

BEFORE THE
GOVERNING BOARD
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT
COUNTY OF SACRAMENTO
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE FOLSOM
CORDOVA UNIFIED SCHOOL
DISTRICT,

OAH No. 2009060740

Respondents.

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California heard this matter in Folsom, California on July 8, 2009.

Kim Kingsley Bogard, Attorney at Law, and Elizabeth Tanner, Attorney at Law, of Kingsley, Bogard, Thompson, L.L.P., Attorneys at Law, represented the Folsom Cordova Unified School District (District).

Andrea Price, Attorney at Law, of Langenkamp and Curtis, L.L.P., represented most but not all the respondents.

Respondent Erica Davis appeared in pro per. Ms. Davis was the only unrepresented respondent to appear at the hearing.

The matter was submitted on July 8, 2009.

FACTUAL FINDINGS

1. Patrick Godwin, (Superintendent) made and filed the Accusations in his official capacity as Superintendent, Folsom Cordova Unified School District (District).

2. Respondents are and at all times relevant to this Decision were certificated employees of the District.

3. On June 11, 2009, in accordance with Education Code section 44955.5, 44951 and 44955, the Governing Board of the District (Board) adopted Resolution No. 06-11-09-32, in which the Board made the findings required by section 44955.5 that cause exists to initiate a certificated layoff as a result of the District's expected failure to meet the total revenue limit increase mandated in section 44955.5. In this Resolution, the Board found:

- a. The total revenue limit per unit of average daily attendance (ADA) for the 2009/2010 fiscal year did not increase by at least two per cent (2%);
- b. In the opinion of the Board, it is necessary to decrease the number of permanent employees of the District by terminating the services of certain permanent and probationary certificated employees of the District; and
- c. That the termination of probationary and permanent certificated employees shall be pursuant to Education Code sections 44955.5, 44951 and 44955, and that the actions of giving notice and conducting a hearing shall take place as set forth in an attached procedural schedule.

4. The Board adopted a procedural schedule for this action set forth in Attachment B to Resolution No. 06-11-09-32, as authorized by section 44955.5, as follows:

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|------------------|--|
| June 11, 2009 | Adoption of operative Resolutions by the Board; |
| June 12, 2009 | Superintendent or designee to arrange hearing dates with the Office of Administrative Hearings; |
| June 19, 2009 | Notices and other procedural documents to be served on respondents; |
| June 29, 2009 | Time deadline for filing Requests for Hearings/ Notices of Defense (June 29 or ten days after service of notices, whichever is later); |
| July 6, 2009 | Last day for respondents to request discovery from District (or six days prior to commencement of scheduled hearing); |
| July 14-15, 2009 | Anticipated hearing dates; |
| July 26, 2009 | ALJ's Proposed Decision due to Board; |
| July 30, 2009 | Board to act on Proposed Decision; and |

July 31, 2009

Final notices to be served on those respondents affirmed to be subject to termination of services by Decision.

5. On June 11, 2009, the Board adopted Resolution 06-11-09-30, authorizing the Superintendent to reduce or eliminate the particular kinds of services, as specifically set forth below. The particular kinds of services to be reduced or eliminated total 74.93 full time equivalents (FTE). A corresponding number of certificated employees of the District would have to be laid off to effectuate the reduction or elimination of the 74.93 FTE of particular kinds of services. The Board adopted “Exhibit B” to Resolution 06-11-09-30, specifying “Programs For Which the Board of Education Has Resolved to Retain the Services of Certificated Employees, Regardless of Seniority, Who Possess Qualifications and Competencies Needed in the Projected Educational Programs.”¹ The Programs enumerated in “Exhibit B” are:

- a. FLES;
- b. Mather Youth Academy; and
- c. AP/ACE.

