

BEFORE THE
GOVERNING BOARD OF THE
TWIN RIVERS UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter of the Reduction In Force of:

OAH No. 2010030030

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE TWIN RIVERS
UNIFIED SCHOOL DISTRICT,

Respondents.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on April 7, 8, 9 and 14, 2010, in Sacramento, California.

Timothy M. Cary and Loni Y. Chhen, Attorneys at Law, appeared on behalf of the Twin Rivers Unified School District.

Margaret Geddes and A. Eugene Huguenin, Jr., Attorneys at Law, appeared on behalf of respondents listed in Attachment A. Respondent Keith Kimble appeared on his own behalf.

Evidence was received and submission of the matter was deferred pending receipt of additional written argument. The District and respondents filed post-hearing briefs on April 16 and 17, 2010, respectively.¹ The case was thereafter submitted for decision.

FACTUAL FINDINGS

1. Frank S. Porter is the Superintendent of the Twin Rivers Unified School District (District). Patty L. Smart is the Associate Superintendent for Human Resources/Employee Relations of the District. The actions of Mr. Porter, Ms. Smart, and the District Governing Board were taken in their official capacities.

¹ The District filed a Post-Hearing Brief, "Twin Rivers Unified School District's Post Hearing Brief." This was marked as Exhibit 28 for identification. Respondents filed a Post Hearing Brief that was marked as Exhibit P for identification.

2. Respondents are permanent or probationary certificated employees of the District. On March 10 through 15, 2009, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would be reduced or would not be required for the 2010-2011 school year. Each written notice set forth the reasons for the recommendation and noted that the District Governing Board had passed a Resolution reducing the certificated staff by 203.7 full-time equivalent (FTE) positions. Most respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

3. Associate Superintendent Patty L. Smart made and filed Accusations against respondents. The Accusations with required accompanying documents and blank Notices of Defense were timely served on respondents. Most respondents timely filed Notices of Defense to the Accusation. Each respondent identified in Attachment B to this Decision filed a Notice of Defense to the Accusation, either in person or through counsel.

4. Each individual identified in Attachment C was non-represented and filed no Request for Hearing. The three individuals in Attachment D were non-represented and filed untimely Requests for Hearing.

5. Seven District employees appeared at hearing to explain the reasons for their failure to request a hearing or file a Notice of Defense. Mary Elizabeth is a self-represented party. She filed a request for hearing, but no Notice of Defense. The District mailed her the accusation packet which included a blank Notice of Defense. Nicole Botaitis did not file a timely request for hearing. She filed no Notice of Defense. Xavier Young avers that he received nothing in the mail, although his vice principal provided him with the preliminary notice. He suggested that other documents that the District mailed to him may have been sent to an old address. Donato Nesta filed a request for hearing, but no Notice of Defense. He did not recall receiving an accusation packet. Andrew Carter made a request for hearing and received the accusation packet on March 26, 2010. He averred that he was told he needed to return the Notice of Defense by April 6, and was then later told that the deadline was March 31. When he failed to meet the earlier deadline, he filed no Notice of Defense. In each of these five cases, District employees failed to timely file a Notice of Defense. The District did not waive objections to their inclusion as respondents in this matter. These five certificated employees who failed to file a Notice of Defense waived their right to a hearing.

Dallas Tognotti timely filed a request for hearing. He did not file a timely Notice of Defense. Mr. Tognotti was out of the country over spring break, from March 24 through April 5, 2010. He returned the Notice of Defense on April 6, 2010, his first opportunity to do so. The District's objection to his inclusion as one of the respondents in this matter was overruled at hearing. Brad Betschart received a preliminary notice packet on March 12, 2010. The request for hearing was not in the packet. He obtained a request for hearing from a union representative on March 15, and mailed it to the District on March 16, 2010. He also attempted to hand-deliver a copy to the District on March 19, 2010, but the building was closed. He did deliver a copy of his request for hearing to the District on March 23, 2010.

On April 6, 2010, the District received by mail a request for hearing and Notice of Defense from Mr. Betschart, postmarked March 31, 2010. The District's objection to his inclusion as one of the respondents in this matter was overruled at hearing.

Any certificated employee who failed to file a request for hearing and/or a Notice of Defense, other than Mr. Tognotti and Mr. Betschart, has waived his or her right to a hearing, and may be subject to layoff by the District.

