

BEFORE THE GOVERNING BOARD  
OF THE  
REDLANDS UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force  
Involving 30 Credentialed Employees of the  
Redlands Unified School District,

Respondents.

OAH No. 2010030267

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Redlands, California, on April 6, 2010.

Todd M. Robbins, Attorney at Law, and Mark Thompson, Attorney at Law, represented the Redlands Unified School District.

Marianne Reinhold, Attorney at Law, represented 26 of the certificated employees who were served with layoff notices in this proceeding.

No appearance was made by or on behalf of Carita Dickson, Patricia Frink, Carman Peoples (who did not file a request for a hearing), or Kacy Winger (who did not file a request for a hearing).

The matter was submitted on April 6, 2010.

**FACTUAL FINDINGS**

*The Redlands Unified School District*

1. The Redlands Unified School District (RUSD or the district) is located in Redlands, California. The district serves the educational needs of the communities of

Redlands, Loma Linda, Mentone, Forest Falls and portions of San Bernardino and Highland. RUSD provides educational services from kindergarten through grade 12. The district's current enrollment slightly exceeds 21,000 students.

The district operates 15 elementary schools which serve students attending kindergarten through fifth grade. Four middle schools serve students in grades six, seven and eight. Students attending grades nine through twelve are served by three comprehensive high schools: Redlands High School, Redlands East Valley High School, and Citrus Valley High School. An alternative high school setting exists at Orangewood High School. The district also operates the Redlands Independent Study (RISE) Program.

RUSD employs approximately 1,100 certificated employees who provide services from kindergarten through grade 12, as well as other services and supports related to those students who attend traditional classes. In addition, RUSD employs other certificated persons who provide educational services through the RISE Program, although these persons are employed on an hourly basis and their hours of employment fluctuate. Persons providing services in the RISE program are usually retired school teachers and are not included in RUSD's seniority list.<sup>1</sup>

RUSD's annual budget is approximately \$155 million.

2. The district is governed by an elected five-member Board of Education (the governing board). Lori Rhodes (Superintendent Rhodes), the Superintendent of Schools, is the Board's Chief Executive Officer. Sabine Robertson-Phillips (Assistant Superintendent Robertson-Phillips) is the district's Assistant Superintendent, Human Resources, and is Superintendent Rhodes' designee in this layoff proceeding.

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<sup>1</sup> Notice is taken of RUSD's website which describes the RISE Program as an individualized instructional program with flexible scheduling that is aligned with state standards and district approved curriculum, an alternative to regular classroom instruction. According to the website, participants in the RISE program may be working full-time to support themselves or their family, may be pregnant or parenting teens, may have verifiable physical or emotional problems, may be professional athletes, musicians, models, actors, etc., or may be credit deficient. Participants in the RISE program must have the ability and motivation to participate in independent study, be working at or near grade level, have reliable transportation, have a strong support system at home, and must be responsible, self-motivated, English proficient, and have no serious learning disabilities. According to the website, in a typical RISE program, students meet with a teacher once per week, receive all their classroom instruction for a week's worth of work within their one weekly meeting time of one hour, may need to attend an additional math class and/or a science lab once per week, and may need to attend additional intervention classes (i.e., CAHSEE Review) during the week. The website states that independent study is both difficult and time-consuming.

## *The Continuing Fiscal Crisis – Economic Layoffs*

3. Proposition 13 limited the imposition of local property taxes and reduced a major source of assured revenue for funding public education in California. Since the passage of Proposition 13, public school districts have looked primarily to the State of California and to other governmental entities for funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event usually occurring in late June, but sometimes taking much longer as has recently been the case. Before then, the school district's governing board must take steps to make certain that ends meet if the worst-case financial scenario develops.

A school board's obligation to balance its budget often requires that some teachers, administrators or other certificated employees be given preliminary layoff notices, warning them that their services will not be required for the next school year. Under Education Code section 44949, these preliminary layoff notices must be given no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees and the retention of permanent employees over probationary employees and other employees with less seniority.

A public school district may deviate from the general rule requiring termination in reverse order of seniority only if it can demonstrate that identifiable junior employees possess a credential, special training or experience necessary to teach a course of study or to provide services which more senior employees do not possess.