REDUCTIONS/ELIMINATIONS OF PARTICULAR KINDS OF SERVICES

6. Exhibit A to Resolution 06-11-09-30 sets forth and itemizes the 74.93 FTE of particular kinds of services to be reduced or eliminated as follows:

**Services to Be Reduced or Eliminated
Pursuant to a Certificated Employee Layoff
Authorized by Education Code §44955.5**

Particular Service or Program to be Reduced or Eliminated	Grade Level	No. of FTE
Art	7 - 12	4.9
Business	9 - 12	1.8
Computers	7 - 12	2.5
Counselor	N/A	14.2
Drivers Ed	9 - 12	0.3
English	7 - 12	3.6

¹ The Board determined to “skip” layoffs of employees serving in these programs, regardless of seniority. However, the District did cause these employees to receive “precautionary” notices of layoff, in the event challenges were raised to the District’s decision to skip these employees.

Particular Service or Program to be Reduced or Eliminated	Grade Level	No. of FTE
French	9 - 12	2.0
German	9 - 12	0.6
Health	9 - 12	0.3
Home Economics	7 - 12	3.4
Math	9 - 12	0.83
Media Productions	9 - 12	0.2
MS - Self Contained	K - 6	15.0
Music	7 - 12	5.6
Newcomer	K - 6	1.0
Physical Education	9 - 12	3.9
Science, Life	9 - 12	1.3
Science, Social	7 - 12	2.5
Spanish	7 - 12	3.6
Starbase	K - 6	1.0
Student Body	6 -9	0.4
Technology	N/A	3.5

7. The Governing Board also adopted Resolution 16-11-09-31 (Tie Breaker Resolution) on June 11, 2009. The tie-breaker Resolution set forth a hierarchy and protocol regarding criteria for breaking ties in the event two or more certificated employees have the same first date of paid service. The Assistant Superintendent and his designees prepared a chart entitled “Exercise of Judgment in Application of Tie Breaker Criteria” that added considerable explanatory detail to the methodology the District employed in the application of the tie-breaking criteria. There was only one challenge (set forth below) raised to the manner in which the District applied the tie breaker criteria.

8. The Assistant Superintendent for Human Resources of the District caused each of the respondents to be served with a written Notice of Intention to Dismiss (preliminary notice) on June 19, 2009. The written preliminary notices advised each respondent of the Board’s action to reduce or eliminate particular kinds of services as set forth in Resolution 16-11-09-30, and that the Superintendent and/or his staff had identified each respondent as a

certificated employee whose services would not be required for the upcoming school year. The preliminary notice set forth the reasons for the recommendation.

9. The Superintendent notified the Board that each respondent receiving a preliminary notice had been identified as a person to whom preliminary notice should be given that his or her services would not be required for the ensuing school year. The recommendation that respondents' services for the District would not be required for the upcoming school year was not related to any respondent's skills, abilities or competencies as a teacher.

INCLUSION FOLLOWING FAILURE TO TIMELY REQUEST A HEARING

10. Preliminary notices of layoff were timely served on District certificated employees Melia Baruso, Jeffery Carter and Melissa Marcucci. None of these three employees timely returned Requests for Hearing to the District. Nevertheless, the District determined to include each of these three employees as respondents, proceeded to serve them Accusations and waived any objections to their participation in the hearing.

WAIVER FOR FAILURE TO TIMELY REQUEST A HEARING

11. Preliminary notices of layoff were timely served on District certificated employees as follows:

- James Bennett;
 - Melia Borruso*;
 - Colleen Bright*;
 - Amorina Edwards;
 - Carmen Farruggia;
 - David Gray;
 - John Green;
 - Don Isbel;
 - Dennis Jones*;
 - Nicole Keyfel;
 - Anna Knott;
 - Yvette Loya;
 - Tara Runnels;
 - Nicole Thompson; and
 - Robert Tippett;
- (* Preliminary notice of layoff later withdrawn and dismissed for other reasons)

12. None of these employees named above who received preliminary notices of layoff timely filed a written Requests for a Hearing with the District to determine if there was cause for not reemploying them for the ensuing year. These named employees above, other

than those denoted with an asterisk, were found on the record to have waived their right to a hearing for failure to timely file a Request for a Hearing.²

ACCUSATIONS AND NOTICES OF DEFENSE

13. The District timely served Accusations on each respondent who timely filed a Request for a Hearing. None of the respondents receiving an Accusation failed to timely file a Notice of Defense to the Accusations they received. All prehearing jurisdictional requirements were met with respect to the respondents who did not waive their right to a hearing.

