPOSED DECISION**

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter at the Oroville Joint Union High School District Office, Oroville, California on April 27, 2009.

Diana D. Halpenny, Attorney at Law, of Kronick, Moscovitz, Tiedemann and Girard, Attorneys at Law, represented the Oroville Joint Union High School District (District) Oran Roberts, Ed.D, Superintendent, appeared on behalf of the District.

Ted Lindstrom, Attorney at Law, of Langenkamp and Curtis, L.L.P., represented all respondents who appeared.

No respondents appeared in pro per.

The matter was submitted on April 27, 2009.

**FACTUAL FINDINGS**

1. Oran Roberts, Ed.D., (Superintendent) made and filed the Accusation in his official capacity as Superintendent, Oroville Union High School District (District).

2. All respondents were, at all times relevant to this Decision, certificated employees of the District.

3. On or just before March 13, 2009, in accordance with Education Code section 44949 and 44955, the Superintendent notified the Governing Board of the District (Board) in writing of the Superintendent's recommendation that certain particular kinds of services would have to be reduced or eliminated for the upcoming school year. The Superintendent's recommendation specified the particular kinds of services to be reduced or eliminated, as set forth below. The Superintendent also notified the Board that a corresponding number of certificated employees of the District, in this instance, 22.50 full time equivalents (FTE) in the regular education program, and 10.8 FTEs in the Challenge Charter High School (Charter School), would have to be laid off to effectuate the reduction or elimination of the particular kinds of services. The Superintendent notified the Board that respondents had been identified as persons to whom notice should be given that their services would not be required for the ensuing school year.

4. The recommendation that respondents' services for the District would not be required for the upcoming school year was not related to their skills, abilities or competencies as teachers.

*REDUCTIONS/ELIMINATIONS OF PARTICULAR KINDS OF SERVICES*

5. The Board adopted Resolution 20-08/09 on March 13, 2009. The Board resolved to follow the Superintendent's recommendation to reduce 22.50 FTE particular kinds of services in the regular education program of the District. The Board also resolved to follow the Superintendent's recommendation to lay off the entire staff of the Charter School, which will be closing due to budget constraints and declining enrollment. The Resolution authorized the Charter School layoff constituting 10.8 FTE. The Resolution authorized and directed the Superintendent to give notice to an equivalent number of certificated employees of the District that their services would not be required for the upcoming school year in order to effectuate the reduction. The Resolution authorized the elimination of the following regular education services now offered in the District:

1. Reduce .20 FTE Special Education Teacher
2. Reduce 1.4 FTE Math Teachers
3. Reduce 1.0 FTE Earth Science Teacher
4. Reduce 1.0 FTE Life Science Teacher
5. Reduce 2.0 FTE Social Science Teachers
6. Reduce 1.6 FTE English Teachers
7. Reduce .20 FTE Journalism Teacher
8. Reduce .20 FTE Drama Teacher
9. Reduce 1.4 FTE Industrial Technology (Wood) Teachers
10. Reduce .40 FTE Industrial Technology (Introduction to Tech Block) Teacher
11. Reduce .80 FTE Art Teacher
12. Reduce 2.0 FTE Physical Education Teacher
13. Reduce .20 FTE Environmental and Spatial Technology Teacher
14. Reduce .20 FTE Spanish Teacher
15. Reduce .20 FTE Continuation School (Cal-SAFE Funded) Teacher

16. Reduce 8.7 FTE Counselors (entire program)
17. Reduce 1.0 FTE Assistant Principal

#### *CHARTER SCHOOL REDUCTIONS*

6. The Governing Board also determined and resolved that the following particular kinds of services (PKS) offered by Challenge Charter High School (Charter School) are to be reduced or discontinued no later than the beginning of the 2009-2010 school year and the following certificated positions be reduced or discontinued for the 2009-2010 school year:

1. Reduce 8.8 FTE Challenge Charter High School Teachers
2. Reduce 1.0 FTE Challenge Charter High School Counselor
3. Reduce 1.0 FTE Challenge Charter High School Principal

