

**BEFORE THE GOVERNING BOARD  
OF THE LANCASTER SCHOOL DISTRICT**

In the Matter of the Accusation Against:

OAH Case No. 2009031291

CERTIFICATED EMPLOYEES OF THE  
LANCASTER SCHOOL DISTRICT,  
identified in Exhibit A, hereto, incorporated  
by reference,

Respondents.

**PROPOSED DECISION**

The hearing in the above-captioned matter was held on April 14, and 20, 2009, at Lancaster, California, and by telephone on May 13, 2009. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by Fagen, Friedman & Fulfroost, by Howard Friedman and Maggy Athanasious. Respondents were represented by Trygstad, Schwab & Trygstad, by Richard J. Schwab. Carolyn Kinel, of the California Teachers Association, was present and assisted Mr. Schwab.

Oral and documentary evidence was received at the hearing, and argument was received, but the hearing was continued to April 30, 2009, so that the parties could file closing briefs. Complainant's Closing Brief was received on time and is identified for the record as Exhibit 14. Respondents' Closing Brief was also received in a timely manner, and is identified as Exhibit H. The matter was submitted for decision on April 30, 2009, however, on May 7, 2009, the matter was reopened and continued so that the telephonic hearing could be held; the continuance was by the consent and request of the parties. As a result, and by operation of Education Code section 44949, subdivision (e), the time for issuing this Proposed Decision was extended until May 19, 2009, and the parties agreed that the District would have until May 26, 2009, to act on the proposed decision.

Prior to the telephonic hearing, and at the ALJ's request, copies of various governing board resolutions were provided by the District. Copies of those resolutions are received in evidence as Exhibit 15.

The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follow.

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## FACTUAL FINDINGS

1. Complainant Lexy Conte filed the accusations<sup>1</sup> in this proceeding in his official capacity as Assistant Superintendent, Human Resources, of the Lancaster School District (District).

2. The persons listed on Exhibit “A” hereto are certificated employees of the District, and are the Respondents in this case. During the course of the hearing, the accusations against Respondents Kathy Green, Michael Adriano, Lucia Reyes, Rhonda Curtis, Lorinda Novovesky-Hixon, Kevin Palmer, Mikalanne Quinn, Mechelle Reynolds, Natalia Vanko, Jacinta Weitz, Mari Franceschi, Michelle Conover, Mariana Mafnas were dismissed, as the District determined that it would not need to lay off those Respondents.

3. (A) On March 3, 2009, Howard E. Sundberg, Ph.D., Superintendent of the District, recommended to the District’s Board of Trustees (Board) that there be a reduction or elimination of particular services, and that notice be given to various certificated personnel that their services will be terminated at the close of the current school year (2008-2009).

(B) On March 3, 2009, the Board passed resolution number 2008-09:32, “Intention to Reduce/Eliminate Particular Kinds of Services” (Reduction Resolution). The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services no later than the close of the 2008-2009 school year, in light of budgetary projections and other factors.

(C) The Board determined in its Reduction Resolution that it would have to reduce elementary school teachers, including class size reduction, grades first and second, by 105 Full Time Equivalent, or “FTE.” It also determined to reduce eight FTE of other positions. Those other eight FTE were made up of two FTE school counselors, and one each of Reading First-Special Education Coach; Site Grant Curricular Coordinator, Mariposa school; Language Arts Coach, Park View school; New Teacher Program Consulting Teacher; Consulting Teacher to P.A.R.; and Technology Curriculum Specialist.

4. (A) In its Reduction Resolution the Board directed the Superintendent of the District, or a designee of the Superintendent, to give notice of termination to certificated employees in accordance with Education Code sections 44949 and 44955,<sup>2</sup> informing them that Respondents’ services would not be required for the following school year (2009-2010).

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<sup>1</sup> The term “accusation” refers to a type of pleading utilized under the Administrative Procedure Act, Government Code sections 11500 and 11503, which governs procedures in cases of this type. The Respondents are not “accused” in the every-day sense of that word; they have done nothing wrong, and all appear to be dedicated professionals. Essentially, they are accused of not having enough seniority or qualifications to retain their positions with the District in the face of a resolution to reduce positions.