STIPULATIONS

14. The District and counsel for the represented respondents entered into several stipulations serially during the evidentiary hearing. The stipulations form the Factual Findings set forth below.

14.1. The District determined to “skip” and preserve its Foreign Language in Elementary Schools (FLES) program intact, and retain the teachers serving in this program, regardless of seniority. The District thus skipped the following FLES employees:

Flavia Barajas;
Colleen Bright;
Gloria Chicca;
Kelly Curtan;
Jessica Hardy;
Pedro Perez;
Yoly Stroeve; and
Carmen Treviso.

Each of these named respondents serving in the FLES program were served precautionary preliminary notices of layoff. Upon respondents’ representation that no respondent claims eligibility to “bump” into a FLES assignment, the District rescinded the precautionary notices with respect to these particular employees as part of the stipulation. The parties stipulated each of these employees serving in the FLES program will be reemployed in the upcoming school year.

14.2. Respondent Yoly Stroeve returned to service in the District within thirty nine (39) months of separation. Respondent Stroeve’s status is changed from probationary to permanent.

14.3. Upon stipulation that no respondents have challenges to the status or seniority of the individuals named below who are teaching in the District, the District stipulated to withdraw preliminary notices of layoff issued to the following individuals:

² Education Code section 44949, subdivision (b).

Linda Rieger;
Yvette Loya;
John Lusk;
Scott Meyer;
Heather Sancedo;
Tara Antonetti;
Jennifer Fagan;
Terri Hladik;
Brooke Webster;
Tracey Buffalo;
Rosemary Jarvinen; and
Gayle Martin (seniority date 08/10/2004)

14.4. Respondent Cole Cooper is properly retained pursuant to Education Code section 44955, subdivision (b) to teach Advanced Placement/ACE through California State University, Sacramento. He has special skills and qualifications necessary to the District's education program not possessed by those more senior than him receiving a preliminary notice, warranting his retention, regardless of seniority.

14.5. The parties stipulated that no respondents are raising challenges to retentions and assignments, seniority dates or status in Social Sciences. Based on this stipulation, the District withdrew preliminary notices of layoff issued to:

Dennis Jones; and
Melissa Lawson

14.6. The parties stipulated that no respondents are raising challenges to retentions and assignments, or seniority dates and status in Art. On the basis of this stipulation, the District withdrew its preliminary notice of layoff issued to Debra Kyle for 0.6 FTE, and reassigned her to Multi-Media. Ms. Kyle's preliminary notice of layoff remains effective as to her remaining 0.4 FTE.

14.7. The parties stipulated that only one respondent is raising a challenge to retentions and assignments in Music. That challenge was made by respondent Leo Gravin, and that challenge was to his seniority date. Based on the stipulation, the District withdrew its preliminary notices of layoff issued to:

Daniel McCrossen 1.0 FTE, and
Donald Wersky 1.0 FTE

14.8. The parties stipulated that no respondent is raising a challenge to retentions and assignments in adaptive Physical Education, and no respondent in this area has a challenge to seniority dates or status. Based upon this stipulation, limited to adaptive PE, the

District withdrew the preliminary notice of layoff issued to Bernadette Hendrickson for 1.0 FTE.

14.9. The parties stipulated that no respondent has a challenge to retentions, assignments, seniority dates and status in French and Spanish. Based on this stipulation, the District withdrew preliminary notices of layoff issued to the following:

Rochelle Messer	split 1.0 FTE Spanish/French
Susan Martin	split 1.0 FTE Spanish/French
Miguel Rodriguez	1.0 FTE

14.10. The parties stipulated that only one respondent has a challenge in Life Science, Mya Olsen. Based upon the District's understanding that there is only this one challenge in Life Science, the District withdrew preliminary notices of layoff issued to:

Nicole Kiefel	1.0 FTE; and
Stephanie Berg	1.0 FTE

14.11. The parties stipulated that the District applied the tie-breaker criteria as set forth in the Resolution and the addendum, to respondents Tim Mancini and Renee Simpson. The District determined that respondent Mancini is entitled to seniority over respondent Simpson due to a larger breadth of credentials. Both respondents have served in the District in the most recent school year as Counselors/ behaviorists. Respondent Simpson has the same Pupil Personnel credential as does respondent Mancini, and respondent Simpson is a licensed Marriage, Family and Child Counselor (MFCC).