6. On March 2, 2010, at a regular meeting, the District Governing Board was given notice of the Superintendent's recommendations that certificated employees holding 203.7 FTE positions be given notice that their services would be reduced or not required for the next school year and stating the reasons for that recommendation.

7. On March 2, 2010, the District Governing Board determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching and other certificated services affecting employment of 203.7 FTE positions. The District Governing Board adopted Resolution No. 164 providing for the reduction or elimination of the following particular kinds of services (PKS):

<u>Services</u>	<u>Equivalent Positions</u>
Site Administration	2.0
Instructional Support	25.8
Elementary Counseling	8.6
Administrative Services	11.0
Physical Education Services	9.6
Math Instruction	13.6
Social Science Instruction	12.0
English Instruction	16.6
Student Services	2.0
Grades 7/8 Social Science/ELA Instruction	1.0
Grades 7/8 Math/Science Instruction	2.0
Spanish Instruction	2.0
Grades 7/8 Self Contained	4.0
Life Science/Biology Instruction	9.6
Business Instruction	0.4
Work Experience-Counseling	1.0
Technology Coaching	0.5
Elementary Classroom Instruction	51.0
EL/Independent Study Instruction	0.4
Resource Specialist	1.0
Opportunity	4.0
Industrial Arts	0.6
Woodworking	0.6
Visual and Performing Arts	10.3

Bilingual Instruction	1.0
Computer Instruction	2.1
Earth Science Instruction	0.8
Adult Education with Disabilities	6.0
Regional Occupation Program	4.2
TOTAL	203.7 FTE

8. The District began operations in July 1, 2008, after the consolidation of three elementary school districts and one high school district.² It was created as a result of approval of a measure in November 2007, merging the four districts. The only high school district consolidated into the new Twin Rivers District was the Grant Joint Union High School District. The District serves approximately 27,000 preschool through adult education students in northern Sacramento County. The District represented that reductions in particular kinds of services are necessary to ensure the District’s fiscal survival, which is threatened by a severe decrease in revenues to the District due to the State of California and national economic crisis. Kate Ingersoll is the District’s Budget Services Director. She testified that the proposed reductions are necessary for the District to remain solvent given revenue reductions and expected revenue shortfalls.

The Governing Board’s resolution to reduce or discontinue particular kinds of services was made in anticipation of decreased revenues to the District occasioned by the Governor’s state budget. Kate Ingersoll, the District’s budget services director, noted that the proposed reductions are necessary for the District to remain solvent.

9. The District maintains a Certificated Seniority List which contains employees’ seniority dates (first date of paid service), status as tenured, probationary or temporary, their FTE and current assignments. Status, credential and authorization data were obtained from the District’s records and employees were given the opportunity to correct errors in the seniority list. All certificated employees were sent a letter in December 2009, inviting them to correct their seniority date and any other information contained in their individual personnel information on file with the District. They were asked to do so by January 2010.

Ms. Smart and other District employees, including Michelle Abrams and Nancy Gamache, were responsible for implementation of the technical aspects of the layoff. The District used the seniority list, Resolution No. 164, and all pertinent information from each employee’s personnel file, to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether these employees held credentials in another area, were entitled to be “skipped”

² The three elementary school districts included North Sacramento School District, Del Paso Heights School District and Rio Linda Union School District. The high school district was the former Grant Joint Union High School District.

pursuant to the Governing Board's Resolution, or could "bump" into positions held by junior District employees.

Rescission of Notices

10. During the four days of hearing, the District rescinded the notices to the following 23 respondents:

1. George Brown
2. Christy Caceres
3. Roberta Coker
4. David Dawson
5. Daniel Dorantes
6. Constance Earley
7. Lynette Echelmeier
8. Diana Gontar
9. Brenda Hin
10. Alan Hudson
11. Steven Jensen
12. Erin Klentos
13. Amy Page
14. Robert Pope
15. Kadhira Rajagopal
16. Erland Renslo
17. Richard Sears
18. Dominic Slavich
19. Anna Stinson
20. Nancy Thao
21. Christina Verner
22. Jacob Walker
23. Linda Holmes-Yarbrough

Seniority Date Changes

11. The District provided respondents opportunity to correct errors in their seniority dates, including multiple conferences during the hearing. There were a number of certificated employees who claimed to have attended mandatory professional development or in-services required by the former school districts prior to merging into Twin Rivers Unified School District. The District properly adjusted seniority dates in each case where respondents provided documentation showing that they attended the paid in-service, and where the personnel and payroll records of the District reflected that these respondents were paid for attendance at the training sessions.

The District changed the seniority dates of a number of respondents from August 8, 2006, to August 7, 2006, after they demonstrated that they attended mandatory in-service training conducted by the former school districts and were paid for their attendance. The following individuals had their seniority dates changed to August 7, 2006: Jennifer Bourgeois, Thomas Cope, Jennifer Dwyer, Jacqueline Howard, Jeri Ann Jones, De Ann Karl, Keith Kimble, Rebecca Le Doux, Pakou Lee, Jan-Erik Maher, Yvette Medina, Joan Pentecost, Thuy Pham, Kathryn Sluis, Becky Solis, Elizabeth Spackman, Shannon Summers, Jenika Valenchich-Sheldon, Karen Vierk (now Nozicka), Christine Boerner, Devon Dragoo, Mara Gonzalez, Kelly Grumann, and Miriam Schroeder.

Respondents Julie Pepper and Lorri Williams have District seniority dates of August 9, 2006. This was based on their attendance at a new teacher orientation for the former Rio Linda Union School District on that date. Paula Roach was their principal at that time. Ms. Roach asked Ms. Pepper and Ms. Williams to attend a two-day writing program used at their site (Step Up to Writing). Both attended this training on August 7 and 8, 2006, before attending the new teacher orientation on August 9. They both obtained permission to attend the new teacher orientation on August 9, so that they could attend the writing program as requested. The District paid a registration fee of \$325 for each of the two to attend the writing program. However, neither was paid for their time spent attending the writing program. Ms. Pepper and Ms. Williams would like their District seniority date to be changed to August 8, 2006, consistent with their peers who attended new teacher orientation that date.

A probationary or permanent employee is “deemed to have been employed on the date upon which he first rendered paid service in a probationary position.” (Ed. Code, § 44845.) Ms. Pepper and Ms. Williams were not engaged in “paid service” for the District when they attended the two-day writing program. District Human Resources payroll records confirmed this. They were asked by their supervisor to attend the writing program, and the equities in this case would certainly weigh in favor of adjusting their seniority date to August 8. However, the law requires that they render “paid service” and this was simply not the case. Their District seniority date cannot be adjusted under these circumstances.

12. The District also changed the seniority dates of a number of respondents for other various reasons based on supplemental information provided at the time of hearing. The individuals listed below had their seniority dates changed as follows:

- | | | |
|-----|------------------------|-------------------|
| 1. | Michael Cook | January 7, 2002 |
| 2. | Constance Early | April 28, 1980 |
| 3. | Daniel Grubbs | August 9, 2007 |
| 4. | Brenda Hin | August 23, 2005 |
| 5. | Linda Holmes-Yarbrough | August 17, 2005 |
| 6. | H. Lanard German | August 21, 2007 |
| 7. | Jose Lozano | August 14, 2007 |
| 8. | Kathleen McCarthy | February 24, 2004 |
| 9. | Jasmine Patel | August 9, 2007 |
| 10. | Terry Press-Dawson | October 15, 2001 |

11.	Connie Price	August 26, 1997
12.	Tania Salazar	August 14, 2000
13.	Gayle Shibata	May 1, 2000
14.	Victor Umeh	August 16, 2006
15.	Terri Williams	August 21, 2000
16.	Jonathan Young	January 22, 2008

As a result of the adjustments/revisions in seniority dates, some notices were rescinded. These were included in the list of rescissions set forth in Finding 10.

Skipping

13. Board Resolution No. 164 provided that the District has the need to retain certain certificated employees who possess certain credentials and which more senior employees do not possess. The Superintendent was authorized to deviate from terminating certificated employees in order of seniority in instances where they are currently assigned to teach specific courses and will be assigned to teach those courses again for the next school year, and more senior employees do not possess the same specialized training and experience related to the course.