<sup>2</sup> All further statutory references are to the Education Code unless otherwise noted.

(B) When the Board adopted the Reduction Resolution, it also identified tie-breaking criteria to be used when employees shared the same first date of paid service. That criteria was set forth on Exhibit B to the Reduction Resolution.

5. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under section 44955.

6. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion given uncertainty regarding the state budget and the District's financial resources.

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

8. Prior to March 15, 2009, Respondents were given a written notice (preliminary notice) to the effect that pursuant to sections 44949 and 44955, their services would be terminated at the end of the 2008-2009 school year.

9. The Respondents requested a hearing to determine if there is cause for not reemploying them for the 2009-2010 school year. Those requests for hearing were timely filed, or the Board waived objection to any late filing.

10. Thereafter, on March 30, 2009, an accusation was served upon those persons who requested a hearing. That accusation was accompanied by a notice which stated that failure to deliver a Notice of Defense to the Board within five days of service of the Accusation would constitute a waiver of the right to a hearing, and that the Board might then proceed against the Respondents without a hearing. The Respondents herein requested a hearing. All prehearing jurisdictional requirements have been met.

11. (A) In the course of the reduction in force process, the District created a seniority list. That seniority list took into account a number of factors, including first date of paid service and the tie-breaking criteria that were developed by the District and adopted by the Board.

(B) During the hearing, the District stipulated or admitted that several Respondents had been assigned incorrect seniority dates, which had to be changed on the seniority list. Those Respondents, with their original and corrected seniority dates, are:

Dudley Krizek, seniority date changed from August 1, 2006, to July 7, 2006;  
Charlene Johnson-Cato, October 25, 2004, changed to September 7, 2007;  
Robin Webb, October 6, 2005, changed to August 22, 2005;  
Candy Haser, changed from October 2, 2006, to February 1, 2006.  
Pamela Baker, changed from July 1, 2006, to November 21, 2005;

Mikala Ellis, from August 15, 2005, to August 2, 2005;  
John Gibba, from September 1, 2004, to August 30, 2004;  
Christine Gurney, from December 1, 2005, to November 14, 2005;  
Katherine Mathys, from January 9, 2006, to October 3, 2005;  
Lisa Moody, from February 1, 2006, to April 1, 2005;  
Ronald Rubio, from July 1, 2005, to February 1, 2005;  
Sondra Taylor, from July 1, 2006, to February 24, 2006;  
Sandra Thomas-Stevens, from July 1, 2007, to December 8, 2005.

12. (A) The District determined that certain junior teachers possessed superior skills, training, or capabilities which more senior teachers did not possess, which would allow the more junior teachers to be exempted from lay off or “skipped.” Specifically, the District retained two teachers currently assigned as English Learner Literacy (EL) coaches. Those retained teachers are Maria Esquivel (Esquivel) and Storm Lydon (Lydon), each holding seniority dates of July 1, 2005.

(B) The District asserted that these two teachers were retained so that they could continue as EL coaches. Lydon and Esquivel received training when first placed in the position of EL coach, and they received further training each year. Furthermore, they had experience as EL coaches in other districts before coming to work in the District. Thus, while relatively junior in the District, Esquivel and Lydon have significant training, skills, and experience in a specific area of instruction.

(C) A number of more senior teachers hold the same credentials or certificates as those held by Esquivel and Lydon, such as a BCLAD or a CLAD. Those Respondents include Clair Rhea, seniority date of January 9, 2005, through Natalia Vanko, whose seniority date is July 1, 2004. (See seniority list, Exhibit 1.) However, none of those Respondents provided credible evidence that they have received any separate training to act as EL coaches, nor had they established that they had experience teaching anywhere else as an EL coach, unlike Esquivel and Lydon.

(D) It was established that Lydon will not return as an EL coach in the 2009-2010 school year, because he is being promoted to an administrative position.