### *The District's Response*

4. In early 2010, RUSD's governing board and administration (as well as the governing boards and administrators of most other school districts) were acutely aware of the State of California's continuing budget deficit and its crippling fiscal impact. RUSD projected a budget deficit of about \$21 million for the 2010-2011 school year. As a result of the budgetary shortfall, Superintendent Rhodes prepared a recommendation which was presented to the governing board which outlined the reduction and elimination of particular kinds of services currently being provided by certificated employees.

5. On February 23, 2010, under Education Code sections 44949 and 44955, Superintendent Rhodes recommended to the governing board that the district notify certain certificated employees that their services would not be required in the 2010-11 school year and the reason for the recommended reduction in force.

6. February 23, 2010, the governing board passed the following resolution:

**“BOARD OF EDUCATION OF THE REDLANDS UNIFIED SCHOOL DISTRICT  
REDUCTION OF PARTICULAR KINDS OF CERTIFICATED SERVICES  
RESOLUTION NO. 40, 2009-10**

WHEREAS, the Board of Education of the Redlands Unified School District has determined that it is in the best interests of the District and the welfare of the schools and the pupils thereof that the particular kinds of services set forth herein must be reduced or discontinued due to financial conditions; and

WHEREAS, it is the opinion of the Board that because of the aforementioned reason, the number of certificated employees of the District must be reduced; and

WHEREAS, this Board does not desire to reduce the services of regular certificated employees based upon reduction of average daily attendance during the past two years.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Redlands Unified School District as follows:

A. That the particular kinds of services set forth below be reduced or eliminated commencing in the 2010-2011 school year:

Elementary K-5 Teaching Services	46	F.T.E.
Counseling Services	7	F.T.E.
High School Math Teaching Services	4	F.T.E.
Educational Services Teacher on Assignment Services	4	F.T.E.
BTSA Support Provider Services	1	F.T.E.
Adult Education ESL Teaching Services	1	F.T.E.
Adult Education High School Diploma Teaching Services	1	F.T.E.
Adult Education Montero House Teaching Services	1	F.T.E.
Adult Education Counseling Services	1	F.T.E.
Adult Education Certified Nursing Assistant Instructor	1	F.T.E.
Adult Education Licensed Vocational Nursing Instructor Services	.26	F.T.E.
<b>TOTAL CERTIFICATED POSITIONS</b>	<b>67.26</b>	<b>F.T.E.</b>

B. The reduction or elimination of particular kinds of services, the corresponding number of certificated employees of the District shall be terminated pursuant to Education Code

section 44955.

- C. That the reduction of certificated staff be achieved by the termination of regular employees and not by terminating temporary and substitute employees.
- D. That "competency" as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include possession of a valid credential in the relevant subject matter area, "highly qualified" status under the No Child Left Behind Act, and an appropriate EL authorization (if required by the position).
- E. That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by Board-adopted criteria.
- F. That the District Superintendent or designee is directed to initiate layoff procedures and give appropriate notice pursuant to Education Code sections 44955 and 44949."

### *Jurisdictional Matters*

7. On and before March 15, 2010, certificated employees were given written notice that the Superintendent of Schools had recommended to the governing board that their services be terminated at the conclusion of the current school year and that those services would not be needed for the upcoming 2010-11 school year.<sup>2</sup> Each respondent was notified of the right to a hearing. Each respondent who filed a request for a hearing was thereafter served with an accusation and other required jurisdictional documents.

On April 6, 2010, the record in the administrative hearing was opened. Jurisdictional documents were presented. A written stipulation was provided, sworn testimony was given, documentary evidence was received, closing arguments were given, the record was closed, and the matter was submitted.

### *The Particular Kinds of Services*

8. The services identified in the governing board's resolution were services the governing board could properly reduce or discontinue. The reduction and elimination of those services was neither arbitrary nor capricious, and the reduction and elimination of services was a matter within the board's discretion. Before issuing preliminary layoff notices, the district's administrative staff considered all known positive attrition including resignations, retirements and probationary non-reelects to determine the number of layoff

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<sup>2</sup> The district sought fewer FTEs in this layoff proceeding than were originally authorized by the governing board as a result of positions becoming available when many certificated employees retired under a supplemental retirement plan that was recently offered.

notices that needed to be issued. No particular kinds of services were lowered to levels below those levels mandated by state or federal law.