The skipped individuals under Board Resolution 164 include those who are:

- a. Certificated employees with special education certifications who are currently using those certifications. Said certificated employees who possess and are currently using special education credentials shall not be displaced by more senior employees unless those more senior employees possess the appropriate special education credential, training, competency, and experience to perform those special education services.
- b. Certificated employees whose position requires Bilingual Crosscultural, Language and Academic Development (BCLAD) Certificate for their position. Said certificated employees who possess and are currently using the BCLAD certificate shall not be displaced by more senior employees unless those more senior employees possess the appropriate certificate, training, competency, and experience to perform those services.
- c. Certificated employees with necessary certification to teach at the secondary level such that the District may maintain its current academic departments at legally required levels. Said certificated employees who possess and are currently using said credentials shall not be displaced by more senior employees unless those more senior employees possess the appropriate

credential, training, competency, and experience to perform those services.

14. With regard to certificated employees with special education certifications who are currently using those certifications, respondents did not challenge the skipping for these certificated personnel.

With regard to BCLAD, the District applied the PKS resolution skipping language only to those teachers whose position required a BCLAD. Respondents did not challenge the skipping for certificated employees who possess a BCLAD certificate.

With regard to certificated employees with necessary certifications to teach at the secondary level such that the District may maintain its current academic departments at legally required levels, the District did not skip any individuals pursuant to this section of the Resolution.

Adult Education

15. The District took the legal position that a District certificated employee assigned to a teaching position in the Adult Education program may not bump into the regular education (K-12) program, unless he or she obtained tenure in the K-12 program before being assigned to a position in Adult Education; and that no certificated employee currently assigned in the K-12 program may bump into the Adult Education program. Respondents did not object to the District's position. Some layoffs were affected by the District's position on this issue, and proper adjustments were made by the District, including the rescissions of layoff notices to affected certificated employees (Erland Renslo, Diana Gontar, Jacob Walker and Steven Jensen).

There are no certificated personnel currently assigned to a teaching position in the Adult Education program who earned tenure in the regular K-12 program and have the credentials and seniority to potentially bump into the regular K-12 program, and this was therefore not an issue.

Early Childhood Education

16. The District took the legal position that all certificated personnel currently assigned to a teaching position in Early Childhood Education do not have rights to bump into the regular education (K-12) program, and that no certificated personnel currently assigned in the K-12 program have the right to bump into a position in Early Childhood Education. Accordingly, the District rescinded the notices of Christina Verner and Roberta Coker. There was no objection by respondents, and this was therefore not an issue.

Alternative Education

17. The District rescinded the notices of four certificated personnel in the alternative education program. Specifically, the District rescinded the notices of David Dawson, Christy Caceres, Erin Klentos, and Anna Stinson. Some of these certificated employees were more junior to other certificated personnel currently assigned to the regular K-12 program who are certificated and competent to render services in the alternative education program and who consented to being assigned to teach in alternative education in lieu of being laid off, thereby effectuating their right to “bump” one of these employees.

Education Code section 44865 provides that a person possessing a valid teaching credential issued by the State Board or the Commission on Teacher Credentialing, based on a bachelor’s degree, student teaching, and special fitness to perform, shall be deemed qualified for assignment in alternative education, but such person may only be assigned to teach in such a position if he or she consents. Alternative education within the District includes the following programs: Independent Study, Community Day Schools, and Continuation Schools.

18. Between April 12 and April 14, 2010, the District contacted multiple individuals who had a seniority date up through and including August 16, 2006, and who possessed the valid teaching credential that would enable them to teach in alternative education. These calls were placed pursuant to a ruling made at the time of the April 9 hearing that the District had an affirmative obligation to inquire whether these individuals would consent to an assignment to alternative education. (*Bledsoe v. Biggs* (2009) 170 Cal.App.4th 127.) The District specifically asked each of these individuals whether they consented to assignment in alternative education. No person more senior to David Dawson and Christy Caceres who has a valid teaching credential qualifying him or her to be assigned to alternative education consented to being assigned to teach in alternative education. Accordingly, the District rescinded the notices of Mr. Dawson and Ms. Caceres without objection by respondents, and without any further effect on other layoff notices.

19. The District also rescinded the notices of Erin Klentos and Anna Stinson, who are both more junior to two more senior certificated employees holding a valid teaching credential qualifying them to be assigned in alternative education and who consented to the alternative education assignment. Because the District rescinded two notices of two more junior certificated employees, the District is aware that it must also rescind two additional notices of certificated employees who are more senior than those two employees.

The District has taken the position that the two most senior certificated employees who have consented to being assigned in alternative education should have their notices rescinded; these individuals are Lynn Reed, Jr. and Jodi Serrano. However, respondents take the position that the two most senior certificated employees who have received preliminary layoff notices should have their notices rescinded. There is no disagreement that the District must rescind two additional notices.