14.11a. Respondent Simpson contends she is entitled to be senior to respondent Mancini. She does not contend the tie-breaker criteria were applied incorrectly, unfairly or improperly. In essence, she is challenging the Board's Resolution itself and the manner in which the Resolution sets the protocol and valuation structure for breaking ties, contending that her MFCC should have been greater weight and primacy over respondent Simpson's breadth of credentials in the tie-breaking structure.

14.11b. The ALJ ruled on the record that jurisdiction to resolve respondent Simpson's challenge to the Board's Resolution does not lie in these proceedings as a matter of law. Ms. Simpson's contention was dismissed for lack of jurisdiction.

14.12. The parties stipulated that, following the ruling set forth in section 14.11 above, no respondents serving as Counselors have challenges to retentions, assignments, seniority dates or status. Based on the stipulation, the District withdrew and rescinded preliminary notices of layoff issued to the following:

Tim Mancini	(serving as behaviorist);
Margie Komatsu	1.0 FTE; and

Jeanine Hanrihan Preliminary notice rescinded to 0.6 FTE only, preliminary notice still effective as to 0.4 FTE.

14.13. The parties stipulated that no respondents serving in Business have challenges to retentions, assignments, seniority dates or status. Based on the stipulation, the District withdrew and rescinded the preliminary notices of layoff issued to respondents:

Lawrence Van Inwangen (1.0 FTE);
Dale Waldo (1.0 FTE); and
Greg Crannell (as to 0.2 FTE only)

14.14. The parties stipulated that no respondents serving in Music have challenges or claims they can bump respondents being retained, or to seniority dates or status. Based on this stipulation, the District withdrew and rescinded the preliminary notice of layoff issued to Katherine Olsen as to 0.6 FTE.

14.15. The parties stipulated that no respondents serving in regular Physical Education have challenges or claims they can bump respondents being retained, or to seniority dates or status. Based on this stipulation, the District withdrew and rescinded the preliminary notice of layoff issued to Elizabeth England as to 0.5 FTE.

14.16. The parties stipulated that no respondents serving in Social Sciences have challenges or claims they can bump respondents being retained, or to seniority dates or status. Based on this stipulation, the District withdrew and rescinded the preliminary notice of layoff issued to Alexandra Patillo-Murray as to 0.8 FTE.

14.17. The parties stipulated that respondent Robert Tippet has special skills, experience and/or training that warrants his being skipped pursuant to Education Code section 44955, subdivision (b). Following this stipulation, the parties further stipulated that all challenges and claims regarding any respondent's ability to bump into English teaching assignments had been resolved, with the exception of respondent Claire Barr-Smith (below) and that there were no further challenges to any respondent's status or seniority in this area. Based on the stipulation, the District withdrew and rescinded preliminary notice of layoff issued to Adrian McMannus (1.0 FTE).

14.18. The parties stipulated that respondent Amorina Edwards has special skills, experience and/or training that warrants her being skipped and retained to serve at the Mather Youth Academy, pursuant to Education Code section 44955, subdivision (b). Following this stipulation, the parties further stipulated that all challenges and claims regarding any respondent's ability to bump into Mathematics assignments had been resolved, and that there were no further challenges to any respondent's status or seniority in this area. Based on the stipulation, the District withdrew and rescinded preliminary notice of layoff issued to:

Tyler Johnstone 1.0 FTE; and
Amorina Edwards 1.0 FTE

14.19. The parties stipulated that respondent Martin Olsen has special skills, experience and/or training that warrants his being skipped and retained to serve at the Mather Youth Academy, pursuant to Education Code section 44955, subdivision (b). Following this stipulation, the parties further stipulated that all challenges and claims regarding any respondent's ability to bump into Life Sciences teaching assignments had been resolved, and that there were no further challenges to any respondent's status or seniority in this area. Based on the stipulation, the District withdrew and rescinded preliminary notice of layoff issued to Martin Olsen, (1.0 FTE). In addition, Kendra Duncan is retained as to 0.2 FTE, and the preliminary notice of layoff issued to her remains effective as to 0.8 FTE.