### *The Seniority List*

9. RUSD maintained a seniority list. An employee's seniority date was based on the employee's first date of paid service with the district in a probationary position.<sup>3</sup> The list included a reference/seniority number, the employee's name, the seniority date, the employee's assignment, the credential(s) the employee held, the employee's English learner (EL) authorization, if any, and district notes related to that employee's right to "bump" a more junior employee.

In order to prepare the seniority list, Assistant Superintendent Robertson-Phillips consulted district employment records, referenced the board's resolution, referenced the board's tie-breaking criteria, and determined whether an employee's credential authorized that employee to teach certain subjects and whether the employee was "competent" within the meaning of the board's resolution. Assistant Superintendent Robertson-Phillips prepared a tie-breaking matrix by which persons having the same date of hire were ranked. Assistant Superintendent Robertson-Phillips prepared a "bump analysis" to supplement the comments regarding bumping and to establish the district's methodology in bumping.

10. There were no temporary employees or substitute employees involved in this layoff proceeding. The use of tie-breaking criteria to determine the order of layoff between employees having the same seniority date was utilized. RUSD did not skip an appropriately credentialed and NCLB highly qualified junior employee into a position that was held by a more senior employee even if the senior employee was not NCLB highly qualified; however, more senior non NCLB highly qualified employees who were subject to this layoff proceeding were not given bumping preference over more junior teachers who had attained NCLB highly qualified status.

### *Denying Bumping Preference to NCLB Highly Qualified Employees*

11. An issue in this layoff proceeding was the governing board's decision to include in its "competency" definition an employee's NCLB highly qualified status<sup>4</sup> and

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<sup>3</sup> Education Code section 44845 provides: "Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position."

<sup>4</sup> NCLB highly qualified status may be obtained in a variety of ways. For elementary school teachers, an applicant must pass a multiple subjects examination approved by the California Commission on Teacher Credentialing (CCTC) or (if the teacher is "not new" to the profession) by completing California's High Objective Uniform State Standard of Evaluation (HOUSSE). For middle school and high school teachers, core academic

the application of that status in bumping. The district's use of an employee's NCLB highly qualified status did not involve an arbitrary or capricious standard, but was an objective measure of an employee's competence. The policy that precluded a non NCLB highly qualified employee from bumping into an existing position and the granting of bumping rights to a more junior employee who attained NCLB highly qualified status involved the consideration of both seniority and competence, and the evidence established that implementation of that policy was in the best interests of the district and the students. The No Child Left Behind Act<sup>5</sup> remains the law.

The district's use of NCLB compliance in its bumping policy fell squarely within a governing board's discretion to 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.

### *Core Assignments*

12. Another issue involved whether several middle school teachers who received preliminary layoff notices held appropriate credentials and authorizations necessary to bump into positions that were being retained by more junior employees.

Most elementary schools, regardless of the grade level configuration, are organized around a self-contained classroom where all, or most, subjects are taught to the same group of children by a single teacher. Most elementary school teachers hold a Ryan Multiple Subject Teaching Credential, which permits an individual to teach multiple subjects to students in a self-contained classroom.

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competence may be established by passing a subject matter examination approved by the CCTC in each subject taught, or by coursework, i.e., in each core area taught the applicant must complete a CCTC approved subject matter program, or major, or major equivalent, (32 semester units or the equivalent) or a graduate degree, or National Board Certification in the core area, or completion of HOUSSE.

<sup>5</sup> The No Child Left Behind Act of 2001 is a United States Act of Congress that was originally proposed by the administration of President George W. Bush immediately after taking office. The bill, shepherded through the Senate by the late Senator Ted Kennedy, one of the bill's sponsors, received overwhelming bipartisan support in Congress. NCLB involved federal legislation that enacted theories of standards-based education reform, based on the belief that setting high standards and establishing measurable goals can improve individual outcomes in education. NCLB requires states to develop assessments in basic skills to be given to all students in certain grades to enable those states to receive federal funding. The Act does not assert a national achievement standard; standards are set by each individual state.

A significant provision of NCLB requires that all K-12 teachers of core content areas must demonstrate that they are 'highly qualified' by the close of the 2005-06 school year. NCLB identifies the core content areas as English/language arts, mathematics, science, geography, civics, government, economics, foreign language and the arts (music, theatre, dance and visual arts). Teachers of English language learners, special education teachers and public school teachers in programs for neglected and delinquent students who provide core content instruction must also demonstrate that they meet the 'highly qualified' standard.