20. Education Code section 44955, subdivision (b) provides that “the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.” When the District rescinded the notices of Erin Klentos and Anna Stinson, it was placed in a position of having to rescind two additional notices. The additional notices are not conditioned upon the senior employees’ consent to assignment to alternative education. The next two certificated employees more senior to Ms. Klentos and Ms. Stinson who received preliminary layoff notices should have their notices rescinded in order to meet the requirement of Education Code section 44955, subdivision (b).

21. Respondents also argued that because the seniority date of Ms. Klentos and Victor Umeh are equal (they both have the seniority date of 8/16/06), that the District must exercise the tie-breaking criteria to determine which of these two individuals should have his or her notice rescinded. The District takes the position that the District’s rescission of Ms. Klentos’ notice is the equivalent of no notice to Ms. Klentos. The District is correct. Tie-breaking criteria are not required to be applied in this circumstance and the only consequence of withdrawing the Klentos notice is that one other more senior notice must be rescinded. *Respondents in Categorically Funded Programs, and Counselor Employment Status*

22. Respondents made an offer of proof that certain respondents believe their status should change because they believe their positions are funded from the general fund, and they believe that they are therefore not Education Code section 44909 employees.³ The District provided testimony by Ms. Smart and Kate Ingersoll that established that these employees are still funded by categorical funds. They remain section 44909 employees in a “Prob. 0” status. Respondents did not provide any other evidence supporting their offer of proof.

The District and certain respondents serving as counselors in certain categorically funded positions stipulated that they will resolve seniority and status issues informally, and requested that no ruling be made on this issue. The parties agree that neither the District nor any affected respondents shall be precluded from bringing forth status and seniority issues applying to these counselors during any 2010-2011 reduction-in-force hearings if there is no informal resolution by the parties prior to that time.

³ Education Code section 44909 provides for employment of teachers to perform services under contract with public or private agencies or certain categorically funded projects which are not required by federal or state statutes. In the Twin Rivers Unified School District decision last year (OAH No. 2009030049) the District was directed to classify such employees as probationary, and not as temporary employees. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2007) 145 Cal.App.4th 1260; *CTA v. Vallejo City Unified School District* (2007) 149 Cal.App.4th 135.)

Over-noticing

23. Respondents complain that the District “overnoticed” respondents by sending significantly more preliminary notices (235) than the number of FTE’s of service reductions (203.7). Respondents point to the “firm limit” on the number of preliminary notices to be sent to employees under Education Code section 44955, as being “not more than a corresponding percentage of certificated employees of the district.” Respondents contend that the District must account for employee terminations arising collateral to the service reductions, including assured attrition. For example, the District acknowledged 13 FTE of attrition assured for 2010-2011, in the form of ten non-reelected probationary employees and three resignations or retirements. Respondents argue that instead of 203.7 FTE, it will only be necessary to give final notice of layoff to 190.7 FTE of certificated employees.

The District explained that in calculating the number of employees who must receive notices it was required to take into account resignations, returns from leave, retirements, partial FTE’s, reassigned administrators and other factors. The District believes it gave the number of preliminary notices reasonably required to carry out the reductions ordered by its governing board. It has rescinded 23 notices to date, excluding the two additional rescissions occasioned by the rescissions of two junior Alternative Education notices. The District has discretion to engage in the administrative actions necessary to achieve the 203.7 FTE service reductions. It engaged in a relatively complicated analyses in doing so and respondents made no showing that the District acted in an arbitrary or capricious manner in exercising such discretion.

24. The number of positions eliminated by a particular kind of service layoff is not required to be identical to the number of layoff notices a school district serves on its employees. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636; *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334.) The District posits that respondent’s reference to a “corresponding percentage” relates only to average daily attendance terminations based upon an actual reduction in attendance. It suggests that where the governing board determines to discontinue or reduce a particular kind of service, there is no need to calculate a corresponding percentage.

The District has provided a satisfactory explanation for its noticing practices. It is unnecessary in this case to resolve questions related to the “firm limits” respondents believe were exceeded under Education Code section 44955. Following the District’s 2008-2009 layoffs, the District rehired certificated employees from its reemployment list to fill the positions of employees who were out on leave, rather than filling such positions with temporary employees. The District received information that 22 senior certificated employees currently on leave intend to return to certificated positions for the 2010-2011 school year. These 22 employees are entitled to return to the District because they are senior to those currently being laid off. Thus, the District was required to take into account the 22 teachers returning from leave to effectuate the 203.7 FTE reduction in certificated positions. The District properly included these teachers in its calculations of the number of preliminary

layoff notices that had to be issued. The District will also rescind a total of 25 notices after accounting for the two Alternative Education employees. (See Finding 23.)

After consideration of the 25 rescinded notices, positively assured attrition, administrators returning to the classroom, and the 22 employees reduced because of those returning from leave, the number of layoff notices issued by the District was neither unreasonable nor excessive. It was well within the District's discretion to serve 235 certificated employees with preliminary layoff notices.

25. With due consideration and adjustments made for the matters noted above, no permanent or probationary certificated employees junior to respondents are being retained to perform a service which respondents are certificated and competent to render. Those certificated employees junior to respondents being retained will provide services which respondents are not certificated and competent to perform.

LEGAL CONCLUSIONS

1. The District employees receiving notices that their services would not be required next year have rendered valuable services to the District.

2. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

3. The services identified in Board Resolution No. 164 are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

4. A District may reduce services within the meaning of Education Code 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.)

5. Education Code section 44955 provides in pertinent part:

¶...¶

(b) Whenever in any school year ... whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, ...or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

¶...¶

6. Education Code section 44955 provides that when certificated employees face layoffs due to reduction or elimination of PKS, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teacher has both the credentials and competence to occupy such positions. The intent of the Legislation is clearly to prevent Districts from laying off senior teachers while retaining junior teachers. Education Code section 44955, subdivision (c) provides in pertinent part:

Services of such employees shall be terminated in the inverse of the order in which they were employed... 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...

7. As set forth in Factual Findings 10, the District has rescinded notices of layoff to 23 certificated employees. In addition, the District shall rescind two additional notices of certificated employees who are more senior than Erin Klentos and Anna Stinson. These two additional notices are not conditioned upon the senior employees' consent to assignment to alternative education. (See Findings 19 and 20.)

8. As set forth in the Factual Findings, the District has considered, provided a reasonable explanation for, or made corrections to seniority dates for respondents. (See Findings 11 and 12.)

9. As set forth in Factual Findings 13 and 14, the District applied the PKS Resolution skipping language only to those teachers with special education certifications who are currently using these certifications, and to those teachers whose positions require BCLAD certificates. With regard to certificated employees with necessary certifications to teach at the secondary level such that the District may maintain its current academic departments at legally required levels, the District did not skip any individuals pursuant to this section of the Resolution.

Respondents did not challenge skipping for certificated employees. There was no evidence that the District abused its discretion in doing so.

10. The District applied bumping rules with some consistency, and generally allowed bumping based upon the more senior employee holding a credential or authorization to teach the assignment of the less senior teacher. The District articulated the rationale for its bumping rules (Findings 15 through 18) and properly applied them. The District was not required to exercise tie-break criteria with respect to Ms. Klentos and Mr. Umeh. (See Finding 21.)

11. The District did not engage in over-noticing of respondents. After consideration of the 25 rescinded notices, positively assured attrition, administrators returning to the classroom, and the 22 employees reduced because of those returning from leave the number of layoff notices issued by the District was neither unreasonable nor excessive. It was well within the District's discretion to serve 235 certificated employees with preliminary layoff notices. (See Findings 23 and 24.)

12. Cause exists for the reduction of the particular kinds of services and for the reduction of full-time equivalent certificated positions at the end of the 2009-2010 school year pursuant to Education Code sections 44949 and 44955. Therefore, and except as otherwise noted above, cause exists to give respondents notice that their services will be reduced or will not be required for the ensuing 2010-2011 school year.

RECOMMENDATION

Cause exists for the reduction of 203.7 full-time equivalent certificated positions at the end of the 2009-2010 school year. After making the adjustments set forth in the Factual Findings and Legal Conclusions, notice shall be given to remaining respondents that their services will be reduced or will not be required for the ensuing school year, 2010-2011, because of the reduction and discontinuance of particular kinds of services. Notice shall be given in inverse order of seniority.