13. (A) A number of the junior teachers were retained because they are now teaching classes on the basis of “district authorizations” obtained pursuant to section 44256; that is, no notice of lay off was issued to them. Those teachers are identified, along with their seniority dates and authorizations, as follows: Elizabeth Murphy, October 30, 2006 (English); Jeffrey Beckerman, July 1, 2006 (Math); Kristine Behen, July 1, 2006 (English and Social Science); Cheri DeMarco, July 1, 2006 (Math); Kymberlee Cochran, July 1, 2006 (English); Guillermo Lopez, July 1, 2006; (Math); and Angela Arends, July 1, 2005 (Science). These teachers all hold multiple subject credentials<sup>3</sup> and are assigned to teach

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<sup>3</sup> Mr. Lopez has a preliminary multiple subject credential; the other teachers hold clear credentials.

departmentalized classes in junior high schools, according to their authorizations. Thus, for example, Ms. Behen is currently teaching language arts and social sciences in the seventh grade, and Mr. Lopez is teaching math to a seventh grade class.

(B) District staff testified that the authorizations are issued on a needs-driven basis; for example, if there is a need for a math teacher. A teacher wishing to fill the position, teaching one or two subjects in the junior high schools, must have a certain amount of college credit in the subject area. In order for the District to authorize the teacher to teach a departmentalized class, they must have had at least 12 semester units or 6 upper division units or graduate units in the subject. Teachers who are granted the district authorization (which was also referred to as a waiver by District personnel) might obtain the position because site administrators recommend them, but the open position is posted so that other teachers in the District could have an opportunity to seek the position. The authorizations are deemed, by the District, as valid for one school year, and they must be re-authorized each year. The District staff, during testimony, could not confirm whether any of these retained teachers will in fact receive the District authorizations for 2009-2010; as of the hearing, none of them had been renewed. The authorizations provided by the District under section 44256, subdivision (b), are not granted on a seniority basis.

(C) Two of those teachers retained because they held District authorizations did not hold them on March 15, 2009; instead, they received them on April 21, 2009. Those teachers are Guillermo Lopez and Elizabeth Murphy.<sup>4</sup> The authorizations for Mr. Lopez and Ms. Murphy expire at the end of the 2008-2009 school year.

(D) Numerous Respondents testified that they have the appropriate college coursework to obtain district authorizations, often in more than one subject area, and that they are therefore competent to teach the courses that Ms. Murphy and her colleagues, identified above, were being retained to teach. These Respondents were identified generally in Respondents' Closing Brief as the group starting with Jennifer Sloan, October 20, 2006, through and including Natalia Vanko, July 1, 2004, being otherwise senior to those seven teachers retained on the basis of the District authorizations. For example, 29 Respondents asserted they had enough college courses to qualify for a language arts/English authorization, and approximately a dozen claimed enough units to obtain a math authorization. However, these Respondents did not hold the district authorizations as of March 15, 2009.

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<sup>4</sup> District counsel represented, during the telephonic hearing, that these two teachers had been discovered to have been mis-assigned during a credential audit performed by the Los Angeles County Office of Education. The auditors advised the District that the problem could be rectified by the latter issuing a district authorization pursuant to section 44256, subdivision (b). The resolution itself does not speak to such ratification; instead it follows the same form as the other resolutions that authorized the teachers to instruct in departmentalized classes.

(E) A number of the Respondents who claimed to have sufficient college credits to support a district authorization were senior to the teachers retained. Thus, all three teachers retained by the fact of their current district authorizations to teach math had a seniority date of July 1, 2006 (Lopez, Beckerman, and DeMarco). However, Respondents MacTaggart, Romero, Guzman, Henry, and Cadnus had seniority dates in 2005, and Basulto and King were hired in 2006, prior to July 1 of that year. To be sure, some were junior to those retained, such as Ms. Otto, but Respondents Langenohl and Marley had the same seniority date as those retained.

(F) It was stipulated that the Respondents who hold sufficient units to receive a district authorization would accept one if provided, and that no teacher holds such an authorization for the 2009-2010 school year.

14. (A) Several Respondents asserted that their seniority dates had been incorrectly calculated. Respondents Bowen and Romero, who were assigned seniority dates of July 1, 2005, asserted that they were entitled to credit for an additional year of probationary service, under section 44918, because they had taught 129 days in the 2004-2005 school year. The District established that the 2004-2005 school year, by contract with the teacher's association, was deemed to be 172 school days, but 173 days for new teachers. Ms. Romero established that she taught as a substitute teacher in 2003, and therefore was not new to the District. Likewise, Ms. Bowen had taught as a substitute teacher in 2001 and 2002, and hence was not new to the District.

(B) Ms. Kathryn Hampton established her first paid date of service was August 12, 2005, but her seniority date was shown as December 1, 2005. However, she was employed as a long term substitute from August 2005 until December 1 of that year, and then was made a probationary teacher on December 1, 2005.

(C) John Gibba, who was assigned a seniority date of August 30, 2004, asserted that he was entitled to an earlier date, of at least December 1, 2003. However, the record showed that he had not taught a sufficient amount of days prior to August 30, 2004, to receive additional probationary status.

(D) Diana Hope-Adams was assigned a seniority date of November 1, 2005, but asserted that she began teaching in a probationary status on October 22, 2005, having been asked by the principal of her school to take over a class on that date, after previously serving as a speech coach.<sup>5</sup> Her testimony regarding the circumstances of when she began teaching her class was not refuted.

(E) Brian Briggs asserted that he had rendered paid duty prior to the seniority date assigned to him, August 10, 2007. According to his testimony, he was paid for work

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<sup>5</sup> During this Respondent's testimony, it was unclear whether October 22, 2004, was a school day. The ALJ has reviewed a 2004 calendar, which shows that in 2004 October 22 fell on a Friday.

performed in July 2007, including attendance at training sessions. He was unable to document that additional service.

15. During the hearing, no Respondents were able to show that they could bump another teacher.

16. The District also considered attrition by retirement, resignation, and re-assignment in making its decision to lay off certificated personnel.

### **LEGAL CONCLUSIONS**

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 10.

2. (A) A District may reduce a particular kind of service (PKS) within the meaning of 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.) The Court of Appeal has made clear that a PKS reduction does not have to lead to less classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-854. See also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 [Reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

(B) The services to be discontinued by the District in this case are particular kinds of services within the meaning of section 44955. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of Education Code section 44949. (See *Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808.) This Conclusion is based on Factual Findings 3 through 7 and the foregoing authorities.

3. (A) A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) At the same time, junior teachers may be given retention priority over senior teachers—a district may “skip” a senior employee—if the junior teacher possesses superior skills or capabilities not possessed by their more senior

colleagues. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.)

(B) The District properly skipped Ms. Esquivel based on her qualifications. This Conclusion is based on Factual Findings 12 (A) to 12 (C), and the foregoing authority. However, the District improperly skipped Mr. Lydon, given the undisputed fact that Mr. Lydon will not be assigned as an EL coach in 2009-2010, as established in Factual Finding 12 (D). To retain a junior teacher over senior teachers on the basis of qualifications that they will not actually use is antithetical to the precept that seniority, generally, is the controlling factor when determining who must be laid off in a reduction in force proceeding.

(C) No Respondent established at the hearing that they had the right to bump a junior employee, based on Factual Finding 15.

5. A number of Respondents are entitled to have their seniority dates changed, as established in Factual Finding 11(B). Further, Respondents Bowen and Romero are entitled to have their seniority dates changed to the first school day of the 2004-2005 school year-, pursuant to section 44918, based on Factual Finding 14(A). Respondent Hope-Adams is entitled to have her seniority date changed to October 22, 2005, based on Factual Finding 14 (D). No other Respondent was able to establish a different seniority date, based on Factual Findings 14 (B), (C), and (E).