Middle schools and junior high schools<sup>6</sup> provide a transition from the elementary school's self-contained classroom model to the departmentalized programs offered in high schools. As a result, middle schools and junior high schools may incorporate features not generally present at the elementary school or high school levels, and some authorizations to teach middle school are unique.

If a middle or junior high school program is arranged so that one teacher provides instruction in several subjects, it is a self-contained classroom and that middle school or junior high school teacher must have a multiple subject credential that authorizes that service. But, when a middle school or a junior high school teacher teaches just one subject to several groups of students, he or she needs to have a credential that authorizes the teaching the specific subject in a departmentalized setting.

Within the middle school and junior high school milieu, a "core assignment" exists. A core assignment is defined in Education Code section 44258.1. It involves a middle school or junior high school teacher providing instruction in a self-contained classroom where he or she teaches two or more subjects for two or more periods per day to the same group of pupils, and, in addition, teaches any of those subjects to a separate group of pupils at the same grade level for an additional period or periods, provided that the additional period or periods do not exceed one-half of the teacher's total assignment.

Most high schools have departmentalized classes. Most high school teachers hold a single subject teaching credential. With a single subject teaching credential, a teacher may teach any class within the broad single subject area listed on the credentialing document.

13. Caleb Rothe (Rothe) graduated from Cal Poly Pomona in Computer Science. Rothe took "very few" units in English and has somewhere between 20 to 30 units in Math. Rothe is a tenured RUSD employee with a seniority date of September 6, 2007. Rothe now teaches a 6<sup>th</sup> grade core assignment (two periods of Math, with the remainder in English) in a single classroom to several groups of students each day. He had a similar arrangement his first year of teaching at RUSD, when he taught 7<sup>th</sup> grade English and Social Studies in a core assignment, and in his second year of teaching at RUSD, when he taught 7<sup>th</sup> grade English and remedial English in core assignments. Rothe holds a preliminary multiple subject teaching credential and supplemental authorizations in Math and Computer Science. While he is NCLB compliant in multiple subjects, he is not NCLB compliant in the core content areas of Math or English, and he cannot, under the district's bumping criteria, bump into a single subject classroom where Math or English is taught.

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<sup>6</sup> Middle schools are defined as schools that most frequently include grades six through eight but may have any combination of grades five through eight. Junior high schools often also include grade nine.

Rothe established that he was senior to Jeffrey Martinez (Martinez), a probationary teacher with seniority date July 1, 2009, and to Jennifer Vadnais (Vadnais), a first year probationary teacher with a seniority date of August 10, 2009, each of whom teaches a single subject of Math; Rothe did not establish he enjoyed “competence” under the board’s resolution to bump into their positions. Martinez and Vadnais hold single subject teaching credentials in Math and are NCLB compliant; Rothe does not hold a single subject teaching credential and is not NCLB compliant in Math.

14. Melissa Anderson (Anderson) is a tenured RUSD employee with a seniority date of August 13, 2007. Anderson now teaches a 6<sup>th</sup> grade core assignment (Math and Science classes). While Anderson has always taught a 6<sup>th</sup> grade core assignment involving Math and Science during the traditional school year during her employment at RUSD, she also taught exit examination English during two RUSD summer school sessions. Anderson holds a multiple subject teaching credential with a special authorization in English. She has completed approximately 25 units of English. Anderson does not hold HOUSSE certification in English and while she is NCLB compliant in multiple subjects, she is not NCLB compliant in any specific academic core content area.

Anderson established that she was senior to Laura Whitehurst (Whitehurst), a probationary teacher with seniority date August 13, 2007, and that she was senior to Katie Baker (Baker), an intern with a seniority date of March 18, 2008, each of whom teaches Math in grades 9 through 12 and each of whom is being retained by RUSD. Anderson did not establish that she enjoyed sufficient “competence” under the board’s bumping criteria to move into their positions. Whitehurst and Baker hold single subject teaching credentials in English and are capable of teaching grades 9 through 12; Whitehurst and Baker are NCLB compliant by reason of passing NCLB competency examinations; Anderson does not have NCLB compliance in English and while she is authorized to teach in 9<sup>th</sup> grade English by reason of her special authorization, she is not certificated to teach English in grades 10 through 12. For each of these reasons, Anderson cannot bump into Baker and Whitehurst’s positions.