14.20. These proceedings are based solely on the grounds set forth in Education Code sections 44955.5 and 44955, and in no way relate to any respondent's ability or performance.

CLAIRE BARR-SMITH

15. Ms. Barr-Smith is listed on the District Seniority List as having a first date of paid service to the District of February 1, 2006. She is a permanent employee. She is listed as assigned to Mills Middle School as an English teacher. She received a preliminary notice of layoff. Ms. Barr-Smith took the occasion of this hearing to challenge her seniority date.

16. Ms. Barr-Smith contends she has been teaching in the District continuously since 1997, when she started substitute teaching. She contends she has taught continuously since then, without having taken any leave in any school year.

17. Ms. Barr-Smith failed to clearly identify what specifically she sought through her testimony. She evidently seeks an earlier seniority date, early enough to avoid the layoff process. She did not identify the date she claimed should be her seniority date. She failed to provide any documentation or support for her claim. She repeatedly testified, "I am still working on pulling my records together. I have done a pretty good job, pulling the 12 years together." It was not clear just what she was talking about, as she presented no records at all. Ms. Barr-Smith was grossly unprepared and it would be generous to characterize her presentation as disorganized. She had no notes of her claims of service and her pay records to which she repeatedly referred that were in storage and could support her claims. These records evidently never got out of storage, despite the fact that there was more than a month's notice that these proceedings were taking place. Her testimony regarding where and when she served wandered, sometimes aimlessly, and was exceptionally difficult to follow, made worse by the fact that she had not taken the time to prepare a written log documenting the times and dates of claimed service over the years.

18. In response to Ms. Barr-Smith's testimony, the District presented all Ms. Barr-Smith's pay records for the years in question. These records showed Ms. Barr-Smith was a short term substitute for most of the periods in question, with a few stints as a longer term substitute. None of the records produced by the District showed any evidence that Ms. Barr-Smith's seniority date was miscalculated or was otherwise incorrect. Ms. Barr-Smith's

claims that the District's pay records were inaccurate, in response to the District's presentation of her pay records, without even one record of her own that could support her allegation or rebut the District records was, under the circumstances, profoundly unconvincing.

THE SECTION 44955.5 ISSUE- THE 2% INCREASE IN REVENUE LIMIT THRESHHOLD

19. To say the District is facing financial pressure necessitating the reduction or elimination of the particular kinds of services set forth in the Resolution is to greatly understate the matter. Even with the injection of a significant amount of State Stabilization Funds, Title 1 funds, Special Education/IDEA federal funds and federal stimulus money earmarked to save teacher positions through the American Recovery and Reinvestment Act, the District is still in "qualified status" with the County Office of Education, meaning that it was only barely able to meet its current obligations, and is expected to be in a deficit position for school years 2010 and 2011. Due to being in qualified status, the District must retain a reserve. That reserve was spent down to arguably below its minimum mandatory level to save teacher jobs through the April layoff action.

20. The District experienced a decrease in its average revenue limit in school year 2008-2009. The District's current budget projections, which interestingly anticipates a slight increase in enrollment District wide, nevertheless calculates a 3.41 percent drop in its revenue limit per unit of average daily attendance (ADA). This is considerably lower than the two per cent increase minimum threshold set by section 44955.5.

21. Much contention surrounded proffered competing calculations of projected budgets, including the variable of the inclusion or exclusion of stimulus funds, and the potential tapping of the District's reserve. The respondent's California Teacher's Association (CTA) representative offered evidence of alternative calculations, in an effort to demonstrate that less layoffs were necessary to reach the undisputedly mandated balanced budget.