7. The principal of the Charter School recommended to the Superintendent that the entire Charter School staff (10.8 FTE) be laid off. The principal initially recommended layoff of some employees as a result of reductions in some programs due to declining enrollment and financial problems with the school. The Charter School's charter is up for review/renewal in May 2009. The school is forbidden by the charter to operate at a deficit. Upon review of enrollment and finances, it became apparent to the principal and the Superintendent that the Charter School was unlikely to have its charter renewed by the Board because it was operating at a deficit and was projected to continue to do so into the foreseeable future due to declining enrollment. The principal and the Superintendent agreed that the Charter School was likely to close, and all teaching services and programs being offered at the Charter School needed to be eliminated. The Charter School and all its employees are District employees. These employees losing their positions at the Charter School have the right to move into any assignment in the District's regular education program to which their credentials, competencies and seniority entitle them. The District thus accounted for these displaced employees in determining who received preliminary notices of layoff (below)

#### *COMPETENCE STANDARD*

8. The Resolution also adopted a competence standard containing criteria to assist in determining displacement (bumping) rights in "Alternative Education" programs to be offered in the District in the upcoming school year. Although use of the word "competence" ordinarily is understood to mean possession of adequate skills and abilities as a teacher, in this instance, the word is a term of art. It means in this context the possession of certain specialized training, experience and background in meeting the special needs of a narrowly defined student population.

9. The competence standard is as follows:

WHEREAS, the Governing Board has determined that “competency” for the purposes of this resolution, and the purposes of displacement rights in Alternative Education shall mean at least one semester actual teaching experience *in<sup>1</sup> (sic) specific Alternative Education program* within the last five (5) years (italics added) ; and

WHEREAS, the Governing Board has determined that “competency” for the purposes of this resolution, and the purposes of displacement rights in Career Technical Education shall mean at a minimum possession of the appropriate credential and at least one semester actual teaching experience in the specific Career Technical Education course within the last five (5) years; and

WHEREAS, the Governing Board has determined that "competency" for the purposes of this resolution, and the purposes of displacement rights into Challenge Charter High School shall mean at least one semester actual teaching experience in Challenge Charter High School within the last five (5) years; and

*“ALTERNATIVE EDUCATION” DEFINED*

10. The Superintendent testified that there are there three types of “Alternative Education” programs offered in the District; Independent Study; Community Day School (CDS) and the Prospect Continuation High School (Prospect CHS). At first, the Superintendent appeared to place all three programs on an equal footing regarding the skills and competencies the District requires to serve in these programs. Some of the respondents took this testimony to mean the District considered service in one or more of these programs interchangeable. The Superintendent explained the matter in significantly more detail in redirect examination and on rebuttal that the IS program requires a highly qualified teacher under the No Child Left Behind Act (NCLB) who is able to teach across the curriculum. The IS program is not site based and the IS teacher meets with the students in the IS program one or more times per week to check and assess progress. Most of the time, IS students are not behavioral problems and are enrolled in the regular education program of the District making progress toward graduation and college.

11. The Superintendent clarified that teaching at the CDS and Prospect is significantly different than IS, both in approach and in relevant qualifications and competencies required to successfully teach in the programs. CDS and Prospect share staff because the types of students receiving services in these programs are similar. Prospect is a continuation high school that serves students who have been removed from the regular

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<sup>1</sup> The inadvertent omission of the intended word “the” in this sentence caused substantial unanticipated problems, leading some respondents to believe the right to bump into Alternative Education was a global rather than a specific, program by program inquiry.

education program due to extreme behavioral problems, drug or alcohol dependency, excessive truancy, teenage motherhood and other issues that make the students unfit or unsuitable for any regular education program in the District. These students are usually unable to behave themselves long enough to keep from being expelled from the regular education program. Students in the CDS are “last chance” students. Most have been expelled twice and many are placed at the CDS by juvenile courts. CDS students are aggressive, sometimes violent, have substantial behavioral and emotional problems and lack self-control.

12. The District seeks teachers with special skills, training and experience in behavioral intervention and modification, drug and alcohol awareness and intervention, and persons with exceptional self control and classroom management skills to hire into teaching these programs. Teaching credentials and competencies appear secondary to behavioral, class management and intervention skills while still being able to deliver a reasonably good educational program. The District tries to have teachers in these two programs be NCLB highly qualified, but that objective is not always met. The students in these two programs are not necessarily graduation and college bound and the objectives of the programs are not solely in this direction, as they are in the other District programs, including the Charter School. Teachers serving in the CDS and Prospect cross over between the two programs to provide adequate breadth of classes.

