

BEFORE THE
GOVERNING BOARD OF THE
MADERA UNIFIED SCHOOL DISTRICT

In the Matter of the Employment Status of:

TRACEY ALEMAN, et al.,

Respondents.

OAH No. 2010040213

PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Madera, California, on May 12 and 13, 2010.

Kevin R. Dale, Attorney at law,¹ represented the complainant, John R. Stafford, Superintendent, Madera Unified School District.

Joshua F. Richtel, Attorney at Law,² represented the respondents who are not in administrative positions. There are 76 respondents who are not in administrative positions, and they are listed in exhibit A.

John H. Hamilton, Owner of Kelley & Associates,³ represented the respondents who are in administrative positions. There are three respondents who are in administrative positions, and they are listed in exhibit B.

The record was held open to permit the parties to file briefs. Mr. Dale's brief was received and marked as C 18 for identification. Mr. Dale also submitted a Declaration of Jerry Stehman, which was marked as C 19 for identification. Mr. Richtel's brief was received and marked as R 7 for identification. Mr. Hamilton's brief was received and marked as R 8 for identification.

This matter originally was set to be heard on May 12 and 13, 2010. By an order dated April 15, 2010, a continuance was granted pursuant to Government Code section 11524. The continuance was for a period of 23 days. Pursuant to Education Code section 44949,

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subdivision (e),⁴ the dates prescribed in Code section 44949, subdivision (c), and in Code section 44955, subdivision (c), shall be extended. The time for submitting the proposed decision to the governing board and the employees is extended to May 30, 2010. The date before which notices of termination must be given is extended. Those notices must be given before the 7th of June, 2010.

FACTUAL FINDINGS

IN MARCH, WITH REGARD TO NINE EMPLOYEES, THE SUPERINTENDENT FAILED TO FOLLOW THE USUAL PROCEDURE FOR RECOMMENDING TO THE GOVERNING BOARD THAT THE EMPLOYEES BE SENT TERMINATION NOTICES IN MAY.

1. Code sections 44949 and 44955, provide for two notices to be given in connection with terminating an employee. The first notice is given by the superintendent and must be given by March 15. In the March notice, the superintendent makes a recommendation that certain employees be sent termination notices in May. The superintendent gives notice of that recommendation to those employees *and to the governing board*. That notice will be referred to as the Superintendent's Layoff Recommendation. There is no requirement that a governing board take any action in March. But while it is unnecessary, governing boards usually adopt a resolution ratifying the superintendent's recommendation.

2. The second notice is a notice of a governing board's decision to terminate an employee. That notice is provided for in Code section 44955 and must be given before May 15.

3. By a letter dated March 9, 2010, the Superintendent of the Madera Unified School District recommended to the governing board that termination notices be sent in May to 115 certificated employees who provide services in 114 positions. The recommendation concerned 113 full-time employees and two part-time employees. The recommendation identified the 115 employees by name and stated the reason for the recommendation.

4. While it was unnecessary for the board to take any action in March, the board, on March 9, 2010, adopted a resolution ratifying the superintendent's recommendation.

5. On March 15, 2010, Jerry Stehman, Director of Human Resources and Labor Relations for the Madera Unified School District, drafted a letter for the superintendent to send to the board. The letter was an amendment to the superintendent's March 9, 2010, recommendation. The March 15, 2010, letter recommended to the governing board that termination notices be sent in May to an additional nine certificated employees. The

⁴ All references to the Code are to the Education Code unless otherwise specified.

recommendation identified the nine additional employees by name and stated the reason for the recommendation.

6. The superintendent, however, did not, as is required by Code section 44949, subdivision (a), actually give that amended recommendation to the board.

7. Complainant contends that the superintendent, in effect, did give the amended recommendation to the board. The superintendent is the secretary of the board. Mr. Stehman gave the amended recommendation to the superintendent on March 15, 2010. Complainant contends that Mr. Stehman acted as the superintendent's designee and delivered the March 15, 2010, recommendation to the board by delivering it to the board's secretary – the superintendent.

8. No later than March 15, 2010, the superintendent sent the Superintendent's Layoff Recommendation to all 124 of the certificated employees – the 115 in the original recommendation and the nine additional employees in the amended recommendation. (There is an issue as to whether two of those notices were addressed correctly.)

9. The superintendent acted in two capacities and, in effect, gave the amended recommendation to himself. That certainly was a curious way to proceed. Nevertheless, it is found that the nine additional employees did not suffer any prejudice as a result of the superintendent's proceeding that way.

A BOARD IS REQUIRED TO ARRIVE AT AN OPINION REGARDING A NEED TO REDUCE SERVICES. BUT A BOARD IS REQUIRED TO ARRIVE AT SUCH AN OPINION ONLY IN CONNECTION WITH SENDING TERMINATION NOTICES BEFORE MAY 15. THERE IS NO REQUIREMENT THAT A BOARD TAKE ANY ACTION IN MARCH.

10. A governing board may terminate the services of certificated employees pursuant to Code section 44955 only in the very limited circumstances that are specified in subdivision (b) of that section. One circumstance is “whenever a particular kind of service is to be reduced or discontinued . . . and when *in the opinion of the governing board* of the district it shall have become necessary by reason of [that condition] to decrease the number of permanent employees in the district . . .” [Italics added.] But it is not necessary for the governing board to have any opinion about these matters in March. A governing board is not required to take any action in March. The superintendent is to make a recommendation in March. The governing board must deal with the matter before May 15.

11. While it is unnecessary for a governing board to deal with these matters before mid-May, governing boards usually adopt a resolution in March resolving to reduced or discontinue services and identifying the particular kinds of services to be reduced or discontinued.

12. In a resolution of March 9, 2010, the governing board of the Madera Unified School District resolved to reduce or discontinue services provided by the equivalent of 114 full-time permanent or probationary employees (FTE). The board identified the services as follows:

Classroom Instructional Services

Multiple Subject Teaching Services (Grades K-8)	69
Physical Education Specialist (Grades 4-8)	2
Elementary Music Teaching Services	1
9 TH Grade Class Size Reduction – Mathematics	4
Work Experience/Occupation Ed Teacher (Grades 9-12)	1
Business Teaching Services (Grades 9-12)	2
Industrial Technology (Grades 9-12)	2

Alternative Education Instructional Services

Adult Education Teachers	12
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Counselor Positions

School Counselor (Grades 7-12)	6
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Non-Classroom Positions

Nurse	2
Middle School Librarian	1
Psychologist	1

Administrators

Principal	1
Vice Principals	8
Coordinator Teacher Support	1

13. The superintendent subsequently concluded that additional services should be reduced or discontinued. Nothing precludes the superintendent's making a recommendation that additional services should be reduced or discontinued. As explained above, there is no requirement that a board arrive at an opinion regarding the need to reduce services until sometime in May. A board must arrive at that opinion before it decides, pursuant to Code section 44955, to send notices of termination. But a board may do that so long as it acts before the 15th of May. In the present case, because of the extension, the board must act before the 7th of June, 2010.

STIPULATION TO RESCIND

14. The district stipulates to rescind the Superintendent's Layoff Recommendation as to the following 25 non-administrative employees:

MS. ALEMAN	TRACEY
MS. BRATCHER	MARISA
MS. CANO	MARILU
MS. CERVANTES	MIRNA
MS. CHILDERS	DORA Z
MR. CODY	QUINN
MS. DOMOTO	JAMIE AKEMI
MS. DORADO	MARIA A
MS. HAGIHARA	LORETTA
MR. HERNANDEZ	JACOB
MS. HOWARD	MARISSA
MS. JAQUITH	LORA LEE
MS. JEFFERSON	RHONDA KAYE
MS. KEENAN	ELIZABETH M
MS. KUHN	KATHIE MAY
MS. LINDSAY	ANGELA L
MS. LOPEZ	ELIDA
MS. MATTHEWS	ELIZABETH
MS. NIEVES	SANDRA
MS. RUIZ	ALICIA
MS. STANFORD	MARICELA
MR. STOCKTON	RICHARD
MR. VALDIVIA	JUAN JOSE
MR. VALMONTE	VERNON
MS. ZENDEJAS	GLORIA VIOLETA

GENERAL FINDINGS CONCERNING STATUTORY REQUIREMENTS

15. Respondents are certificated employees.

16. Not later than March 15, 2010, in accordance with Code sections 44949 and 44955, the superintendent of the school district caused the respondents – other than Sarah White and Thom Holt – to be notified in writing that it was recommended that respondents be notified that the district would not require their services for the ensuing school year. The notice stated the reasons for the recommendation. The recommendation was not related to respondents' competency.

17. A notice was delivered to each respondent – other than Sarah White and Thom Holt – either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to respondent's last known address.

18. The notice advised each respondent – other than Sarah White and Thom Holt – of the following: He or she had a right to a hearing. In order to obtain a hearing, he or she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by a specified date, which was a date that was not less than seven days after the notice of termination was served.⁵ And the failure to request a hearing would constitute a waiver of the right to a hearing.

19. Respondents timely filed written requests for a hearing to determine whether there was cause for not reemploying them for the ensuing year. An accusation was timely served on respondents. Respondents were given notice that, if they were going to request a hearing, they were required to file a notice of defense within five days after being served with the accusation.⁶ Respondents filed timely notices of defense. All prehearing jurisdictional requirements were met.

20. The governing board of the district resolved to reduce or discontinue particular kinds of services. Within the meaning of Code section 44955, the services are "particular kinds of services" that can be reduced or discontinued. The decision to reduce or discontinue these services was not arbitrary or capricious but constituted a proper exercise of discretion.

⁵ Employees must be given at least seven days in which to file a request for a hearing. Education Code section 44949, subdivision (b), provides that the final date for filing a request for a hearing "shall not be less than seven days after the date on which the notice is served upon the employee."

⁶ Pursuant to Government Code section 11506, a party on whom an accusation is served must file a notice of defense in order to obtain a hearing. Education Code section 44949, subdivision (c)(1), provides that, in teacher termination cases, the notice of defense must be filed within five days after service of the accusation.

DISTRICT'S INTENTION TO DEVIATE FROM SENIORITY (SKIPPING)

21. Pursuant to Code section 44955, subdivision (d)(1), the governing board of the district resolved to deviate from terminating employees in the order of seniority. The board established skipping criteria as follows:

WHEREAS, Education Code section 44955 authorizes the District to deviate from terminating certificated employees in order of seniority where the District demonstrates a specific need for personnel to teach a specific course or courses 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; and,

WHEREAS, this Board has determined that due to a significant population of English language learner students with specialized educational needs, a specific and compelling need exists to employ and retain certificated employees who have authorization to teach English Learner (“EL”) students, as determined by the California Commission on Teacher Credentialing, and the special training and experience that comes therewith; and,

WHEREAS, Education Code section 44955(d) authorizes this Board to deviate from terminating a certificated employee in order of seniority for the above reason, if necessary; and,

WHEREAS, State law mandates that each failure to staff a classroom containing one or more EL students with a certificated employee possessing an appropriate EL authorization is a “misassignment” subject to sanction by the County Superintendent of Schools; and,

WHEREAS, compliance with the provisions of the No Child Left Behind Act (“NCLB”) and the Williams Settlement require that EL students be served by certificated employees with appropriate EL authorizations; and,

WHEREAS, during the 2009-2010 school year the District was notified that it did not meet the Annual Measurable Achievement Objectives (“AMAO’s”) for EL Students for two consecutive years, therefore, the District was required to inform

the parents of all EL Students that the AMAO's had not been met; if the District fails to meet the AMAO's for two consecutive years it must develop an improvement plan addendum (IPA) that will ensure that the AMAO's are met; the IPA will address the factors that prevented the District from achieving the AMAO's; and further sanctions may include California Department of Education notification, modification of curriculum, program, and method of instruction, and state reconsideration of whether the District will continue to receive related funding; and,

WHEREAS, the needs of the District and the students thereof should not and cannot be adequately served by concentrating EL students in particular classrooms in such a manner as to lessen the need for certificated employees with EL authorizations; and,

WHEREAS, in order for an employee to be eligible for reassignment to a position held by an employee with less seniority, the senior employee must be both credentialed and competent to render the service currently being performed by the junior employee pursuant to Education Code sections 44955, 44956, and 44957 and the competency criteria set forth herein.

That due to the need of the District to hire and retain only teachers who possess necessary authorization to teach English Learner students, the Superintendent and/or designee is authorized to deviate from terminating certificated employees in order of seniority ("skipping") where the less senior employee possesses a properly filed CLAD, BCLAD, SDAIE, or regular (non-emergency) EL authorization valid for the 2010-2011 school year which authorizes instruction to EL students, and the more senior employee does not possess such authorization.

That due to the need of the District to hire and retain only highly qualified teachers, the Superintendent and/or designee is authorized to deviate from terminating certificated employees in order of seniority ("skipping") where the less senior employee possesses Highly Qualified status under NCLB in the relevant subject matter, and the more senior employee does not possess such status.

USE OF TIE-BREAKING CRITERIA BASED ON THE CURRENT NEEDS OF THE DISTRICT AND STUDENTS

22. Pursuant to Code section 44955, subdivision (b), the governing board of the district established criteria for determining the order of termination as between employees who first rendered paid service on the same day. These criteria are listed in priority order, and each criterion shall be used only if the preceding criteria do not determine the order of termination. The tie-breaking criteria are as follows:

- a. Possession of a currently valid and properly filed regular credential (clear, professional clear, or preliminary)
- b. The certificated employee is “Highly Qualified” within the meaning of the No Child Left Behind Act.
- c. Possession of a currently valid and properly filed BCLAD certificate.
- d. Possession of a currently valid and properly filed CLAD, SDAIE, or regular (non-emergency) EL authorization valid for the 2010-2011 school year which authorizes instruction to EL students.
- e. The certificated employee whose currently valid and properly filed credentials authorize a broader scope of service. (This tie-breaker is to be repeated as applicable.)
- f. Possession of a Master’s Degree
- g. The certificated employee holding the highest current placement on the salary schedule. (This tie-breaker is to be repeated as applicable.)
- h. If a tie still exists after application of criteria a. to g., the tie shall be broken by lot. Numbers shall be drawn with the lowest number drawn winning the tie and continuing until all remaining tied individuals are ranked in order.

23. Application of the tie-breaking criteria resulted in determining the order of termination solely on the basis of the needs of the district and the students thereof.

RIGHT TO BE RETAINED ACCORDING TO SENIORITY AND QUALIFICATIONS – BUMPING

24. The second paragraph of section 44955, subdivision (c), does not add to teachers’ seniority rights. It does, however, make it clear that governing boards must make assignments in such a way as to protect seniority rights. Employees must be retained to render any service their *seniority* and qualifications entitle them to render.

25. Thus, if a senior teacher whose regular assignment is being eliminated is certificated and competent to teach a junior teacher’s courses, the district must retain the senior teacher to render that service. This is commonly referred to as bumping. The district must either reassign or terminate the junior employee.

26. The board adopted competency criteria for bumping as follows:

For purposes of implementing this Resolution, a more senior employee is defined as competent for reassignment into a position currently held by a more junior employee if he or she currently possesses a clear or preliminary credential and Highly Qualified status under NCLB in the relevant subject matter, and possesses a properly filed CLAD, BCLAD, SDAIE, or regular (non-emergency) EL authorization valid for the 2010-2011 school year which authorizes instruction to EL students.

MR. MILLER, AN ADMINISTRATOR

27. Darren Miller is a middle school principal. Employees serve in administrative positions at the pleasure of the governing board. The district, as it has a right to do, is releasing Mr. Miller from his administrative position; the district gave him a notice pursuant to Code section 44951. Mr. Miller is classified as a permanent, classroom teacher. He is certificated to be a school counselor. He has a right to be transferred into a counselor position.

28. The superintendent also gave Mr. Miller a Superintendent's Layoff Recommendation.

29. The board adopted a special competency criterion concerning counselors. It provides that, in order to be eligible for reassignment to a counselor's position held by a less senior employee one must have had at least one year of experience as a counselor within the past three years. The resolution is as follows:

In order for an employee to be eligible for reassignment to a Counselor . . . position *held by an employee with less seniority*, the senior employee must be . . . competent to render the service currently being performed by the junior employee. For purposes of implementing this Resolution, a more senior employee is defined as competent for reassignment into a Counselor . . . position currently held by a more junior employee, if he or she . . . has at least one (1) year of experience within the preceding three (3) years serving in the assignment. [Italics added.]

30. The district may not apply this criterion so as to deny Mr. Miller his right to be transferred to a teaching position.

31. The Code is not comprehensive concerning an administrator's right to a transfer, but there are a few relevant provisions.

32. Code section 44896 provides that, when a district transfers an administrator to a teaching position, he or she may request a written statement of reasons, and the governing board is required to provide a statement. There is an additional requirement if the reasons include incompetence.

33. Code section 44897 provides that, generally, an administrator who completes a probationary period shall become a permanent employee classified as a classroom teacher. Thus, generally, a person released from his or her administrative position after two years as an administrator would have a right to be transferred to a classroom teacher position.

34. Code section 44898 concerns the circumstances under which an administrator with a four-year term has a right to be classified as permanent and as a classroom teacher.

35. Code section 44899 concerns administrators who are employed by more than one district.

36. Code section 44951 requires a district to continue an administrator in his or her administrative position unless, no later than March 15, the district gives a notice that he or she may be released from the position. There is a reference to Code section 44955. If an administrative position is being discontinued, notice is to be given pursuant to section 44949.

37. Code section 44956.5 applies to anyone initially employed in an administrative position on or after July 1, 1983, and who subsequently is transferred to a teaching position. The time one spent in the administrative position does not count toward seniority for purposes of layoff pursuant to Code section 44955 or reappointment pursuant to Code section 44956. There is an exception for site administrators, who can earn a maximum of three years of seniority.

38. Thus, while the Code is not comprehensive concerning an administrator's right to a transfer, it is clear that administrators have rights.

