

BEFORE THE
GOVERNING BOARD OF THE
RED BLUFF JOINT UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter of the Amended Accusation
Against:

TIM ARNETT
CHRISTINE BROUGHTON
LYNETTE CORNING
DARBIE GUTIERREZ
JARED NORTON
CARLI ROSS
ELENA TOMASETTI
MURKUS VOSS,

Respondents,

and

Person Who Did Not File for Hearing:

ERIN PINA

OAH No. 2009031356

PROPOSED DECISION

Judith A. Kopec, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 8, 2009, in Red Bluff, California.

Roman J. Munoz, Attorney at Law, represented the Red Bluff Joint Union High School District (district).

Michael N. McCallum, Attorney at Law, represented respondents and Erin Pina.

The matter was submitted at the conclusion of the hearing on April 8, 2009.

FACTUAL FINDINGS

1. The district operates Red Bluff High School, a comprehensive high school for grades 9 through 12; Salisbury High School, an alternative high school primarily for grades 11 and 12; an independent study program; and Rebound, a community day program, for students who have been expelled or have severe behavioral issues.

2. Dan Curry, district's superintendent, recommended that the district begin the lay off process in order to maintain fiscal stability in light of the State's uncertain budget situation. His recommendations sought to promote fiscal integrity while minimizing the impact on educational programs provided to students.

Board's Resolutions

3. The district's governing board (board) adopted resolution number 2009-4 on March 4, 2009, which proposed reduction or discontinuation of 8.73 full-time equivalent (FTE) certificated employees. The resolution provided for the reduction or discontinuation of the following particular kinds of services:

- 0.6 FTE Agriculture
- 0.2 FTE Business
- 1.0 FTE English (Grades 9-12)
- 0.6 FTE Physical Education
- 0.6 FTE Science
- 0.4 FTE Social Science
- 0.2 FTE Personal Growth
- 0.6 FTE Guitar
- 1.0 FTE Counseling
- 0.6 FTE Opportunity Class
- 0.2 FTE Leadership 9
- 0.4 FTE AVID 9
- 0.2 FTE Title 1 Reading
- 0.2 FTE Tobacco Cessation
- 0.2 FTE Shasta College Psychology
- 0.4 FTE ROP Office Occupations
- 0.33 FTE ROP Office Training
- 0.67 FTE ROP Construction
- 0.33 FTE ROP Ag Natural Resources

4. The board also adopted resolution number 2009-5 on March 4, 2009, which established tie-breaking criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. There is no evidence the tie-breaking criteria were used or are at issue.

5. In addition, the board adopted resolution number 2009-6 on March 4, 2009, which established criteria for determining competency for the purposes of assigning and reassigning certificated employees. It provided the following:

For purposes of making assignments and reassignments of certificated employees the Governing Board has determined competency shall mean, at a minimum, possession of a preliminary, clear, professional clear, lifetime, or other full credential, **and** at least one complete school year actual teaching experience in alternative education within the last five years.

(Bold and underline in original.)

6. Prior to March 15, 2009, Respondents and Erin Pina were each timely served with notices under Education Code sections 44949, subdivision (a) and 44955, that their services will not be required for the next school year. This notice was based on the proposed reduction or discontinuation of particular kinds of services described in the March 4, 2009, resolution. Respondents each timely filed a request for hearing, as required by Education Code section 44949, subdivision (b). Ms. Pina did not file a request for hearing. Respondents were properly served with an accusation dated March 27, 2009, that was also based upon the March 4, 2009, resolution. District did not serve Ms. Pina with the accusation.

7. District contends that Erin Pina is not eligible to be a respondent in this hearing because she did not file a request for hearing. Ms. Pina offered no evidence showing that she filed a request for hearing, as required under Education Code section 44949, subdivision (b). Accordingly, Ms. Pina is not a respondent in this matter.