6. (A) The junior teachers who hold “district authorizations” may not be retained over more senior teachers who don’t currently hold those authorizations; therefore, some Respondents senior to those retained may not be laid off.

(B) As set out in Factual Finding 13 (A), the District effectively skipped seven teachers who hold multiple subject credentials, but with relatively low seniority dates. Those teachers are identified in Factual Finding 13(A), the first teacher in the group being identified as Elizabeth Murphy. These teachers were skipped because they hold a “district authorization” to teach certain single subjects, those topics being math, English, social science, and science. The authorizations were issued pursuant to section 44256, subdivision (b).

(C) Section 44256 is titled “authorization for teaching credentials.” The first two subdivisions tend to define single subject and multiple subject credentials. Subdivision (a) states that

“single subject instruction” means the practice of assignment of teachers and students to specified subject matter courses, as is commonly practices in California high schools and most California junior high schools. The holder of a single subject credential or a standard secondary credential . . . who has completed 20 semester hours of coursework or 10 semester hours of upper division or graduate

coursework approved by the commission<sup>6</sup> at an accredited institution in any subject commonly taught in grades 7 to 12, inclusive, other than the subject for which he or she is already certificated to teach, shall be eligible to have this subject appear on the credential as an authorization to teach this subject.

It appears from the foregoing that a teacher can obtain additional authorizations for his or her single subject credential upon application to the CTC, assuming the teacher can show they have the appropriate college coursework. This in turn expands the scope of their credential—their license—to teach. (See § 44203, defining “authorization” as the designation that appears on a credential, certificate, or permit, identifying the subjects that the holder may teach.)

(D) Subdivision (b) of section 44256 also speaks to the issue of adding authorizations to a credential, but to a multiple subject credential.<sup>7</sup> It provides that a person holding such a credential who has 20 semester hours or 10 upper division or graduate hours in a subject commonly taught in grades 9 and below “shall be eligible to have that subject appear on the credential as an authorization to teach the subject in departmentalized classes in grades 9 and below.” As with the high school teachers, elementary teachers with the appropriate college education may expand the scope of their credential, with the CTC.

Subdivision (b) of section 44256 then goes on to state that “the governing board of a school district by resolution may authorize the holder of a multiple subject teaching credential or standard elementary credential to teach any subject in departmentalized classes to a given class or group of students below grade 9, provided that the teacher has completed at least 12 semester units or six upper division or graduate units, of coursework . . . .” This action by a board must be with the teacher’s consent.

(E) Hence, under section 44256, subdivision (b), a school district can effectively expand the scope of a teacher’s credential, even though that teacher has less college education than the CTC would require before it expands the scope of a credential by tacking an additional authorization onto the teacher’s credential. It appears that a district’s “authorization” does not affix to the certificate issued by the CTC, but the teacher is effectively licensed to teach “departmentalized” classes to grades 9 and below in that

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<sup>6</sup> This is a reference to the Commission on Teacher Credentialing, referred to as the Commission or CTC in the balance of this decision.

<sup>7</sup> In 1970 the elementary credential became the multiple subject credential, and the secondary credential became the single subject credential. (*Motion Picture Studio Teachers and Welfare Workers v. Milan* (1996) 51 Cal.App.4th 1190, 1194.)

district.<sup>8</sup> In either case, the expanded use of the multiple subject credential can only be created through the participation of the teacher, either by his or her application to the Commission, or by their consent to a governing board resolution.

(F) Respondents cited two other statutes related to authorizations. One is section 44263, which is entitled “assignment to single subject class,” and which provides, in pertinent part:

A teacher licensed pursuant to provisions of this article<sup>9</sup> may be assigned, with his or her consent, to teach any single subject class in which he or she has 18 semester hours of coursework or nine semester hours of upper division or graduate coursework or a multiple subject class if he or she holds at least 60 semester hours equally distributed among the four areas of a diversified major set forth in section 44314. . . . The governing board of a school district by resolution shall provide specific authorization for such assignment. The authorization of the governing board shall remain valid for one year and may be renewed annually.<sup>10</sup>

(G) Respondents also cited section 44258.3, which provides that a governing board may assign the holder of any credential, other than an emergency credential, to teach in any departmentalized class in grades K through 12, if it determines prior to assignment that the teacher has sufficient knowledge of the subject to be taught, and if they consent to the assignment. The board must establish policies and procedures to verify the adequacy of the teacher’s knowledge, and those policies and procedures must provide for some criteria and ways to verify subject matter knowledge, and there must be some form of observation of the teacher by subject matter specialists. The assignments made by this statute are only valid in the District that makes the assignments.

(H) While it is clear that the Board did not rely on sections 44263 or 44258.3, these sections in issuing authorizations to the seven teachers in question, those two statutes, and others contained in the same article as section 44256, must impinge on the analysis. When read in the light of these statutes, it becomes clear that where section 44256, subdivision (b), speaks to a governing board authorizing a teacher to teach a

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<sup>8</sup> Exhibit B included printouts from the CTC showing the credential status of some of the teachers involved in the case. Neither Ms. Behen nor Mr. Beckerman’s records show a single-subject authorization issued pursuant to section 44256, subdivision (b).

<sup>9</sup> Article 4 of Chapter 2 of Part 25 of the Education Code, sections 44250 through 44279.

<sup>10</sup> The District was treating the section 44256, subdivision (b), authorizations, which it also described as waivers, as having a one-year duration, although that statute, unlike section 44263, does not have any time limit on the authorizations.

departmentalized class with his or her multiple subject credential, such is really a power of assignment; the CTC has retained to itself the authority to alter the scope of the credential by issuing an “authorization,” a term specifically defined in section 44203 to encompass an act of the CTC. As such, an authorization is a credential, but a district’s power to “authorize” under section 44256, subdivision (b), is only a power to assign a teacher, with his or her consent, without formally modifying that license through the Commission, and without running afoul of the limits otherwise set forth within the four corners of the teacher’s credential.

(I) Sections 44258.3 and 44263 both speak to the power to assign a teacher to a certain type of teaching position, if they have enough credits. Likewise, section 44258.2 allows the assignment of those holding single subject credentials to teach middle school, again, if the teacher in question has enough college credits. None of these statutes use the term “authorization,” but the effect is the same as the “district authorization” allowed under the second part of section 44256, subdivision (b): the teachers can legally teach subjects that not explicitly authorized by their credentials, and they may do so by governing board action.

(J) This power of assignment, granted to a district under these statutes, is of great significance given the language of section 44955, subdivision (c), at the second paragraph thereof. There it is stated that:

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. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee’s major area of postsecondary education study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

Here the Legislature used the term “qualifications” rather than terms such as credentialed or certificated. The term is expanded upon by reference to the teacher’s credential, and by reference to the teacher’s college major, as well as to prior experience obtained by the teaching of a particular subject, and must be read as a broader term than credentialed. This statutory language supports the conclusion that a teacher who has obtained college education that otherwise makes them eligible for increased authorizations from the CTC, or the governing board, or which makes them available for assignment pursuant to section 44263, is a teacher who possesses “qualifications.” If prior teaching experience makes one qualified to teach a subject for purpose of assignment or reassignment, even if that subject was not in a teacher’s major area of study, it follows that possession of college education sufficient to obtain a “district authorization” is also a qualification sufficient for assignment or reassignment.

(K) The record establishes that for a period of years issuance of district authorizations has been a mere exercise of discretion by the District. Assignment has been, somewhat, a matter of chance, in that some sort of notice has been provided to teachers in the District that it wished to make single subject or departmentalized assignments, and someone might therefore apply for the position, thereby obtaining the authorization. The testimony established that the process might start with a site administrator wanting to assign a certain teacher to the departmentalized position. Plainly, seniority has had little or nothing to do with who would receive a district authorization. While the Board must act to confer the authorization, it has treated the authorizations as lasting for one year, apparently renewing the authorizations on a yearly basis. That the process is essentially a ministerial one is indicated by the late authorization to Mr. Lopez and Ms. Murphy, which occurred on April 21, 2009, well after the March 15 date that had been used as a demarcation line. The District simply passed a resolution providing those teachers with authorization (and thereby an exemption from lay off).<sup>11</sup> Put another way, the District assigned them to a position they were qualified for by dint of undergraduate education, and the District did that with a much more senior teacher, Ms. Powell. There is no reason that such assignments could not have been made to teachers more senior than Ms. Murphy and Mr. Lopez.