39. There are two reasons the district may not apply the board's criterion so as to deny Mr. Miller his right to be transferred. The first reason has to do with appropriate standards for judging competency. There is no doubt that an administrator has no right to be transferred to a position for which he or she is not competent. But what standards are appropriate for judging competency with regard to such a transfer? The Code does not provide for a competency test regarding the transfer of an administrator. The Code expressly requires a demonstration of competency regarding other matters. For example, Code section 44955, subdivision (b), provides that senior teachers have a right to be retained to render services they are certificated and *competent* to render. Code section 44955, subdivision (c), second paragraph, provides for bumping with regard to services one's seniority and *qualifications* entitle one to render. And Code section 44956, subdivision (a)(1), provides for reappointment rights regarding services one is certificated and *competent* to render. But the Code does not address competency with regard to a transfer from an administrative position to a teaching position.

40. The board's competency criterion has an unacceptable consequence for anyone who serves three years as an administrator. It deprives him or her of the benefit of having earned a permanent classification as a classroom teacher, and it does that without any inquiry into his or her actual competency. The district could have inquired into Mr. Miller's competency from various perspectives and on various levels. It may not, however, refuse to transfer him just because he has been an administrator for three years.

41. The right to be transferred to a classroom position and the matter of how much seniority one can earn as an administrator are discrete. Nevertheless, Code section 44956.5 tends to support a determination that the board's competency criterion has an unacceptable consequence. It is unlikely that the Legislature intended that someone who has earned seniority through serving three years as an administrator can be deprived of an opportunity to benefit from it merely because of having served three years as an administrator.

42. The second reason the district may not apply the board's criterion so as to deny Mr. Miller his right to be transferred has to do with the narrow scope of the board's resolution. The resolution has a very limited reach. It concerns bumping into a "*position held by an employee with less seniority.*" But Mr. Miller's right to a transfer does not involve bumping. If as is occurring in this case, there are also Code section 44949 recommendations for workforce reduction, bumping might come into play in a subsequent step in the process. But the *transfer* from the administrative position to a classroom position is just that – a transfer. If the district has a vacancy, it can transfer the administrator into the vacancy. If there is no vacancy, the district may create a position or transfer the administrator into an existing position and reassign the teacher who held it. Teachers do not have a right to a particular assignment.

43. Bumping is derived from Code section 44955, subdivision (c), second paragraph, and is available in certain circumstances in a workforce reduction. The Code sections concerning an administrator's right to be transferred make no provision for bumping. Consider the following: A district gives an administrator a release notice pursuant to Code section 44951 but does not give anyone a Superintendent's Layoff Recommendation pursuant to Code sections 44949 and 44955. The district must transfer the administrator to a classroom position. In doing that, the district may make some reassignments; teachers have no right to a particular assignment. But the district cannot terminate some other teacher. There is no bumping involved.

44. The district must transfer Mr. Miller to a counselor position. He is a site administrator and has a seniority date of July 23, 2007. Because of Code section 44956.5, he cannot earn more than three years of seniority as an administrator. Therefore, he will earn no seniority between July 23, 2010, and the beginning of his service in the 2010 – 2011 school year. During that period, his effective seniority date must be adjusted day to day.

THE DISTRICT PLANS TO DISCONTINUE SIX COUNSELOR POSITIONS

45. In the Board's March 9, 2010, resolution, the board resolved to discontinue six FTE counselor positions. The six most junior counselors are:

Melissa Cato
Julia Lomas
Jenifer Heck
Sara Bonilla
Veronica Garcia
Sylvia Prado

46. The district may send a May notice of termination to those six counselors.

47. According to the district's seniority list, Veronica Garcia and Sylvia Prado share a date of hire of July 28, 2008. The district did not apply tie-breaking criteria to rank them for relative rights regarding the order of termination and reinstatement.

48. According to the district's seniority list, the other four share a date of hire of July 30, 2007. The district applied tie-breaking criteria and ranked them for relative rights regarding the order of termination and reinstatement. After applying tie-breaking criteria, the district ranked them, with Ms. Cato being deemed the most senior, as follows:

Melissa Cato
Julia Lomas
Jenifer Heck
Sara Bonilla

49. Each of those six counselors contends that the district has an incorrect date of hire for her and, therefore, an incorrect determination regarding her seniority. Even if they are correct, the errors can have no effect on the district's right to terminate them because the changes they say should be made would not cause any of them to be more senior than Mr. Miller and Sarah White, counselors who are senior to the six.

50. The relative seniority of the six, among themselves, may affect rights to reinstatement, but that is beyond the scope of this proceeding.

51. The superintendent gave a Superintendent's Layoff Recommendation to the more senior counselors, Mr. Miller and Ms. White. Those notices must be rescinded.

ADMINISTRATORS GROW AND FOWLER

52. Jay Fowler resigned.

53. The district stipulates that it will rescind the Superintendent's Layoff Recommendation regarding John Grow and transfer him to a special education teaching position. Mr. Grow agrees to accept that position.

THE SUPERINTENDENT FAILED TO PROVIDE NOTICE TO WHITE AND HOLT

54. Both Sarah White and Thom Holt filed notices of change of address with the district on the form the district provided. The superintendent, however, sent Superintendent's Layoff Recommendations to them at their former addresses. Ms. White testified that she did not receive the notice by March 15, 2010, and Mr. Holt testified that he did not receive it by that date. The notices that were not properly given to them must be rescinded. (In Mr. Dale's brief, he, on behalf of the complainant, acknowledged that the notice was not properly given to Ms. White or Mr. Holt and that those notices must be rescinded.)

CORRECTIONS IN SENIORITY DATES BECAUSE OF REQUIRED TRAINING FOR WHICH TEACHERS WERE PAID

55. Miriam Singleton and Amy Cary-Park Smith were required to attend High Points training regarding the curricula they were hired to teach. The training began on July 10, 2006, and continued for five days. They were paid to attend. It is found that their first day of paid service as probationary employees was July 10, 2006. That is their date of hire for purposes of seniority.

56. Four teachers were required to attend three days of staff development training in connection with the opening of Cesar Chavez Elementary School. The training began on August 7, 2006. They were paid to attend. It is found that their first day of paid service as probationary employees was August 7, 2006. That is their date of hire for purposes of seniority. The four are:

Sarah Barr
Emily Jones Catron
Jacob Hernandez
Stephen Jaquith

FINDINGS REGARDING OTHER MATTERS

57. Shannon Lancaster was sent a Superintendent's Layoff Recommendation. She did not request a hearing and is not a respondent. She is senior to Ryan Philip and certificated and competent to render the service Mr. Philip renders. Ms. Lancaster may bump into Mr. Philip's position, and the district may send a May notice of termination to Mr. Philip.

58. Kathie Kuhn was sent a Superintendent's Layoff Recommendation, and she is a respondent. She is senior to Theresa MacEacheron and certificated and competent to render the service Ms. MacEacheron renders. Ms. Kuhn may bump into Ms. MacEacheron's position, and the district may send a May notice of termination to Ms. MacEacheron.

59. Angela Lindsay was sent a Superintendent's Layoff Recommendation, and she is a respondent. She is senior to Thom Holt and certificated and competent to render the service Mr. Holt renders. Ms. Lindsay may bump into Mr. Holt's position. The district, however, may not send a May notice of termination to Mr. Holt because, as noted above, the superintendent failed to give Mr. Holt a Superintendent's Layoff Recommendation. There was no evidence that Mr. Holt will be rendering a service that a more senior employee who is being terminated is certificated and competent to render. If that is the case, however, the most senior employee who is certificated and competent to render the service must also be retained.

60. Blanca Bishop is senior to a number of teachers who are being retained to teach subjects she is credentialed to teach. All of those teachers, however, possess "highly qualified" status under No Child Left Behind, but Ms. Bishop does not. The district demonstrated a specific need for personnel to teach that course of study; demonstrated that teachers junior to Ms. Bishop have special training and experience necessary to teach that course of study; and demonstrated that Ms. Bishop, in spite of being more senior, does not possess that special training and experience. The district may skip the junior teachers and, unless Ms. Bishop has a right to bump into a position held by a junior teacher, send a May termination notice to Ms. Bishop.

61. Heidi Rochin is an academic coach. Ms. Bishop is senior to Ms. Rochin, has worked as an academic coach, and contends that she has a right to bump into Ms. Rochin's position. Ms. Rochin possesses "highly qualified" status in the relevant subject matter under No Child Left Behind. Ms. Bishop does not. It is found that Ms. Bishop does not meet the district's competency criteria for bumping into Ms. Rochin's position.

62. Cynthia Grimaldo is senior to a number of teachers who are being retained to teach subjects she is credentialed to teach. All of those teachers, however, possess authorizations to teach students who are English language learners, but Ms. Grimaldo does not. Ms. Grimaldo teaches at Sierra Vista Elementary School. In the current year, 18 of her students are English language learners. The district demonstrated a specific need for personnel to teach English language learners; demonstrated that teachers junior to Ms. Grimaldo have special training and experience necessary to teach that course or course of study; and demonstrated that Ms. Grimaldo, in spite of being more senior, does not possess that special training and experience. The district may skip the junior teachers and, unless Ms. Grimaldo has a right to bump into a position held by a junior teacher, send a May termination notice to Ms. Grimaldo.