8. The board subsequently adopted resolution number 2009-8 on April 3, 2009, which proposed reduction or discontinuation of 9.53 FTE certificated employees (April resolution). The resolution provided for the reduction or discontinuation of the following particular kinds of services:

- 0.6 FTE Agriculture
- 1.0 FTE Math
- 1.0 FTE English (Grades 9-12)
- 0.6 FTE Physical Education
- 0.6 FTE Science
- 0.4 FTE Social Science
- 0.2 FTE Personal Growth
- 0.6 FTE Guitar
- 1.0 FTE Counseling
- 0.6 FTE Opportunity Class
- 0.2 FTE Leadership 9
- 0.4 FTE AVID 9

0.2 FTE Title 1 Reading
0.2 FTE Tobacco Cessation
0.2 FTE Shasta College Psychology
0.4 FTE ROP Office Occupations
0.33 FTE ROP Office Training
0.67 FTE ROP Construction
0.33 FTE ROP Ag Natural Resources

The only difference from the March resolution is the board substituted a reduction of 1.0 FTE in mathematics for the reduction of .2 FTE in business in the prior resolution. Mathematics was not identified as a particular kind of service to be reduced or discontinued in the March resolution.

9. According to Patrick Gleason, district's assistant superintendent and principal of the high school, the April resolution was necessary to conform the services to be reduced or discontinued to the notices sent to employees. However, this is contrary to the statutory scheme. The determination that a particular kind of service is to be reduced or discontinued must occur first, because it governs which employees receive notice prior to March 15.

10. District claims that because teachers effected by the particular kinds of service identified for reduction or discontinuation in the April resolution had each received a notice before March 15, 2009, there was no prejudice. However, the notice requirement is a substantive, jurisdictional requirement. Because district failed to provide notice to effected employees prior to March 15 that mathematics was a particular kind of service to be reduced or discontinued, district may not reduce or discontinue 1.0 FTE in mathematics.

11. In the April resolution the board also adopted modified competency criteria as follows:

. . . for purposes of making assignments and reassignments of certificated employees *to an alternative education assignment*, the Governing Board has determined competency shall mean, at a minimum, possession of a preliminary, clear, professional clear, lifetime, or other full credential, and at least one complete school year actual teaching experience in alternative education within the last five years. *For purposes of making assignments and reassignments of certificated employees to a comprehensive education program, the Governing Board has determined competency shall mean, at a minimum, possession of a preliminary, clear, professional clear, lifetime, or other full credential in the subject area in which he/she intends to displace the junior employee.*

(Italics added to indicate changes from initial resolution.) This competency resolution was adopted after the union requested clarification and changes were made to conform to the original intent of the first resolution.

12. The board's determination that a teacher is competent for assignment to a comprehensive education program only if the has a full credential in the subject area to be taught takes into consideration the teacher's skills and qualifications. This requirement helps ensure that teachers are retained who have fulfilled all statutory requirements for a full credential, which is a reasonable exercise of the board's and district's discretion.

13. The board determined that, in addition to a full credential, a teacher is competent for assignment to an alternative education assignment if he or she has taught in alternative education for at least one full school year within the last five years. Teachers in alternative education must address a variety of issues in an educational setting, such as substance abuse, gang affiliation, pregnancy, and homelessness. And this must be done while providing a standards-based curriculum. This additional requirement helps ensure that the teacher has recent experience and training necessary to meet the educational needs of students in alternative education. The board's competency criteria for reassignment to alternative education takes into consideration the teacher's skills and qualifications, and is reasonable.

14. On April 7, 2009, district served respondents through their attorney with an amended accusation based on the April resolution. Over the objection of respondents, district was permitted to amend the accusation.

Lay Off Procedure Used by District

15. District maintains a seniority list containing employees' seniority dates, credentials, and current assignments. The seniority list was posted and employees were given an opportunity to request corrections. There are no disputes concerning the seniority list.

16. The following reductions were made through retirements: .2 FTE English; .6 FTE science; .2 FTE Title 1 reading; .2 FTE tobacco cessation; and .2 FTE Shasta College psychology. The following reductions were made as a result of teachers being reassigned into positions made vacant as a result of retirements: .4 FTE physical education and 1.0 FTE counseling. The following reduction was made as a result of a leave of absence: .4 FTE social science. The following reduction was made by reassigning a teacher into a position vacant as a result of a leave of absence: .6 FTE guitar.

Specific Skipping or Bumping Issues

Tim Arnett and .6 FTE Reduction in Agriculture

17. Tim Arnett, who has the least seniority in the agriculture department, holds a preliminary single subject credential in agriculture. He also has a certificate of competence in general science that must be reauthorized by the board each year. Mr. Arnett teaches four agriculture classes: floral design, introduction to agriculture, agricultural leadership, and general science. District proposes to eliminate Mr. Arnett's position to implement the required .6 FTE reduction in agriculture.

18. Mr. Arnett contends that he should be reassigned to teach general science in a position now held by David Michael, who has less seniority. District contends that Mr. Arnett is not certificated and competent to teach general science because he has a certificate of competence in general science that does not meet the board's competence criteria. Mr. Michael has a clear single subject credential in life science. The application of the board's competence criteria to Mr. Arnett takes into consideration necessary skills and qualifications and is reasonable.

Carli Ross and .6 FTE in Physical Education and .2 FTE in Leadership

19. Carli Ross, who has the least seniority in the physical education department, holds a preliminary single subject credential in physical education and a clear credential in adaptive physical education. She teaches four physical education classes and one leadership class.

20. The elimination of .6 FTE of Ms. Ross in physical education results from district's proposed implementation of the reduction or discontinuation of 1.0 FTE in mathematics. District proposed eliminating Cheryl Williams' 1.0 FTE in mathematics and reassigning her to the business department. Ms. Williams holds clear single subject credentials in business and introductory mathematics and meets the board's requirement of competence in business. As a result of Ms. Williams' reassignment from mathematics to business, district proposed to reassign .6 FTE of Stan Twitchell in business to physical education. As a result of this, Mr. Twitchell would displace .6 FTE in physical education of Ms. Ross. Mr. Twitchell holds a clear single subject credential in physical education, meets the board's requirement for competence in physical education, and has more seniority than Ms. Ross. However, as determined in Factual Finding 10, district may not implement a 1.0 FTE reduction or discontinuation in mathematics. As a result, district must rescind its notice to reduce or discontinue .6 FTE of Ms. Ross in physical education.

21. In addition, as part of its proposed reduction of .6 FTE in physical education, district proposed eliminating .2 FTE in physical education of Ms. Ross. District also proposes eliminating .2 FTE in leadership of Ms. Ross. There is no evidence that teachers with less seniority than Ms. Ross are being retained to provide services for which she is certificated and competent to provide.

22. The remaining .4 FTE in physical education is being reduced by the reassignment of Pamela Disibio from physical education to psychology/sociology. Ms. Disibio has more seniority than Ms. Ross, holds a clear single subject credential in social sciences, and meets the board's requirement of competence in social science. As a result of Ms. Disibio's reassignment, Jared Norton is being reassigned to English into a position vacated by a retirement. Mr. Norton holds a clear single subject credential in introductory English and meets the board's requirement of competence in English.

23. Ms. Ross argues that she should be retained or 'skipped' because she is needed to supervise the girls' locker room. She contends that if she is laid off and Ms. Disibio is reassigned, only one female physical education instructor, Kim Wheeler, will remain to supervise the girls' locker room. Ms. Ross' contentions are not supported by the record or the law. First, there is another female teacher in the physical education department, Sharon Shilts, who can be used to supervise the girls' locker room. Second, retaining or 'skipping' a more junior employee to provide a specific need that a more senior employee does not possess is within the sole discretion of district. There is no legal or factual basis for Ms. Ross to compel district to retain her for this or any other purpose.

Lynette Corning and .4 FTE Regional Occupational Program (ROP) Office Occupations and Skipping of Christine Boughton

24. Lynette Corning, whose seniority date is August 16, 2000, holds a clear single subject credential in business and introductory psychology. In addition, she has a master's degree in education and a preliminary administrative credential. She currently teaches three business classes: ROP desktop publishing and office occupations, and keyboarding.

25. District's proposed reassignment of Ms. Williams from mathematics to the business department would bump .2 FTE in business of Ms. Corning to psychology/sociology, for which Ms. Corning meets the board's requirement of competence. However, as determined in Factual Finding 10, district may not implement a 1.0 FTE reduction in mathematics.

26. District proposes to eliminate .4 FTE in ROP office occupations which is taught by Ms. Corning. District identified this class for reduction because of its low enrollment.

27. Ms. Corning contends that she should be reassigned to teach in one of the alternative programs. Ms. Corning does not have at least one complete school year of teaching experience in alternative education within the last five years. As a result, Ms. Corning does not meet the board's requirement for competence for a teacher to be reassigned to an alternative education program. As determined in Factual Finding 13, the board's competence requirement for reassignment to alternative education is reasonable. Ms. Corning is not competent to provide educational services to students in an alternative education program.

28. Ms. Corning also contends that she should be reassigned to teach an AVID class or classes and bump John Sheffield, who has less seniority. There is little evidence in the record concerning AVID or the certification requirements, if any, to teach the class. Mr. Gleason described it as a class to keep underrepresented students on a college path. Two teachers previously assigned to AVID classes, Erin Pina and John Sheffield, held clear single subject credentials in English. One, Tania Litwiler, had a clear single subject credential in agriculture. District proposes reassigning Cindy Haase, who has a clear multiple subject credential, to bump Ms. Pina from .2 FTE of a 10th grade AVID class. The variety of credentials held by teachers who have taught, or are proposed to teach AVID classes establishes that no specific type of credential is required for a teacher to meet the board's competence requirements to teach an AVID class. As a result, Ms. Corning established that she is competent to teach an AVID class and that an employee with less seniority, John Sheffield, is being retained to teach the class or classes.¹

29. District argues that Ms. Corning does not have the required training to teach an AVID class. To the extent district contends that specialized training is necessary to be competent to teach an AVID class, there is no evidence to support this claim. To the extent district contends that it should be permitted to skip or retain a junior employee to teach the AVID class and instead lay off Ms. Corning, district has failed to meet its burden of proof. Ms. Corning has shown that a less senior employee is being retained to teach the AVID class when she is certificated and competent to do so. As a result, .4 FTE of Ms. Corning must be reassigned to teach AVID.

30. Finally, Ms. Corning contends that she should be permitted to bump Christine Broughton out of her position as director of the After School Safety and Enrichment for Teens (ASSETS) program. District contends that it is permitted to retain or 'skip' Ms. Broughton because she has special experience and training to serve as director of ASSETS.²

31. Christine Broughton, who has the lowest seniority in the district, was hired in August 2008 to direct the program, which is a federal grant program administered by the California Department of Education. Ms. Broughton has preliminary single subject credentials in social science and introductory English. As director of ASSETS, Ms. Broughton performs all program monitoring functions required by state and federal regulations, and supervises and evaluates all certificated and classified staff who work in the program. In order to perform her job, she attended extensive training in categorical program monitoring; annual performance reporting; fiscal management and accountability; program development and evaluation; recruitment, training and development of staff; and leadership and management skills.

¹ There is no evidence in the record about how many AVID classes Mr. Sheffield is proposed to teach for the next school year.

² No party asserted any other claim to support, or challenge, Ms. Broughton's retention by district under Education Code section 44955, subdivision (d).

32. Ms. Corning does not have any training or experience with the ASSETs program, or other comparable categorical grant program. However, she has a master's degree in education, a preliminary administrative credential, and over 13 years of management experience, including four years as an executive director of an organization. Ms. Corning's experience includes budgeting, grant writing, and report writing. In addition, Ms. Corning successfully managed the high school yearbook so that within two years it went from having an operating deficit of \$10,000 to a surplus of \$23,000.

33. Ms. Corning also contends that district seeks to lay her off in retaliation for union activities and because she questioned the manner in which enrollment figures were being reported for her ROP office occupations class. In February 2009, Ms. Corning complained to Kim Gleason, who taught another ROP class, that it was not appropriate to report the combined enrollments of Ms. Corning's and Ms. Gleason's classes. Ms. Gleason is the wife of the principal and assistant superintendent who was involved in implementing the board's lay off resolutions.

34. District established that Ms. Broughton has specific experience and training as director of the ASSETs program to justify retaining her. District's exercise of its discretion to retain Ms. Broughton to meet its specific need for a director of ASSETs is reasonable. Ms. Corning did not show that district abused its discretion or that its explanation for retaining Ms. Broughton, or for eliminating the ROP office occupations class are subterfuge for retaliating against Ms. Corning for protected activity.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under Education Code section 44955. As stated in *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under section 44955, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. As a result, the board's decisions were a proper exercise of its discretion.

3. A school district's governing board may terminate the services of certificated employees whenever a particular kind of service is to be reduced or discontinued. (Ed. Code, § 44955, subd. (b).) A preliminary notice must be sent to an employee that the governing board has determined that his or her services will not be required for the next year as a result of the decision to reduce or discontinue particular kinds of service. (Ed. Code, § 44949, subd. (a).) An employee who is not given the required notices and right to a hearing as

provided under Education Code section 44949 is deemed reemployed for the following school year. (Ed. Code, § 44955, subd. (c).)

4. An employee may request a hearing to determine if there is cause for not reemploying him or her for the next year. (Ed. Code, § 44949, subd. (b).) If an employee fails to request a hearing within the required time frame, his or her failure constitutes a waiver of his or her right to a hearing. (*Ibid.*) If an employee properly requests a hearing, he or she must file a notice of defense within the applicable time frame. (*Id.* at subd. (c)(1).) The hearing is before an administrative law judge, who prepares a proposed decision. (*Id.* at subd. (c)(3).) The governing board may or may not adopt the proposed decision. (*Ibid.*) The school district must provide a final notice of termination before May 15. (Ed. Code, § 44955, subd. (c).)

5. Respondents contend that because district sent more initial lay off notices to employees than positions it was going to reduce or discontinue, district's proposed lay off is unlawful. Respondents' argument is not persuasive.

6. The board authorized reducing or discontinuing 8.73 FTE in March 2009 and 9.53 FTE in April. District provided notice prior to March 15, 2009, to 11 teachers. District acknowledges that five of the notices were 'precautionary,' that is, it did not expect to lay off those teachers, but sent the notices in case it became necessary to do so. Given the contingencies involved in the lay off process, providing notices to 11 teachers for a proposed reduction or discontinuation of 8.73 or 9.53 FTE was not excessive and was reasonable.

7. Erin Pina contends that she should be a respondent in this matter. As determined in Factual Findings 6 and 7, Ms. Pina did not file a request for hearing and offered no evidence as to why she should be a respondent. As a result, based on Legal Conclusions 3 and 4, Ms. Pina is not a respondent in this matter.

8. Respondents contend that district's proposed elimination of 1.0 FTE of mathematics, as provided in the April resolution, is unlawful because district did not provide notice of this prior to March 15, 2009. This contention has merit.

9. A lay off is limited by the terms of the initial notice given prior to March 15. (*Karbach v. Board of Education* (1974) 39 Cal.App.3d 355, 362 [interpreting predecessor to Education Code section 44949].) The preliminary notice is sufficient if it states the statutory basis for the potential lay off; it need not specify the precise number of teachers or the specific positions to be eliminated. (*San Jose Teachers Association v. Allen, supra*. 144 Cal.App.3d at p. 632.) Since district proposes to lay off teachers due to the reduction or discontinuation of particular kinds of services, as provided by Education Code section 44955, subdivision (b), the initial notice must set forth the particular kinds of services that are to be reduced or discontinued, as required by section 44949, subdivision (a). The purpose of the initial notice is to give employees early notice so that they may consider seeking employment elsewhere. (*Karbach v. Board of Education, supra*, 39 Cal.App.3d at p. 362.) An initial

notice that does not include the particular kind of service to be reduced or discontinued, such as mathematics, does not provide the notice required by law.

10. The fact that district was permitted to amend the accusation prior to hearing does not change this conclusion. In case of any conflict between the provisions of the Administrative Procedure Act and the Education Code that apply to this proceeding, the provisions of the Education Code apply. (*Karbach v. Board of Education, supra*, 39 Cal.App.3d at p. 363.) Thus, while the accusation was appropriately amended under the provisions of the Administrative Procedure Act, it did not cure the fact that district failed to provide notice of the proposed reduction or discontinuation of 1.0 FTE of mathematics prior to March 15, as determined in Factual Finding 10.

11. District argued that there was no prejudice because all of the teachers effected by the proposed reduction or elimination of 1.0 FTE in mathematics received notice of their potential lay off prior to March 15, 2009. Nonsubstantive procedural errors committed by a school district or a governing board shall not provide cause to dismiss charges unless the errors are prejudicial. (Ed. Code, § 44949, subd. (c)(3).) However, the requirement to provide preliminary notice prior to March 15 is jurisdictional and, therefore, substantive. (See *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

12. As determined in Factual Finding 10, district did not provide notice of the proposed reduction or discontinuation of 1.0 FTE in mathematics prior to March 1, 2009. As a result, district must rescind initial lay off notices totaling 1.0 FTE.