13. In the past and even in the present school year, the positions at CDS and Prospect have been the least desirable in the District. The District’s experience has been that only those seriously motivated to work with extremely at risk populations of students as a career avocation even apply for these positions. For example, there was evidence that there have been four openings in these programs in the most recent two school years. None of the respondents not currently teaching in these programs applied for these positions.

14. The Superintendent took responsibility for drafting and recommending the competency criteria for Alternative Education. He explained at considerable length that the District has a rather specific definition of what it needs in a teacher staffing a position in the CDS or at Prospect, and that those skills need to be reasonably “fresh.” Thus, he recommended, and the Board approved, a requirement that the person having the defined competency would be a person who had at least one semester of actual experience teaching in a comparable setting as that of the CDS or Prospect within the most recent five years.

#### *PRELIMINARY NOTICES OF LAYOFF*

15. The Superintendent’s designee caused each of the respondents to be served with a written Notice of Intention to Dismiss (preliminary notice) on March 14, 2009. The written preliminary notices advised respondents that their services would not be required for the upcoming school year. The preliminary notice set forth the reasons for the recommendation.

*WAIVER FOR FAILURE TO TIMELY FILE A REQUEST FOR A HEARING*

16. All persons who received a preliminary notice of layoff, except Robyn Plante and Christine Willenberg, timely filed written requests for a hearing to determine if there was cause for not reemploying them for the ensuing year. Robyn Plante and Christine Willenberg were timely served preliminary notices of layoff. These preliminary notices of layoff contained instructions that if the recipient of such a notice wanted a hearing, the recipient must timely file a Request for a Hearing with the District. A form Request for Hearing was included with the preliminary notice of layoff, together with instructions for filing the Request with the District in order to obtain a hearing. The instructions advised the recipient that failure to timely file a Request for a Hearing would be deemed a waiver of the recipient's right to a hearing. Robyn Plante and Christine Willenberg waived any right to a hearing for failure to timely file a Request for a Hearing.<sup>2</sup> Respondent Julie Stephens resigned before the commencement of the hearing.

*NOTICES OF DEFENSE*

17. All respondents who were served an Accusation timely filed a Notice of Defense to the Accusation. All prehearing jurisdictional requirements were met with respect to the remaining respondents.

*PROBATIONARY NONREELECTION*

18. In separate proceedings and by separate notice, the Superintendent gave one probationary teacher notice of nonreelection, advising her that her services would not be required in the upcoming school year. "Probationary employees may be nonreelected without any showing of cause, without any statement of reasons and without any right of appeal or administrative redress."<sup>3</sup> "A school district may choose not to reelect a probationary employee without providing cause or other procedural protections to the terminated employee."<sup>4</sup>

*INDIVIDUAL AND GROUP ISSUES*

19. Individual and group issues in this matter centered around the nature of the tie breaking criteria adopted by the Board and as applied by the Superintendent and his assistant; and the skipping of certain employees retained to teach at Prospect High School ( a continuation high school) and the Community Day School ( a last chance placement school)

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<sup>2</sup> Government Code section 11520.

<sup>3</sup> Education Code section 44948.3, *Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4<sup>th</sup> 911, 917, citing *Bellflower Education Association v. Bellflower Unified School District* (1991) 228 Cal.App. 3d 805, 808

<sup>4</sup> *Kavanaugh, supra*, at p. 918, fn. 4, citing *Board of Education v. Round Valley Teacher's Association* (1996) 13 Cal.4<sup>th</sup> 269, 281.

*TIE BREAKERS FOR EMPLOYEES WITH THE SAME FIRST DAY OF PAID SERVICE*

20. The Governing Board adopted in Resolution 18-08/09 (Tie Breaker Resolution) on February 18, 2009, regarding the adoption of criteria for breaking ties in the event two or more certificated employees have the same first date of paid service. The Resolution set forth seven areas for rating employees one against another, including credentialing, experience (including nature and length of experience within and outside of the District, and relationship of experience to the positions to be filled), educational background including additional degrees and units beyond qualifying, performance, including evaluations, certifications, service to the schools, and NCLB certification.

21. The Superintendent and his Administrative Associate Ms. Fallen worked carefully and in great detail to apply the criteria and break ties. For the most part, it appeared the assessments were clear and easy to rate. However, for some employees who were still “close” to one another upon the application of all seven listed groups of criteria, there was a problem determining the ultimate order of seniority.

22. The Superintendent testified he specifically chose not to use a point system or a lottery to rate and choose employees who were close to one another after application of all listed criteria. Instead, he testified in the District’s case-in-chief, “[I]f they were close we ranked by criteria most relevant to the District.” On rebuttal, after hearing several respondents complain that these criteria were vague, arbitrary and unfair, he testified, “We compared everyone across criteria, and if it was close, we took the criteria with the most relevance to the District.”

23. The Superintendent did not identify the criteria that he used that had “the most relevance to the District,” or criteria he rejected that were of lesser relevance to the District. This testimony actually intensified the criticism, in that it became apparent that, in certain instances, with some employees, the Superintendent applied his own criteria to finally break the tie in close cases.

24. There was no evidence produced regarding any guidance from the Board regarding how to finally break ties when, after application of all the criteria they adopted, two or more employees with the same first days of paid service to the District were still “close.” There was no indication the Board authorized the Superintendent to apply his own view of what was most relevant to the District in making such final decisions. Further, there is no guidance in the Tie Breaking Resolution from the Board regarding the relative weight, if any, to be given to possession of the listed criteria. The Tie Breaking Resolution sets forth seven areas of credentialing, qualifications, experience, service and so forth of value to the District and its students, with several sub criteria for each, but provides no guidance on how to weight or account for possession of any or all of the listed criteria and subcriteria. The Superintendent weighted the criteria in a fashion known only to himself. He did not reveal in his testimony any weighting system he applied in rating the tied employees against the criteria, other than his assessment of the relevant needs of the District. The net result is the Superintendent’s assessment of tied employees via a methodology that leaves no way to

determine how these criteria were weighed and applied for those who were “close,” and no way to assess which criteria were deemed more or less “relevant to the District,” according to the Superintendent’s personal view of that relevance, for any individual respondent affected by the application of these standards.

25. Resolution 20 08/09 instructs the Superintendent and his staff to apply the Tie Breaker’s criteria to affected employees by using language drawn from Education Code section 44955, “... the order of termination shall be based solely on the needs of the District and the students thereof *based on the criteria adopted by the Board...*” (italics added)<sup>5</sup> This portion of this particular Resolution is impermissibly vague and permits the Superintendent to apply his own subjective criteria in making the final decisions among employees who have the same first day of paid service to the District. The Resolution fails to adopt a weighting system of any sort that permits review of the application of the standards in a reasonably objective fashion that can be externally reviewed for fairness and accuracy, and particularly fails by not providing an ultimate tie breaking device for resolving ties among those still close to one another after applying all other criteria.

26. Under the circumstances proved, the Superintendent’s personal preferences cannot be completely eliminated as a possible factor in the making of the final order of seniority decisions for at least the tied employees who were still “close” after application of all other criteria. The Superintendent specifically eschewed in his testimony using a point system or a lottery to break the close calls. There are consequences for that decision, not the least of which was some rather bitter and entirely avoidable criticism of the Superintendent and the District by aggrieved employees who were denied the opportunity to fully determine whether the application of the tie breaking criteria was fully accurate, fair and impartial, or colored with some unquantifiable measure of subjectivity, administrative preferences and arbitrariness. Failure to use a point system or casting lots when all other criteria were essentially equal permitted this issue to arise and prevented an unassailable tie breaking process.

#### *ALTERNATIVE EDUCATION AND CHARTER SCHOOL BUMPING AND SKIPS*

27. The District intends to retain in the upcoming school year each person now teaching in the CDS or Prospect program. Six of these employees are subject to this action because the District gave these employees “precautionary” preliminary notices of layoff. Precautionary notices of layoff were given to these employees to permit the District the ability to still lay off a person in the event any more senior employee was found competent to displace (bump) out one of these employees being retained. There were also unfortunate and unnecessary consequences to this decision. The six affected respondents, Ms. Granka, Ms. Horvath, Mr. Lascano, Mr. Lund, Ms. Quinn, and Ms. Zanon, are junior in seniority to several of the respondents being laid off from the District’s regular education program and the Charter School.

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<sup>5</sup> Clearly referring the Superintendent and his staff back to the earlier adopted Tie Breaker Resolution as the methodology to break ties based on the enumerated criteria the Board adopted expressing the needs of the District.

28. Several respondents being displaced from the Charter School or the regular education program seek to bump one or more of these six more junior employees being retained (skipped) to teach in the CDS or Prospect programs. Each of the respondents seeking to bump admitted in their testimony that they do not meet the competency criteria as adopted by the Board and required to displace one of the junior employees being retained in those programs. It was undisputed that all of the junior employees being retained and skipped more than met the requirements, and in some cases (Mr. Lund and Mr. Lascano, for example) quite impressively so.

29. Nevertheless, several of the respondents being laid off from the District's regular education and Charter School programs are convinced they are competent to teach in the CDS or Prospect programs and insist they should be able to bump out those junior employees being retained, regardless of the competency.

30. None of the respondents seeking to bump the CDS-Prospect employees who were skipped ever applied for any of the positions at CDS or Prospect when they were open. Additionally, Principal Ochs testified that in the seven years he has been principal of the schools, he has never had a request for a transfer from any person teaching in the District's regular education program into any position at CDS or Prospect, with the exception of respondent Robin Zanon, who requested transfer into Prospect to teach math.

Mr. Lund made an excellent point in his testimony that those who actively sought these positions when other options were available should be given a nod when determining who retains or gets the positions. It was also noteworthy that two of the six being skipped are graduates of the District. Ms. Granka is a District graduate. Ms. Quinn is a Prospect graduate. She testified she found herself at Prospect as an unwed teen mother. She found someone there who took an interest in her, guided her, and now she is back, hoping to pass along what she received at Prospect. She specifically sought to become a teacher and to teach at Prospect due to her experience there as a student. Ms. Quinn teaches Special Education at Prospect.

31. None of the challenging respondents made a persuasive case as to why the Board's competency criteria should be disregarded. The criteria were rather generous, requiring only one semester in the last five years of relevant experience. Regardless of their protestations otherwise, none of these challenging respondents met the criteria. However highly these respondents thought of their own skills, experiences and abilities as teachers, it was quite evident when weighing the relative experiences of, for example, Mr. Lund or Mr. Lascano, against the claims of equivalent experience made by Mr. Caratenuto, Ms. White, Ms. Enos, Mr. Isern or especially Ms. Stallman, the group seeking to bump is not similarly situated to those being retained in the specific skills and experiences the District sought to retain.

### *TIE BREAKER CRITERIA APPLICATION*

32. The Superintendent and his close administrative associate Ms. Fallen both testified. Neither identified the respondents subject to the tie breaking criteria who were “close,” and to whom the Superintendent applied his additional criteria of the relevant needs of the District to settle the ordering of these employees. It cannot be ascertained from the documentary evidence and the testimony offered in the hearing which employees’ final seniority position was actually resolved by the application of this additional criteria.

### *THE MOU*

33. The respondents sought to introduce the Memorandum of Understanding (MOU) between the District and its certificated employees as evidence that the District is contractually prohibited from laying off more than a certain number of counselors serving in the District. The proffer of the MOU in evidence was rejected upon the above offer of proof on the record. The MOU contains a specific, contractually agreed upon dispute resolution mechanism that is entirely outside these procedures. The ALJ thus has no jurisdiction to consider the claims raised by this proffer. Those claims must be resolved in the forum and in the manner specified in the agreement.

34. The District is facing financial pressure necessitating the reduction or elimination of the particular kinds of services set forth in the Resolution.

35. The Superintendent, on behalf of the District, 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.

36. There was no evidence that the District proposes to eliminate any services that are State or federally mandated.

### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied. The District has the burden of proving by a preponderance of the evidence that the proposed reduction or elimination of particular kinds of services and the preliminary notice of layoff served on respondent is factually and legally appropriate.<sup>6</sup>

2. The services the District seeks to eliminate in this matter are “particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue these particular kinds of

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<sup>6</sup> Education Code section 44944.

services was not demonstrated to be arbitrary or capricious, but constituted a proper exercise of discretion.

3. Respondents' claims that they are entitled to bump into positions the District has skipped at the CDS and Prospect High School lack merit. Education Code section 44955 requires layoffs to take place in inverse order of seniority, with some notable exceptions.