63. In the Board's March 9, 2010, resolution, the board resolved to discontinue one FTE elementary music teaching position. Sarah Ausley is junior to Sheldon Horn. Ms. Ausley holds an authorization to teach English language learners. Mr. Horn does not. The district will continue to have one FTE elementary music teaching position and proposes to skip Ms. Ausley and terminate Mr. Horn. The remaining position involves classes at Alpha Elementary School and Cesar Chavez Elementary School. There are numerous English language learners at both schools in each class. The district demonstrated a specific need for

personnel to teach English language learners; demonstrated that Ms. Ausley has special training and experience necessary to teach that course or course of study; and demonstrated that Mr. Horn, in spite of being more senior, does not possess that special training and experience. The district may skip Ms. Ausley and send a May termination notice to Mr. Horn.

64. The district may send a May notice of termination to Jennifer Showalter, a nurse.

65. The district may send a May notice of termination to Jeffery Vogt, a librarian.

MULTIPLE SUBJECT TEACHING SERVICES K-8

66. The board resolved to discontinue 69 FTE of positions for employees with multiple subject K through 8 credentials. After the stipulation to rescind, the district continues to seek to terminate 37 respondents who hold multiple subject credentials. Those teachers are identified in exhibit C1 under the heading “Employees District is Seeking to Lay Off.” On that list, the district did not include employees who did not request a hearing and are not respondents. There are ten teachers with multiple subject credentials who did not request a hearing, who have no right to bump into another position, and who are junior to some or all of the 37 respondents. Those ten teachers are:

Stephanie Slenders
Monique Atherton
Brynn Burger
Jene Shipman
Amy Mercer
Elena Montano
Marissa Dunlap
Elizabeth Sanchez
Patrick Johnson
Stacy Waldren

67. The district may send May notices of termination to the 37 respondents on the list of “Employees District is Seeking to Lay Off.” However, the district may not terminate any of the 37 while retaining an employee with less seniority to render a service the more senior employee is certificated and competent to render.

SUMMARY OF FINDINGS REGARDING RETENTION OF EMPLOYEES

68. With regard to respondents who are permanent employees, the district is not retaining any probationary employee to render a service that such a respondent is certificated and competent to render.

69. With regard to respondents who are permanent employees, the district is not retaining any employee with less seniority than such a respondent has to render a service that the respondent is certificated and competent to render.⁷

70. With regard to respondents who are either permanent or probationary employees, the district is not retaining any employee with less seniority than such a respondent has to render a service that the respondent's qualifications entitle him or her to render.⁸

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Code sections 44949 and 44955. Except as to Sarah White and Thom Holt, all notice and jurisdictional requirements contained in those sections were satisfied.

2. Within the terms of Code sections 44949 and 44955, the district has cause to reduce or discontinue particular kinds of services and, as determined in the above findings, to give notices to certain respondents that their services will not be required for the ensuing school year. The cause relates solely to the welfare of the schools and the pupils.

ORDER

1. Pursuant to stipulation, the district shall rescind the Superintendent's Layoff Recommendation as to John Grow.

2. Pursuant to stipulation, the district shall rescind the Superintendent's Layoff Recommendation as to the following 25 employees:

MS. ALEMAN	TRACEY
MS. BRATCHER	MARISA
MS. CANO	MARILU
MS. CERVANTES	MIRNA
MS. CHILDERS	DORA Z
MR. CODY	QUINN
MS. DOMOTO	JAMIE AKEMI
MS. DORADO	MARIA A

⁷ Code section 44955, subdivision (b), provides seniority protection for a *permanent* employee in terms of the services the employee is "*certificated and competent to render.*"

⁸ Code section 44955, subdivision (c), provides seniority protection for both *permanent and probationary* employees in terms of the services an employee's "qualifications entitle [him or her] to render."