22. The calculations were interesting and informative, but missed the point. Section 44955.5 gives the Board discretion to make the cuts it deems appropriate if the budget shows less than a two per cent increase in average revenue limit per unit of ADA. Respondents did not dispute, nor could they, that this statutory threshold was more than satisfied, even by their own calculations. The calculations varied, but no one contended, nor could they, that the District's budget will show an increase in the average revenue limit per unit of ADA in the upcoming year.

23. Thus, the Board's exercise of its discretion is lawfully triggered and invoked. Respondents' alternative calculations seek to bind the Board in how it may exercise its discretion under the section 44955.5 authorization. Short of proof of arbitrariness or capriciousness, respondents may not compel the Board to exercise its discretion in any particular manner. The Board has determined, in consultation with its Chief Financial

Officer,³ that it must make the reductions and cuts it has proposed in order to meet its statutory mandates of balancing its budget in each of the upcoming three years.

24. Respondents contend the layoffs proposed by the District are unwarranted and excessive, and offered their alternative calculations in support. Respondents' contentions lack merit in the sense that there is no legal or factual basis evident in this record that the Board's exercise of its discretion is arbitrary or capricious, or that the Board should be compelled to exercise the discretion authorized by section 44955.5 in some other fashion than it has elected. The depth, breadth and extent of cuts ultimately to be made is wholly in the Board's discretion. The calculations reveal there is room for lively and well supported debate before the Board regarding how and to what extent those cuts need be made as a final matter. But that is not the province of these proceedings, or within the discretion and jurisdiction of the undersigned to overturn the exercise of the Board's discretion on how to ultimately make the needed cuts, once the statutory trigger has been invoked and there is no evidence that the Board's proposals are arbitrary or capricious. Whether the Board elects to revisit and assess the number of layoffs required before sending out final notices of layoffs is, under the circumstances proved here, entirely within the final discretion of the Board. There was not a scintilla of evidence that the Board or the District's administration was disinclined to make every effort to retain as many respondents as feasible, given its budget condition. In fact, the contrary was quite evident; that the District desperately wants to retain the maximum number of teachers it can and still comply with the externally mandated requirement to balance its budget not just for the upcoming year, but to also make sure its budget stays balanced for the following two years so it can get off qualified status with the County Office of Education.

25. The Assistant 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.

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

LEGAL CONCLUSIONS

1. (a) During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at

³ The District's CFO presented as exceptionally well qualified and informed, and her calculations and projections were quite well reasoned and persuasive. She carefully factored in all possible sources of external revenue from Title 1, state and federal stimulus moneys, the claims on the District's budgets, the impact of the April and this layoff, the needs of the District for fixed facilities maintenance and operations, and so forth. Her presentation was even handed and persuasive. It made clear the District's intention to retain as many teachers as possible within the overarching mandate of balancing the budget for the next three years and getting out from under the County Office's qualified status list.

least 2 percent, and if *in the opinion of the governing board* it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board.⁴

2. Jurisdiction in this matter exists under Education Code sections 44951, 44955 and 44955.5. All notices and jurisdictional requirements contained in those sections were satisfied, within the schedule and protocol adopted by the Board in accordance with section 44955.5.

3. The District has the burden of proving by a preponderance of the evidence that its total revenue limit per unit of ADA for the fiscal year of the Budget Act has not increased by at least two per cent. Upon such proof, the Board has exclusive discretion to determine whether it is necessary to accordingly decrease the number of permanent employees of the District. Upon such determination, the District may terminate the services of any permanent or probationary employee, and may reduce or eliminate particular kinds of services. The District met its burden of proof. The statutory revenue limit threshold was met, in that it was undisputed that the District's average revenue limit per unit of ADA will not increase a minimum of two per cent this year. 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 services was not demonstrated to be arbitrary or capricious, but constituted a proper exercise of the discretion provided the Board in section 44955.5.

4. 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 in the upcoming school year, necessitating the reduction or elimination of certain services now offered in the District. The reduction in particular kinds of services proposed is necessary to avert the District operating in a deficit in the upcoming school year.

5. 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

⁴ Education Code section 44955.5, in pertinent part. (italics added).