“Thus, the statute provides that seniority determines the order of dismissals, and that as between employees with the same first date of paid service, the order of termination is determined on the basis of the needs of the district and its students. Senior employees are given "bumping" rights in that they will not be terminated if there are junior employees retained who are rendering services which the senior employee is certificated and competent to render. Conversely, as in this case, a district may move upward from the bottom of the seniority list, "skipping" over and retaining junior employees who are certificated and competent to render services which more senior employees are not.”<sup>7</sup>

“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 ... and that the certificated employee has special training and experience necessary to teach that course or course of study ... which others with more seniority do not possess.”<sup>8</sup>

The District has the discretion to enact and adopt competency criteria beyond credentials and general competency established by credentials and education to define and require additional relevant skills, experience, training and so forth it seeks for certain targeted student populations in the District.<sup>9</sup> The *Bledsoe* case is instructive in that the competency standard approved in *Bledsoe* is identical to that adopted by the District in this matter. The claims of respondents that the competency criteria should be disregarded or do not apply to any respondent individually or collectively fail, for the same reasons those claims failed in *Bledsoe*.

4. Some of the challenging respondents expressed resentment in their testimony that they had not been afforded the opportunity to obtain the necessary training and skills building provided to those hired into the Prospect or CDS program, and thus were unfairly disadvantaged. There was no evidence any of these challenging respondents sought training in dealing with the types of students assigned to Prospect or the CDS on their own or before

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<sup>7</sup> *Alexander v. Board of Trustees of the Delano Unified School District* (1983) 139 Cal. App. 3d 567, 571-2, *Moreland Teacher's Association v. Kurze* (1980) 109 Cal.App.3d 648, 655.

<sup>8</sup> Education Code section 44955, subdivision (d), *Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4<sup>th</sup> 127, 137-138

<sup>9</sup> *Id.*

the possession of such experience became a job determining issue. One semester of experience in five years is not much, and there was no evidence any of the challengers made any effort to obtain such experience before it was too late. Mr. Lund's contention was instructive, when he pointed out that those who sought these positions when there were other options available outside the CDS or Prospect should have an advantage when determining whether they should be able to keep them against challenges from more senior teachers coming from the general education program or the Charter School. By seeking the position and obtaining the outside education and experience that made them suitable candidates to hire into these positions, they were provided with the additional training and experience that proves to be the difference now. Mr. Kermen, teacher and baseball coach, and a challenger respondent, candidly stated what appeared to be true of most of the other challenging respondents, that he would take a position at Prospect or the CDS, "if it came to that." Thus, no certificated employee of the District is being retained to provide a service any of the respondents are certificated and competent to render.

5. The District's application of the tie breaker Resolution's criteria to certain respondents with the same first day of paid service to the District fails. The criteria set forth in Resolution 18 08/09 are fine, but lack a weighting mechanism and an ultimate tie breaking device. It cannot be ascertained on this evidence who the affected respondents were. The District must redetermine the order of seniority for affected respondents who have the same first day of paid service and whose seniority dates were determined by use of this Resolution. The Tie Breaker Resolution cannot be used again without amendment, adding some methodology to rank the employees against one another as objectively as possible, and with some mechanism to break ultimate ties, if employees are still tied after application of all criteria. The reranking of tied employees may or may not affect this layoff. It does not affect the number of PKS that may be reduced or eliminated, nor does it affect the corresponding number of District certificated employees that may be given final notice that their services will not be required for the upcoming school year.

6. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The District is facing a projected deficit related to the loss of enrollment and funding. The reduction in particular kinds of services proposed is necessary to avert the District operating in a deficit in the upcoming school year.

7. Legal cause exists pursuant to Education Code section 44949 and 44955 for the Oroville Union High School District to reduce or discontinue 22.5 FTE of particular kinds of services in the District's regular education programs, and 10.8 FTE in the Challenge Charter High School, as set forth in the District's Resolution 20 08/09. The cause for the reduction or discontinuation of particular kinds of services relates solely to the welfare of the schools and the pupils thereof. Legal cause therefore exists to sustain the Accusations. The Board may give respondents final notices that their services will not be required by the District in the upcoming school year, in inverse order of seniority.

ORDER

The Accusation is SUSTAINED.

The Oroville Union High School District action to reduce or eliminate 22.5 FTE of particular kinds of services from the regular education program and 10.8 FTE from the Challenge Charter High School for the 2009-2010 school year is AFFIRMED.

Final notice may be given to respondents by the District that their services will not be required for the upcoming school year. Notice shall be given in inverse order of seniority.

DATED: May 8, 2009

  
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STEPHEN J. SMITH  
Administrative Law Judge  
Office of Administrative Hearings