MS. HAGIHARA	LORETTA
MR. HERNANDEZ	JACOB
MS. HOWARD	MARISSA
MS. JAQUITH	LORA LEE
MS. JEFFERSON	RHONDA KAYE
MS. KEENAN	ELIZABETH M
MS. KUHN	KATHIE MAY
MS. LINDSAY	ANGELA L
MS. LOPEZ	ELIDA
MS. MATTHEWS	ELIZABETH
MS. NIEVES	SANDRA
MS. RUIZ	ALICIA
MS. STANFORD	MARICELA
MR. STOCKTON	RICHARD
MR. VALDIVIA	JUAN JOSE
MR. VALMONTE	VERNON
MS. ZENDEJAS	GLORIA VIOLETA

3. The district shall rescind the Superintendent's Layoff Recommendation as to the following employees:

Darren Miller
 Sarah White
 Thom Holt
 Kathie Kuhn
 Angela Lindsay

4. The district shall correct its records to show that July 10, 2006, is the date of hire for purposes of calculating seniority for Miriam Singleton and Amy Cary-Park Smith.

5. The district shall correct its records to show that August 7, 2006, is the date of hire for purposes of calculating seniority for the following employees:

Sarah Barr
 Emily Jones Catron
 Jacob Hernandez
 Stephen Jaquith

6. The district may send May notices of termination to the 37 respondents with multiple subject credentials who are on the list of "Employees District is Seeking to Lay Off." However, the district may not terminate any of the 37 while retaining an employee with less seniority to render a service that the more senior employee is certificated and competent to render.

7. The district may give notice to the remaining respondents that the district will not require their services for the ensuing school year.

Dated: May 28, 2010


ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

RESPONDENTS WHO ARE NOT IN ADMINISTRATIVE POSITIONS

MS. ALEMAN	TRACEY
MS. ALVARADO	MARIA A
MS. APODACA-GONZALES	ELINORA
MS. ASHLEY	CHRISTINA
MS. BARR	SARA
MS. BENNETT	LISA
MS. BISHOP	BLANCA
MS. BONILLA	SARA
MS. BOWMAN	ALISON
MS. BRATCHER	MARISA
MS. CAMPBELL	HILARY
MS. CANO	MARILU
MS. CASEY	TIFFANY
MS. CATO	MELISSA
MS. CATRON	EMILY
MS. CERVANTES	MIRNA
MS. CHILDERS	DORA Z
MR. CODY	QUINN
MS. DOMOTO	JAMIE AKEMI
MS. DORADO	MARIA A
MS. EVANGELISTA	GLORIA
MS. GARCIA	VERONICA
MS. GATES	CASEY ANN
MS. GEE	AMANDA
MS. GOMEZ	JULIA
MS. GONZALES	APRIL
MS. GRIMALDO	CYNTHIA
MS. HAGIHARA	LORETTA
MS. HECK	JENIFER
MR. HERNANDEZ	JACOB
MR. HOLT	THOM
MR. HORN	SHELDON
MS. HOWARD	MARISSA
MS. JAQUITH	LORA LEE
MR. JAQUITH	STEPHEN
MS. JEFFERSON	RHONDA KAYE
MS. KEENAN	ELIZABETH M
MS. KUHN	KATHIE MAY
MS. LA SPADA	SANDRA A
MS. LAZAR	DEBORA LYNN
MS. LINDSAY	ANGELA L
MS. LOMAS	JULIA
MS. LOPEZ	ELIDA
MS. MAC EACHERON	THERESA
MS. MACIEL	GUADALUPE

MR.	MARINO	ANTHONY ROBERT
MS.	MATTHEWS	ELIZABETH
MR.	MONTOYA	RICK
MS.	MURPHY	ERIN
MS.	NIEVES	SANDRA
MS.	NISHIOKA	OLIVIA
MS.	PARKINSON	GAYTHA LYNETTE
MS.	PINEDA	FANELIA
MS.	PRADO	SYLVIA
MS.	RAMIREZ	NORMA
MS.	REEVES	KELLI RENE
MS.	RICHARDSON	ELIZABETH
MS.	RUIZ	ALICIA
MS.	SARDEN	JENNIFER
MS.	SCHOETTLER	STEFANI
MS.	SHOWALTER	JENNIFER
MS.	SINGLETON	MIRIAM
MS.	SMITH	AMY CARY-PARK
MS.	STANFORD	MARICELA
MR.	STOCKTON	RICHARD
MS.	TATRO	CHRISTINE
MR.	VALDIVIA	JUAN JOSE
MR.	VALMONTE	VERNON
MS.	VAN ZANT	KATHY A
MR.	VOGT	JEFFREY
MS.	WASHKO	AMY
MS.	YRIGOLLEN	JENNIFER
MS.	ZENDEJAS	GLORIA VIOLETA

PRECAUTIONARY

MS.	MONTANO	ELENA
MR.	PHILP	RYAN
MS.	WHITE	SARAH

EXHIBIT B

RESPONDENTS WHO ARE ADMINISTRATORS

MR. FOWLER
MR. GROW
MR. MILLER

JAY
JOHN
DARREN