15. Margaret Jenner (Jenner) is a tenured RUSD employee with a seniority date of August 13, 2007. Anderson now teaches a 6<sup>th</sup> grade core assignment (Math and Science classes). Jenner holds HOUSSE certification in multiple subjects as a result of her vast teaching experience and as a result of having been awarded that certification by the Colton Unified School District before she applied to RUSD for employment and by RUSD during her first semester of teaching at RUSD. Jenner has completed at least 20 units of English, but not 32. She is not NCLB compliant in any area core area other than multiple subject.

Like Anderson, Jenner established that she was senior to Whitehurst and Baker. Like Anderson, Jenner could not establish that she enjoyed sufficient “competence” under the board’s bumping criteria to bump into their positions. Jenner cannot assume the positions held by Whitehurst or Baker for all these reasons Anderson cannot bump into those positions.

## *The Layoff Procedure*

16. The governing board resolved to reduce and discontinue particular kinds of services provided by RUSD teachers and other certificated employees. This decision was not related to the competency or dedication of the employees whose services were proposed to be discontinued.

The district's administrative staff initiated and followed a systematic procedure for identifying employees directly affected by the governing board's reduction and elimination of particular kinds of services. Careful evaluation of each employee's seniority date, credential, qualifications and competence under the board's bumping criteria preceded the determination of what bumping rights, if any, an employee had.

The determination that non-NCLB employees should not be allowed to bump less senior NCLB compliant teachers in filling a vacant position was lawful, reasonable and in the best interest of the district and its students. Likewise, the determination that employees without proper authorization should not be permitted to teach a departmentalized subject was lawful, reasonable and in the best interest of the district and its students.

No junior credentialed employee was retained by the district to provide services which a more senior employee was certificated, competent and qualified to render.

## LEGAL CONCLUSIONS

### *Statutory Authority*

1. Education Code section 44944 provides in part:

“No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year . . . the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor . . .

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year . . . If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing . . .

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with . . . the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

. . .

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. . . .”

2. Education Code section 44955 provides in part:

“(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary . . . 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.

. . .

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof . . .

. . .

(c) Notice of such termination of services shall be given before the 15th of May . . . and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess. . . .”

### *Jurisdiction*

3. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to all respondent employees who were identified in Exhibit 1 to the accusation.

### *The Reduction of Particular Kinds of Services*

4. A school board's decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. Where a governing board determines to discontinue or reduce a particular kind of service, it is within the discretion of the board to determine the amount by which it will reduce a particular kind of service as long as a district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.)

### *Competence*

5. The intent of the Education Code is to leave to a school board the discretion of determining whether in addition to possessing seniority an employee is also "certificated and competent" to be employed in a vacant position. The term "competent" in this regard relates to an individual's specific skills or qualifications including academic background, training, credentials, and experience, but does not include evidence related to on-the-job performance. (*Forker v. Board of Trustees* (1984) 160 Cal.App.3d 13, 18-19.) In addition to seniority, the only limitation in placing a teacher in a vacant position is that the teacher selected be "certificated and competent" to render the service required by the vacant position. Among employees who meet this threshold limitation, there is no room in the statutory scheme for comparative evaluation. (*Martin v. Kentfield School Dist.* (1983) 35 Cal.3d 294, 299.) An employee holding a special credential or needed skill, if such credentials or competence are not shared by a more senior employee, may be retained though it results in termination of a senior employee. (*Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 655.)

### *Seniority and Bumping*

6. Education Code section 44955, the economic layoff statute, provides in subdivision (b), in part, as follows: "Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while . . . any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." Essentially this language provides "bumping" rights for senior certificated and competent employees and "skipping" authority allowing a school district to retain junior employees who are certificated and competent to render services which more senior employees are not. Subdivision (d)(1) of section 44955

provides an exception to subdivision (b) where a district demonstrates specific need for personnel to teach a specific course of study and that a junior certificated employee has special training and experience necessary to teach that course that the senior certificated employee does not possess. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 134-135.)

7. The district has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.*, *supra*, at 136-137.)

8. The district's competency standard related to NCLB compliance as applied to bumping was reasonable and its identification of persons subject to layoff and retention in this proceeding was in accordance with the provisions of the Education Code.