DATED: April 29, 2010

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A

**TRUSD Certificated Employees Preliminarily Notified of Layoff
and Represented by Geddes/Huguenin as of 4/13/10**

Michael	Amparo
Alison	Autrand
Lauren	Azevedo
Rosalind	Badger
Joy	Ball
Casey	Bartlett
George	Baxter
Brad	Betschart
Tanya	Beverley
Larry	Bibayoff
Brandon	Blom
Shea	Borges
Jennifer	Bourgeois
Susan	Bridge
George	Brown
Jeffrey	Brown
Sandra	Bunch
Christy	Caceres
Alicia	Caddell
Steven	Cammack
Heather	Campbell
Sean	Campbell
Stephanie	Carslake
Emily	Carter*
Tera	Carter
Mary	Castellanos
Jason	Cateriny
Daniel	Chambliss
Annie	Clark
John	Coder
Roberta	Coker
Michael	Cook
Thomas	Cope
Cynthia	Corral
Andrea	Cottrell

Tangelica	Crates
Calen	Cross
Kara	Dahl-Trujillo
Deborah	Daniels*
David	Dawson
Carl	Dixon
Daniel	Dorantes
Jennifer	Dwyer
Constance	Earley
Lynette	Echelmeier
Michael	Espino
Denise	Farinsky
Geoffrey	Flissinger
Roslyn	Franklin
H. Lanard	German
Robin	Gleeson
Jon	Glen
Diana	Gontar
Kathryn	Green
Effie	Griffith
Daniel	Grubbs
Natalie	Hamilton
Kendra	Harback
Brandi	Harris-Hodnette
Jessica	Haskins
Brett	Hatfield
Etelvina	Hernandez
Brenda	Hin
Eve	Hogerheide
Linda	Holmes- Yarbrough
Brooke	Hoppe
Jacqueline	Howard
Matthew	Huddleston
Alan	Hudson
Jessica	Huezo
Yolanda	Jimenez
Genevieve	Johnsen
Asha	Johny Warrior
Jeri Ann	Jones

Teofilo	Judal
Likah	Jugoz
De Ann	Karl
Jennifer	Kimball
Amy	King
Justin	Kleinle
Erin	Klentos
Theresa	Klier
Katherine	Kokkos
Jennifer	LaSalle
Joanne	Lawlor
Teal	LeBaron
Rebecca	Le Doux
Pakou	Lee
Mysti	Lingenfelter
Jose	Lozano
Kari	Lyons
Jan-Erik	Maher
Jolie	Martin
Shawn	Martin
John	Masters
Richard	Mau
Kathleen	McCarthy
Carrie-Anna	McCoy
Elizabeth	McCrory
Sarah	McElroy
Tessa	McGarr
Christopher	McKinnon
Barry	McLennan
Yvette	Medina
Mary	Michaelman
Sean	Millard
Donna	Miller
Miryam	
Saskia	Mills
Richard	Moses
Craig	Murray
Renee	Myers
Sean	Namanny

Jessica	Newberry
Jasmin	Patel
Joan	Pentecost
Julie	Pepper
Angela	Perron
Jason	Perry
Susan	Peyton
Thuy	Pham
Maryann	Polson
Robert	Pope
Susan	Prentice
Terry	Press-Dawson
Connie	Price
Kadhir	Rajagopal
Ron	Ranagan
Lynn	Reed, Jr.
Karen	Reid
Kristen	Reighley
Erland	Renslo
Navdeep	Riar
Randy	Roberson
Diane	Roberts
Adrienne	Ruggles
Tanya	Salazar
Kimberly	Sayler
Clay	Schubert
Richard	Sears
Thomas	Seaton
Autumn	Sharp
Megan	Sheridan
Dominic	Slavich
Kathryn	Sluis
Nichole	Smith
Sarah	Smith
Elizabeth	Spackman
Carly	Starrh
Michael	Stevens
Anna	Stinson*
Jodie	Stueve

Shannon	Summers*
Nancy	Thao
Brenda	Theisen
Dallas	Tognotti
Sara	Tolle
Rebecca	Troxler
Erin	Tucker
Victor	Umeh
Jenika	Valenchich-Sheldon
Christine	Verner
Ann	Ve
Heather	Voigt
Jacob	Walker
Jacqueline	White*
Michael	Wilder
Stacy	Wiley
Olivia	Wilkins
Amber	Williams
Beth	Williams
Lorri	Williams
Jennifer	Woo
Megan	Wooden
Heather	Wren
Maiko	Xiong
Jonathan	Young
Kristi	Zampieri*