Reading section 44955, subdivision (c), together with the article on credentials, it must be concluded that a school district must carry out its duty to assign and reassign senior teachers under section 44955 by using the power granted to it under section 44263, if not under section 44256, subdivision (b), to make such assignments to the most senior teachers qualified for such “district authorizations.”

(M) The ALJ recognizes that in 2008 he resolved this issue in favor of the District. However, in this year’s proceeding, Respondent’s counsel shed further light on the matter by the citations to other parts of the article pertaining to credential types. That the District is empowered to make assignments under section 44263 was not pointed to in 2008, nor was that power correlated to the duty to make assignments of senior personnel in the course of a reduction in force. And, on further reflection, it appears that a district’s power to authorize a teacher to serve in a particular assignment should not be construed as the same thing as allowing a district to add an authorization to a credential.

(N) The District acknowledged during the telephonic hearing that since it issued authorizations to Lopez and Murphy after March 15, it would have to retain the two most senior teachers slated for lay off. This highlights the fact that the District can, and must, make other assignments regardless of the status of the employees on March 15, the traditional cut-off date for determining just what a teacher’s credentials are. Since the teachers holding district authorizations on that date are not assured of retaining those authorizations (even though they are saved from lay off), no serious injustice will befall

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<sup>11</sup> Which also shows that they were not retained, as originally asserted, in order to fill some future, undefined need; they were given the authorization and thus retained in order to cure some administrative mistake.

teachers holding district authorizations in the future, in that at most they will be displaced by more senior teachers who have similar or superior qualifications that flow from the details of their college course work. The District will therefore be ordered to retain at least six more senior teachers who have sufficient college credits to receive a “district authorization” to teach the subjects now being taught by Ms. Murphy, “et. al.”<sup>12</sup> (See, e.g., Factual Finding 13 (E), listing such senior Respondents.)

7. Once the District complies with the order that follows, no junior certificated employee will be scheduled to be retained to perform services which a more senior employee is certificated and competent to render, based on all the foregoing.

### **ORDER**

1. The Accusations are sustained, except as to Respondents Kathy Green, Michael Adriano, Lucia Reyes, Rhonda Curtis, Lorinda Novovesky-Hixon, Kevin Palmer, Mikalanne Quinn, Mechelle Reynolds, Natalia Vanko, Jacinta Weitz, Mari Franceschi, Michelle Conover, and Mariana Mafnas, who are dismissed.

2. The District shall modify the seniority list to conform it to Factual Finding 11(B) and Legal Conclusion 5, the latter pertaining to Respondents Bowen, Romero, and Hope-Adams

3. Notice shall be given to the Respondents listed on Exhibit A hereto that their services will not be required for the 2009-2010 school year because of the reduction and discontinuance of particular kinds of services, provided, however, that the District must retain eight Respondents whose seniority and college education qualifies them for an authorization to teach three departmentalized Math classes, three departmentalized Language Arts classes, one Social Science class, and one Science class.

4. Notice shall be given to Respondents in inverse order of seniority, based on the seniority list.

May 19, 2009

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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>12</sup> The record shows that seven teachers were relying on authorizations to teach eight classes: three Math, three English or Language Arts, one Science, and one Social Science. In placing some Respondents in such positions, the District could rely upon section 44263, which actually has a one-year restriction on the length of the authorization.

**EXHIBIT A TO PROPOSED DECISION**  
**RESPONDENT LIST**  
**Lancaster School District Teacher Layoff Hearing**  
**OAH Case No. 2009031291**

	FIRST
ACOSTA	STACY
ADAMS	DIANA HOPE
ADRIANO	MICHAEL
ALBERT	JESSICA
ALBRECQ	KIMBERLY
ALLISON	DAVID
ALLRED	IAN
AMAYA	JACKIE
BACA	DIANE
BAKER	PAM
BARBANO	SUSAN
BARNES	SHEILA
BARTON KISSAM	KILEY L.
BASULTO	CLAUDIA
BAUTISTA	JEANETTE
BERRY	APRIL
BOWEN	SHARMEEN NARGES
BRIGGS	BRIAN
BROWN	CAROLYN
BROWN	KIRA
BUENDIA	LINSEY
BUENDIA	JOAQUIN
CADMUS	ANDREA
CALDERON	NORMA SUE
CARREON	LAURA
CHENEY	TERESA
CHRISTENSEN	LORI
CLINE	VIRGINIA
CONOVER	MICHELLE
COSOLA	REBEKAH
CURTIS	RHONDA
DAGAMA	ANEK APRIL
DAVIS	ELIZABETH A.
DENNIS-RICE	CATHY
DUDLEY KRIZEK	ERIN
EAVES	TARA L
EGUEZ	KIMBERLY
ELLIS	MIKALA
ERDELY	STEPHANIE
ESSE	KIMBERLY KAY
EVERITT	PAMELA
FARAG	ABIGAIL P.

LAST	FIRST
FEDORKO	LAURA
FIELDS-GOFFIGAN	EUDORA
FLETCHER	JENNIFER
FRANCESCHI	MARI
FULLER	JENNIFER
GARY	STEPHANIE
GIBBA	JOHN C.
GREEN	KATHY
GURNEY	CHRISTINE
GUZMAN	BLANCA
HAMPTON	CATHERINE
HANSEN	KIRSTIE T
HASER	CANDY
HAYNES	DEBRA
HAZARD	KRISTI SUMMER
HENRY	KRISTI
HERNANDEZ	CRYSTAL JOEY
HIBBETS	HEATHER
HOBBS	ROXANNE
IPPOLITO	SHERI
JOHNSON-CATO	CHARLENE
KIM	MARY
KING	MICHELLE
KNAPP	LESLIE
KNOX	TIMOTHY
KONYA	TAMARA J
KULIKOV	ALEXE
LAMOREAUX	LAURA
LANGENOHL	VICTORIA
LESSING	CATHY A.
LINARES	ANA
MAC TAGGART	CONNIE
MAFNAS	MARIANA
MALTBY	NANCY
MANNING	JENNIFER
MARLEY	TIFFANIE
MATHYS	KATHERINE F
MC BRYANT	CARRIE
MC COMBS	JENNIFER
MICHAELS	TRACIE
MOCCARDINI	AMY
MOODY	LISA

LAST	FIRST
MOSLEY	SARAH
NAVARRO	DORA
NGUYEN	JAQUELYNE
NOVOVESKY-HIXON	LORINDA
OGGS	MARGREE
OTTO	MELISSA
PALMER	KEVIN
PARK	EUN JI
PECSI	MONA
POWELL	KATHRYN ANNE
QUINN	MIKALANNE
RAMIREZ	FRANCISCO
REYES	LUCIA
REYNOLDS	MEHELLE S
RHEA	CLAIR
ROMERO	LYDIA
ROUGH	BRANDON
RUBIO	RONALD
SARMIENTO	MARICELA
SEAL	MARGARET
SIMMONS	SANDRA
SLOAN	JENNIFER
SMITH	JOANN
SMITH	KRISTA
STEPP	BRIDGIT
TANNER	BRIAN
TAYLOR	SONDRA
THOMAS-STEVENS	SANDRA
TUMBAGA	RACQUEL
VANKO	NATALIA
WAHE	DEBRA L.
WASHINGTON	ROBIN
WEBB	ROBIN L.
WEITZ	JACINTA
WERTHMANN	DIONNE
ZAMORA	INGRID
ZIMMERMAN	CECILY NANCY