13. The services identified in the board's April resolution as determined in Factual Finding 8 are particular kinds of services that could be reduced or eliminated under Education Code 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. (*Campbell Elementary Teachers Assn., Inc. v. Abbott, supra*, 76 Cal.App.3d at p. 808.) Cause exists to reduce the number of district's certificated employees due to the reduction or discontinuation of particular kinds of services as identified in the board's April resolution. 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, subdivision (c)(3).

14. The fundamental principle governing this process is that no permanent employee may be laid off while any probationary employee, or employee with less seniority is retained to render a service that the permanent employee is certificated and competent to render. (Ed. Code, § 44955, subd. (b).) Nevertheless, the law provides some discretion and flexibility to a school district. When implementing a lay off, a school district shall make assignments and reassignments so that an employee shall be retained to render any service which his or her seniority and qualifications entitle the employee to provide. (Ed. Code, § 44955, subd. (c).) A school district may deviate from terminating a certificated employee in order of seniority, and retain a junior employee while laying off a senior employee under limited circumstances. (Ed. Code, § 44955, subd. (d).) It is permissible to do so when the

school district demonstrates a specific need for a teacher to teach a specific course or course of study, and 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. (*Id.* at subd. (d)(1).) District has considerable discretion in implementing these procedure in order to meet its educational needs while also complying with the teachers' statutory protection during a lay off. (See *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 474.)

15. A school district has discretion in determining whether an employee is certified and competent, as provided by Education Code section 44955, subdivision (b), to be reassigned and, as a result, displace a junior employee, as provided by subdivision (c). (See *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 565.) The criteria used to determine a teacher's competence must be reasonable. (*Id.* at p. 566.) Competency criteria that consider the skills and qualifications required of the teacher are reasonable. (*Id.* at pp. 565-566.)

16. As determined in Factual Finding 20, district proposed laying off .6 FTE of Ms. Ross in physical education as a result of its reduction or discontinuation of 1.0 FTE in mathematics. As determined in Factual Finding 20 and Legal Conclusions 9 through 12, district's proposed reduction or discontinuation of 1.0 FTE in mathematics is unlawful. Accordingly, district shall rescind the preliminary lay off notice of .6 FTE for Ms. Ross. In addition, district must rescind additional preliminary notices of .4 FTE in order to rescind preliminary notices totaling 1.0 FTE for its failure to timely notice a reduction or discontinuation of 1.0 FTE in mathematics, as determined in Legal Conclusion 12.

17. As determined in Factual Findings 26, 28, and 29, district proposed laying off Ms. Corning as a result of its reduction or discontinuation of .4 FTE of ROP office occupations when a more junior employee, Mr. Sheffield, was to be retained to teach an AVID class for which Ms. Corning is certificated and competent to teach. As a result, cause does not exist to issue a final lay off notice to Ms. Corning for .4 FTE. District shall rescind the preliminary lay off notice of .4 FTE for Ms. Corning.

18. Except as provided in Legal Conclusions 16 and 17, district appropriately exercised its discretion in implementing the lay off by reassigning more senior employees and bumping more junior employees.

19. Except as provided in Legal Conclusion 17, district does not propose to retain any junior certificated employee to perform services which a more senior employee is certificated and competent to provide.

ORDER

1. District shall dismiss the amended accusation against respondent Lynette Corning and rescind the preliminary notice of lay off of .4 FTE served on her.

2. District shall rescind the preliminary notice of lay off of .6 FTE served on respondent Carli Ross that resulted from the proposed reduction or discontinuation of 1.0 FTE of mathematics.

3. District shall rescind preliminary notices of lay off totaling .4 FTE that resulted from the proposed reduction or discontinuation of 1.0 FTE of mathematics.

4. District shall give notice before May 15, 2009, to the remaining respondents that their services will not be required for the 2009-2010 School Year because of the reduction and discontinuance of 8.53 FTE of particular kinds of services.

Dated: May 5, 2009

JUDITH A. KOPEC
Administrative Law Judge
Office of Administrative Hearings