### *The RISE Program*

9. Assistant Superintendent Robertson-Phillips' testimony established that RUSD treats RISE certificated employees in the same fashion as temporary teachers are treated – the employees may be hired and dismissed without the formalities required for probationary and permanent employees and their continuing employment status is dependent upon the continuation of the RISE program. Since these temporary employees are not RUSD probationary employees (indeed, most RISE employees are retired teachers), their service does not count toward their acquisition of permanent status. RISE employees are not included in the district's seniority list. A Vice Principal in charge of the RISE program, rather than Assistant Superintendent Robertson-Phillips, hired these individuals and scheduled their services as necessary. Assistant Superintendent Robertson-Phillips testified that while the RISE program was not a categorically funded project, it is far more likely than not that the RISE program conducted under a contract with a private or public agency; there was no evidence to the contrary. Thus, the RUSD was authorized to employ these persons on a temporary basis under Education Code section 44909.<sup>7</sup>

10. The Education Code's complex and somewhat rigid classification scheme is intended to limit rather than to enlarge the power of school districts to classify teachers as temporary employees. The statutory scheme represents the delicate balancing necessary to accommodate students' need for education, teachers' need for job security, and school boards' need for flexibility in evaluating and hiring employees. The Legislature has restricted the flexibility of a school district in the continued use of temporary employees to prevent the benefits resulting from employment security for teachers to the district's

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<sup>7</sup> Education Code section 44852 provides: "Nothing in this code shall be construed as prohibiting the employment of persons in positions requiring certification qualifications for less than a full school year in temporary schools or classes."

administrative needs of a district. The Legislature has prevented the arbitrary dismissal of employees with positions of a settled and continuing nature, i.e., permanent and probationary teachers, by requiring notice and hearing before termination. Substitute and temporary teachers, on the other hand, fill the short range needs of a school district and may be summarily released absent an infringement of constitutional or contractual rights. Because the substitute and temporary classifications are not guaranteed procedural due process by statute, they are narrowly defined by the Legislature, and should be strictly interpreted. (*Bakersfield Elementary Teachers Ass'n v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1280-1281.)

11. This layoff proceeding does not have jurisdiction over RISE employees and does not authorize any respondent in this layoff proceeding to assume the temporary employment of a RISE employee. If any respondent to this proceeding believes that the district's operation of the RISE program involves an unfair labor practice, a right to redress may exist in some venue other than before the Office of Administrative Hearings and in something other than a layoff proceeding. The remedy for an alleged unfair labor practice does not require, as was suggested in this matter, the invalidation of this proceeding and the restoration of all respondents' employment with RUSD.

#### *Cause Exists to Give Notice to Certain Employees*

12. As a result of the governing board's lawful reduction of particular kinds of service, cause exists under the Education Code for the district to give notice to those respondents who are identified hereafter that their employment will be terminated at the close of the current school year and that their services will not be needed by the district for the 2010-11 school year.

#### *Determination*

13. The charges set forth in the accusation were sustained by the preponderance of the evidence and were related to the welfare of the Redlands Unified School District and the pupils thereof. RUSD's administrative staff made necessary assignments and reassignments in such a manner that the most senior employees were retained to render services which their seniority and qualifications entitled them to render. No employee with less seniority than any respondent will be retained to render a service which any respondent is certificated, competent and qualified to render.

This determination is based on all factual findings and on all legal conclusions.

## RECOMMENDATION

It is recommended that the governing board give notice to the following persons that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2010-2011 school year: Melissa Anderson, Claudia Brown, Carly Burrows, Lisa Cohen, Hilary Craw, Raylene Crawley, Sara Desist, Carita Dickson, Danielle Elgan, Michael Falgout, Scott Ferguson, Patricia Frink, Andrea Haendiges, Margaret Jenner, Jennifer Martinez, Yolanda Martinez, John Mendoza, Elaine Pahia, Carman Peoples, Theodore Perkins, Georgina Pinto, Patricia Ramirez, Caleb Rothe, Janell Searle, Lindsey Sexton, Megan Spring, Nicole Steinhaus, Heather Stinson, Benjamin Washburn, and Kacy Winger.

DATED: \_\_\_\_\_

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JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings