

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. 2011020092

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

Respondents.

**PROPOSED DECISION**

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on April 12 and 13, 2011.

Loni Y. Chhen, and Shanna R. Gartenlaub, Attorneys at Law, appeared on behalf of the Twin Rivers Unified School District (District). Patty Smart, Associate Superintendent of Human Resources, was also present.

Respondents are certificated employees who were issued preliminary layoff notices by the District. Respondents' names are listed in the attached Exhibit A.

Margaret Geddes and Brandon Brazil, Jr., Attorneys at Law, appeared on behalf of respondents listed in the attached Exhibit B.

Oral and documentary evidence was presented and the parties offered oral closing arguments. The record remained open for additional briefing, which was received on April 21, 2011. The District's brief was marked as Exhibit 20 for identification; respondents' brief with request for official notice was marked as Exhibit Q for identification. The District did not object to the request for official notice. Official notice is taken of Commission on Teacher Credentialing credential records for the Early Childhood Educator (ECE) respondents identified in Factual Finding 40, which are marked and admitted as Respondents' Exhibit Q. The matter was submitted for decision.

On May 4, 2011, an Order Regarding ECE Respondents was issued directing the parties to provide their response to the hypothetical question of whether these respondents would have received preliminary layoff notices if it is determined that they are permanent certificated employees. On May 5, 2011, these responses and oppositions were received, considered and marked for identification respectively as Exhibits 20 and R.

## FACTUAL FINDINGS

1. The Twin Rivers Unified School District (District) began operations nearly three years ago, on July 1, 2008. The District was created when four districts were merged following the approval of a measure to do so in November 2007. The consolidation combined three former elementary school districts (Rio Linda Union, North Sacramento, and Del Paso Heights) and one former high school district (Grant Joint Union). The District now serves approximately 27,000 preschool through adult education students in northern Sacramento County.

2. Frank S. Porter is the District's Superintendent. Patty Smart is the District's Associate Superintendent for Human Resources. The actions of Mr. Porter, Ms. Smart, their designees, and the District Governing Board were taken in their official capacities.

3. *Board Resolutions:* On March 1, 2011, in response to the Superintendent's recommendations, the District's Governing Board (Board) adopted Resolution No. 230, "Regarding Discontinuation of or Reduction in Particular Kinds of Services" (PKS). Pursuant to this resolution, the Board determined that it will be necessary to reduce or eliminate 130.47 full time equivalent (FTE) certificated positions effective no later than the start of the 2011-2012 school year. The Board directed the Superintendent to issue all legally required notices to effectuate this resolution. The Board passed Resolution No. 235, "Determination of Seniority Among Certificated Employees with Same First Paid Date of Service," establishing criteria to be used to implement the reduction in force in the event that certificated employees had the same seniority date based upon their first day of paid service with the District (hereafter, Tie Break Resolution). The Board adopted three additional resolutions which authorized: the reorganization, reassignment and release of certificated administrative employees (Resolution 231); the release and non-reelection of temporary certificated employees (Resolution No. 232); and the non-reelection of probationary employees (Resolution No. 233).

On March 12, 2011, the Board increased the number of FTE to be reduced or eliminated by 25.5 FTE, following the Superintendent's recommendation to do so. The Board adopted amendments to Resolution No. 230 (hereafter, the PKS Resolution) to reflect the need to reduce or eliminate a total of 155.97 FTE for the 2011-2012 school year, and again directed the Superintendent to issue all legally

required notices to effectuate this resolution. As amended, the PKS Resolution identified the following “particular kinds of services” to be reduced or eliminated for the 2011-2012 school year:<sup>1</sup>

<u>Services</u>	<u>Number of Full-Time Equivalent Positions</u>	
Administrative Services	6.32	
Early Childhood Education Services	<del>4.0</del>	16.0
Instructional Support	44.05	
Elementary Counseling	8.8	
Academic Counseling	4.0	
Library Services	9.0	
Physical Education Services	6.5	
Math Instruction	6.0	
Social Science Instruction	5.2	
English Instruction	12.2	
Life Science Instruction	5.0	
Biology Instruction	2.0	
Physical Science Instruction	6.0	
<u>Spanish Instruction</u>	<u>0.5</u>	
Industrial Arts Instruction	1.0	
Visual and Performing Arts Instruction	1.0	
Adult Education Instruction	<del>7.0</del>	17.0
Alternative Education Instruction	5.4	

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<sup>1</sup> Crossed-out numbers reflect the FTEs recommended for reduction in the original resolution. Underlined numbers reflect new reductions.

## *Respondents*

4. Respondents are permanent or probationary certificated employees of the District. Between March 8 and March 14, 2011, the District served written notice on 143 certificated employees that the Superintendent had recommended to the Board that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would be reduced or not be required for the 2011-2012 school year.<sup>2</sup> Each written notice set forth the reasons for the recommendation and noted that the Board had passed Resolution No. 230 reducing the certificated staff by the FTE positions outlined above. The names of these employees were appended to the PKS Resolution.<sup>3</sup>

5. Of the certificated employees who were provided a preliminary layoff notice, 99 filed a request for hearing. The remaining certificated employees did not request a hearing and waived their right to a hearing. (Educ. Code, § 44949, subd. (b).)<sup>4</sup>

6. Associate Superintendent Patty L. Smart made and signed the Accusation in this matter, seeking authority to issue final layoff notices to respondents pursuant to sections 44949 and 44955 and the PKS Resolution. The District served the Accusation and accompanying documents on the 99 certificated employees who timely filed a request for hearing. The names of these employees are listed in the attached Exhibit A.

7. There were 24 certificated employees served with the Accusation who did not file a Notice of Defense. Each of these employees waived his or her right to a hearing, and may be laid off by the District. (Educ. Code, § 44949, subd. (b); Gov. Code §11506, subd. (c).)

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<sup>2</sup> Unless otherwise indicated, all undesignated statutory references are to the California Education Code.

<sup>3</sup> The PKS Resolution identified 147 employees. The preliminary notices of four of these employees were rescinded before the Board adopted the amendments to the PKS Resolution. As indicated in the testimony of Associate Superintendent Smart, the difference between the 155.9 FTE positions to be reduced and the 143 preliminary notices sent to certificated employees was attributable to vacancies and known retirements or resignations which the District took into consideration before issuing preliminary layoff notices.

<sup>4</sup> There was one late request for a hearing filed by Levi Henson; however, the District rescinded Mr. Henson's preliminary notice.

8. The names of the 76 respondents represented by Ms. Geddes are listed in the attached Exhibit B. Of these respondents, 75 timely filed a Notice of Defense. In addition, Ms. Geddes represents certificated employee Che Baro (seniority date 1/7/08), who filed a request for a hearing but did not file a Notice of Defense. Mr. Baro asserted that he did not receive the Accusation packet. At the hearing, the District agreed to grant Mr. Baro a hearing despite his failure to file a Notice of Defense. (Gov. Code, 11506, subd. (c).) Consequently, Mr. Baro was authorized to proceed as a respondent in this matter.

9. After receipt of respondents' Notice of Defense, the District set the matter for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

10. All jurisdictional requirements have been met. Respondents do not contend that there are any procedural defects with the Board's notice of the reduction in force mandated by its PKS Resolution.

#### *Implementation of the PKS Resolution*

11. *Bumping and Skipping*: As set forth in section 44955, subdivisions (b) and (c), economic layoffs are generally to be carried out on the basis of seniority. A teacher with more seniority typically has greater rights to retain employment than a junior teacher. 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 displacement of a junior teacher is known as "bumping." The seniority rule is not absolute, and a junior teacher with a needed credential or skills may be retained even if a more senior teacher is terminated. "Skipping" a less senior employee from inclusion in a layoff proceeding is authorized by statute. In order to depart from a seniority-based economic layoff, section 44955, subdivision (d)(1), requires that the District must demonstrate "a specific need for personnel to teach a specific course or course of study... and that the certificated employee (to be skipped) has special training and experience necessary to teach that course or course of study... which others with more seniority do not possess."

12. The PKS Resolution provided that the reduction of employees should proceed in the inverse order of seniority, except that it would be necessary to retain the services of the three categories of certificated employees regardless of seniority, unless a more senior employee also had these credentials, competencies and experience:

- a. certificated employees with special education certifications who are currently using those certifications;

- b. certificated employees whose position requires a Bilingual Crosscultural, Language and Academic Development (BCLAD) Certificate for their position; and,
- c. 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.

13. *Seniority List:* The District maintains a Certificated Seniority List which it used to implement the PKS Resolution. The Seniority List contains employees' seniority dates (first date of paid service), status as tenured, probationary or temporary, their FTE and current assignments.

Since its creation in June 2008, the District has been faced with the substantial task of gathering and combining personnel data from four predecessor districts for certificated employees who are now District employees. For the past three years, under the direction of Associate Superintendent Smart, the District's Human Resources Department has worked to ensure the accuracy of the information it maintains in its official files for certificated employees, including seniority dates, certificates and supplementary authorizations. The success of the District's efforts at this task has been tested in two previous layoff hearings. In preparation for this layoff proceeding, in December 2010, the District sent notice to certificated staff which identified their seniority dates and credentials on file and requested that any changes or corrections be made by the end of January 2011. The notice indicated that, if there was no response, the District would assume that the information on file was accurate. The District received some responses and made appropriate corrections. As acknowledged by respondents' counsel, the District has been largely successful in ensuring the accuracy and completeness of respondents' information as reflected in the seniority list. Other than as indicated in this Decision, the information contained in the District's Certificated Seniority List is reliable.

Ms. Smart and District Director of Certificated Personnel Michelle Abrams were responsible for implementation of the technical aspects of the layoff. The District used the seniority list, Resolution No. 230, and all pertinent information from each employee's personnel file, to develop a proposed layoff list of the least senior employees currently assigned to the various PKS services being reduced.

14. The Board's Tie-Break Resolution identified criteria to be used to determine relative seniority between certificated employees who share the same seniority date as reflected in the District's Seniority List. In order of importance, these criteria are: credentialing, experience, competence, advance degrees, school improvement grant participation, specialized training based on position need (AVID, Improving Teacher Quality, Independent Study Compliance, Project Lead the Way, Sierra North Arts Project), Training and Strategic School Funding for Resolutions Pilot Participation. The District had no occasion to use these tie-break criteria to

determine which employees should receive preliminary layoff notices. As indicated in Factual Findings 19 and 50, the District did use the tie break criteria during the hearing and in response to the Order Regarding ECE Respondents.

15. The specific individuals who received preliminary layoff notices for the current reduction in force were identified by Ms. Abrams, who reviewed the PKS Resolution, prepared seniority lists that were specific to each site, subject, and PKS being reduced or eliminated, and determined which certificated employees were the least senior within the PKS area. Once the least senior employees were identified, Ms. Abrams reviewed the credentials held by the identified employees to determine if they were authorized to teach in a different area and displace or bump more junior employees. Certificated human resource analyst Layle Bojanski assisted in this process by researching whether specific credentials held by senior employees identified for layoff authorized them to bump junior employees.

Ms. Abrams developed a “bumping chart” to demonstrate the District’s process of ensuring that there was a position available for each senior employee affected by the PKS Resolution who was certificated and competent to bump into a position held by a junior employee. If senior employees were not able to bump junior employees, they were issued the preliminary layoff notice. If a bump was possible, the junior employees would receive the preliminary layoff notice. Ms. Abrams testified that if an employee to be bumped had less than a full FTE position (i.e., a 0.4 FTE), the District would take that partial FTE plus the whole FTE of the next least senior person. This action was based on the District’s practice to take full FTEs. On the bumping chart this would appear as if one individual was bumping two less senior employees. The practice could result in issuing preliminary notices to more employees within a particular PKS than required by the PKS Resolution. For example, eight preliminary notices were issued to accomplish a 6 FTE reduction in Math Instruction. After the rescissions discussed in Factual Finding 17, there were only 4 full time positions, or 3.6 FTE reduced in Math Instruction.

16. Ms. Smart testified that there may have been some junior employees skipped for layoff over senior employees. Specifically, as authorized by the PKS Resolution, if a junior employee held a special education credential or a bilingual credential, they were skipped. The PKS Resolution did not require the reduction or elimination of either special education or bilingual services for the 2011-2012 school year. Ms. Abrams clarified that one employee was skipped based upon her special education credential (Patricia Wood, Sept. 1, 1993) and that there may have been junior employees skipped based upon the BCLAD credential. There were no skips based upon subsection (c) in Finding No. 10.

There was no evidence or argument that the District inappropriately skipped individuals in the areas authorized by the PKS Resolution.

17. *Rescinded Layoff Notices:* During the hearing, the District rescinded 22 layoff notices.

On April 12, 2011, at the beginning of the hearing, the District announced that it rescinded the preliminary layoff notices issued to 18 certificated employees, whose seniority dates and credentials or supplementary authorizations (SA) are as follows:

- |     |                     |            |                                       |
|-----|---------------------|------------|---------------------------------------|
| 1.  | Levi Henson         | (8/11/08)  | [single subject PE];                  |
| 2.  | Cynthia Corral      | (8/11/08)  | [single subject PE]                   |
| 3.  | Adrienne Ruggles    | (8/11/08)  | [single subject PE]                   |
| 4.  | Colleen Kinder      | (9/14/09)  | [single subject PE]                   |
| 5.  | Andrea Cottrell     | (8/01/07)  | [SA English]                          |
| 6.  | Carly Starrh        | (8/01/07)  | [SA English]                          |
| 7.  | Tangelica Crates    | (8/15/07)  | [Single subject English]              |
| 8.  | Rebekah Hanson      | (8/15/07)  | [single subject English]              |
| 9.  | Diane Roberts       | (10/22/07) | [single subject English]              |
| 10. | Michelle Bricker    | (10/24/07) | [SA English]                          |
| 11. | Daniel Grubbs       | (8/09/07)  | [single subject Math]                 |
| 12. | Jasmin Patel        | (8/09/07)  | [single subject Math]                 |
| 13. | Geoffrey Flissinger | (8/15/07)  | [single subject Math]                 |
| 14. | Carrie-Anna McCoy   | (9/24/07)  | [single subject Math]                 |
| 15. | Clay Schubert       | (8/15/07)  | [single subject English]              |
| 16. | Steven Shields      | (1/02/02)  | [Indus. Arts des. subject]            |
| 17. | Rebecca Troxler     | (8/15/07)  | [single subject English]              |
| 18. | Xavier Young        | (8/15/07)  | [single subject English] <sup>5</sup> |

18. On April 13, 2011, the District acknowledged that it had prematurely rescinded the layoff notices of three certificated employees (Carly Starrh, Diane Roberts, and Michelle Bricker) who were less senior than respondent Autumn Sharp (8/01/07), who has a supplementary authorization in English. To cure this error, the District rescinded three additional preliminary layoff notices issued to:

- |     |                    |           |                          |
|-----|--------------------|-----------|--------------------------|
| 19. | Tessa McGarr       | (2/05/07) | [single subject English] |
| 20. | Megan Wooden       | (8/01/07) | [single subject English] |
| 21. | Etelvina Carrazana | (8/23/06) | [SA English]             |

19. In addition, the District acknowledged its failure to issue a preliminary notice to Jasmin Garcia (8/13/07), who holds a multiple subject teaching credential.

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<sup>5</sup> Because the preliminary notices of some employees who did not file a Notice of Defense were rescinded, not all of the employees whose preliminary notices were rescinded are respondents.

To cure this oversight, the District rescinded the preliminary layoff notice to the next most senior employee (rescission 22). It looked to the next most senior employee and discovered three employees who shared an August 17, 2006 seniority date. The three employees were: Susan Bridge, Michael Espino, and Gina Ripley. The District used the Tie Break Criteria from Resolution 235, and determined that the layoff notice to Susan Bridge would be rescinded. All three employees hold the same multiple subject credentials. The tie was broken using the next tie-break criterion of experience. The records established that Ms. Bridge is the most experienced employee with 16 years experience, followed by Ms. Ripley (10 years) and Mr. Espino (8 years). Respondents did not dispute that the Tie Break criteria were appropriately applied to reach this conclusion.

20. Testimony of Associate Superintendent of Business Support Services Robert Ball and Associate Superintendent Smart established that the PKS reductions and eliminations were necessary for the District to remain solvent in light of shortfalls in revenue sources, which resulted in some school closures and program changes.

21. No mandated services were eliminated. Although the entire elementary counseling program was eliminated (8.8 FTE), there is no requirement that these services be provided. Library Services are being reduced 9.0 FTE, but the District will maintain certificated personnel in its library services program for the 2011-2012 school year.

#### *Respondents' Specific Challenges*

22. *Autumn Sharp Rescission Error:* Autumn Sharp received a preliminary layoff notice based upon the 5 FTE PKS reduction in her assigned area of Life Science Instruction, where she taught seventh grade. Ms. Sharp is a permanent employee with a seniority date of August 1, 2007. She holds a multiple subject credential, with supplementary authorizations in English and science. Ms. Sharp was initially able to bump into an Instructional Support position, which was slated for a 44.05 PKS reduction. She was then bumped out by a more senior employee (Deanne Castaneda; 8/23/99).

Respondents request an order rescinding the preliminary layoff notice issued to Autumn Sharp based upon the District's rescission of notices, described in Factual Findings 17 and 18, to less senior employees who have either a single subject credential in English or a multiple subject credential with supplemental authorization in English. Respondents also request that the preliminary notices of two other most senior respondents with these credentials or authorizations be rescinded. Respondents contend that, although the District partially cured its error as explained in Finding 18, there were three other employees with less seniority than Ms. Sharp who have credentials in English whose notices were rescinded (Mr. Schubert, Ms. Cottrell and Mr. Young) while her notice was not rescinded.

23. In its April 21, 2012, closing brief, the District stated that it had reviewed Ms. Sharp's credentials in light of its rescissions and now agrees it is appropriate to rescind her preliminary layoff notice. The District disputes that it must rescind two additional preliminary notices and asserts that its rescission error has been cured as explained in Factual Finding 18.

24. The District's willingness to promptly rescind preliminary layoff notices and to cure errors in those rescissions is commendable. The method chosen to correct this particular error is somewhat confusing. The District initially rescinded nine teachers with English credentials or authorizations like Ms. Sharp. Seven of these rescissions were for employees who have less seniority than Ms. Sharp. Two employees -- Ms. Cottrell and Ms. Starrh -- share a seniority date with Ms. Sharp. The District conceded that it had prematurely rescinded the notices of Ms. Starrh, Ms. Roberts, and Ms. Bricker. To cure this error, the District rescinded three additional notices, but did not rescind Ms. Sharp's preliminary notice. Two of these new rescissions were issued to teachers who have more seniority than Ms. Sharp. The third teacher, Ms. Wooden, also shares a seniority date with Ms. Sharp.

Thus, the District rescinded 10 preliminary notices of certificated employees with English credentials or supplementary authorizations who either have less seniority than Ms. Sharp (Ms. Crates, Ms. Hanson, Ms. Roberts, Ms. Bricker, Mr. Schubert, Ms. Troxler, Mr. Young) or who share Ms. Sharp's seniority date (Ms. Starrh, Ms. Cottrell, and Ms. Wooden). In its attempts to cure this error during the hearing, the District did not rescind the notice to Ms. Sharp and it did not use its Tie-Break Resolution to resolve the seniority tie between Ms. Sharp, Ms. Starrh, Ms. Cottrell, and Ms. Wooden. Because the District now agrees that Ms. Sharp's notice will be rescinded, the harm resulting from District's initial error of prematurely rescinding notices of employees junior to Ms. Sharp is cured. Based on this rescission, no junior employee is being retained to perform a service that Ms. Sharp is certificated and competent to perform. It is unnecessary to rescind two additional preliminary notices.

25. *Number of Preliminary Notices:* Respondents request an order directing the District to correct its practice of excess bumping; specifically, of taking a full FTE where bumping only requires a partial FTE. This argument is based upon Ms. Abrams' testimony that it is the District's practice to take a full FTE, even if only a partial FTE is needed. (Factual Finding 15.) Respondents contend that this practice violates section 44955, subdivision (b), which states that the District is only allowed to layoff a "corresponding number of employees" relating to its PKS reduction in force.

The District asserts that it has issued an appropriate number of preliminary layoff notices, that the number of such notices to be issued is within the Board's discretion, and that respondents are confusing the number of employees receiving notices with the number of positions being reduced. To calculate the number of PKS

positions needed, the District must consider a variety of factors including partial FTEs.

The District's position is correct. As the appellate court determined in *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 635-636, a board's decision to reduce or discontinue a particular kind of service "is not tied in with any statistical computation, such as reduction in the number of students," and it is within its "discretion to determine the amount by which it will reduce a particular service." The manner in which the District implemented the PKS resolution did not exceed its authority under the PKS Resolution. As indicated in Factual Findings 3 and 4, after considering multiple factors, the District only issued 142 preliminary notices for a PKS reduction of 155.9 FTE.

26. *Public Agency Retirement Services (PARS) Attrition:* Respondents request an order that the District rescind approximately 62 additional preliminary notices of the most senior employees based on early retirements of certificated employees under the Public Agency Retirement Services Retirement Plan as reflected on the PARS Enrollment List for Twin Rivers, dated March 2, 2011. The Enrollment List identifies the names of the employees, their positions and their school sites. The List also contains a column titled "Not replacing" with an "x" next to the names of some employees. Respondents contend these are assured retirements that were known to the District before the issuance of the preliminary notices but were not considered in issuing preliminary layoff notices. In respondents' view, it is unnecessary to await further Board action on these retirements before the District must act in response to this attrition.

The District contends that in a PKS reduction in force it is only required to consider positively assured attrition and not potential attrition, like the PARS program. The District acknowledges that additional rescissions may result from this program, but asserts it is not required to make early rescissions.

27. Ms. Smart testified that on March 11, 2011, the PARS program confirmed the number of District retirement applications it had received. After receiving this information, the District had to verify that all certificated employees who applied for PARS were qualified for this retirement. The District completed its verification process on March 15, 2011, after determining that all certificated employee applicants were qualified, and submitted this information to PARS. PARS then completed a fiscal analysis regarding the cost of the program and submitted this information to the District on March 17, 2011. The District was then required to do further analysis, which it completed March 18, 2011. The District prepared a recommendation for the Board, which approved the financial feasibility of moving forward with the PARS program at its March 26, 2011 meeting. The Board will act on the retirements on April 26, 2011, by approving the actual retirees.

The number of certificated retirements verified was 62, approximately 32 of which are from classroom teachers. Five of these total positions will not be refilled. The District is currently analyzing in what subject areas the retirements have created vacancies. According to Ms. Abrams, it is possible that some of the PARS-created vacancies will be filled from certificated employees deemed “surplus” at a specific site, but who were not laid off. As a result, it is possible that the number of preliminary notices that will be rescinded based upon the PARS program will not necessarily correspond to the number of PARS retirement vacancies.

28. In layoffs based upon a reduction or discontinuance of PKS, the District is not required to consider positively assured attrition that occurs between the date of the preliminary layoff notices and the final layoff notices. (*San Jose Teachers Assoc. v. Allen* (1983) 144 Cal.App.3d 627, 636.) In determining the number of individuals who would receive preliminary layoff notices in this case, the District considered known attrition and it has rescinded preliminary layoff notices based on known retirements. The District’s position regarding PARS-created retirement vacancies is correct. While the Board was aware of PARS early retirement applications before the preliminary notices were issued, it did not approve the financial feasibility of actually proceeding with these retirements until after the preliminary layoff notices were issued. Consequently, the PARS retirements were not “positively assured” by the deadline for issuance of preliminary notices. The District is not obliged to make additional rescissions based on retirements that, while highly probably, had not ripened into “known attrition.”<sup>6</sup>

29. *Alicia Caddell and Kenneth Hobbs*: Respondents contend that Alicia Caddell should be retained for the 2011-2012 school year because she is certificated and competent to teach the classes assigned to Kenneth Hobbs, a less senior employee who the District failed to notice for layoff. Specifically, respondents assert that the District did not meet its burden to skip Mr. Hobbs from layoff as required by section 44955, subdivision (d). The District asserts that it did not improperly “skip” Mr. Hobbs, but rather properly determined that Ms. Caddell does not have the appropriate credential to bump Mr. Hobbs and teach the more advanced computer courses to which he has been assigned.

30. Ms. Caddell was issued a preliminary layoff notice as part of the 5.4 PKS reduction to the District’s Alternative Education Instruction program, which is located at Nova Community Day School (Nova), Vista Nueva Career and Technology High School (Vista Nueva), Pacific High School, and Keema Independent Study. Ms. Caddell is a permanent employee with a seniority date of August 15, 2007. She holds

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<sup>6</sup> As indicated in Ms. Abrams’ testimony, the District has already made some rescissions based upon information gleaned from the PARS program; for example, many of the rescissions issued in English during the layoff hearing were attributable to PARS openings in this subject area.

a single subject teaching credential in business and a CLAD. Because she has a single subject credential, Ms. Caddell is authorized to teach any subject in alternative education with her consent. The District Seniority Lists identifies Ms. Caddell's current assignment as "teacher-computers" at Nova.

Kenneth Hobbs, Jr., is a probationary employee (Prob. 1) with a seniority date of August 20, 2010. The District Seniority Lists indicates that Mr. Hobbs holds a Designated Subject Career Technical Education (CTE) credential in "Info Tech, Finance and Business." Mr. Hobbs is currently assigned to Foothills High School with a .2 FTE as "Teacher – Academy Planning" and a .6 FTE as "Teacher – ROP/Academy Planning." Mr. Hobbs was not issued a preliminary layoff notice.

31. Pursuant to regulations promulgated by the California Commission on Teacher Credentials (Commission), Ms. Caddell's single subject business credential authorizes her to teach the following "subjects which fall within the broad subject area" of business:

accounting, business communications, business English, business mathematics, business management, business marketing, *computer concepts and applications*, consumer education, data processing, economics, general office occupations, keyboarding, marketing, shorthand, typewriting, and word processing. . .  
(Cal. Code Regs., tit. 5 [CCR], § 80005, subd. (a)(3). [Italics added.]

This regulation also gives the District, as the "employing agency," the right to assign Ms. Caddell to teach a subject not listed above if it "has determined its subject-matter content is directly related to the broad subject area." (*Id.*)

32. Ms. Caddell testified that she currently teaches at both Vista Nueva and Nova where she is assigned to teach U.S. and World History to seventh through eleventh grade students. She also teaches one section of computer applications to Nova's seventh and ninth graders. Ms. Caddell did not know Mr. Hobbs's specific assignment at Foothills High School this year; however, she believes she is credentialed and competent to teach in the program to which he is assigned.

Ms. Caddell testified about her experience in teaching computer concepts and applications. She has taught web design and virtual enterprise, which includes many information technology courses like web design, graphic arts and video production. Ms. Caddell is also responsible for the digital yearbook for alternative education students, and she has been both the assistant coordinator and the coordinator of the California Partnership Academy (Academy), a business and technology academy in the school district. The Academy is a technology program for many different subjects. Ms. Caddell was a business and technology teacher, in the topic of agriculture, for high school students for two years before becoming employed by the

District. Within this program, students worked through academic and technology courses related to agriculture.

33. In identifying individuals for layoff, the District determined that Ms. Caddell could not bump into Mr. Hobbs' teaching position. As explained by Ms. Bojanski, Ms. Caddell could not bump into the courses Mr. Hobbs is currently teaching at the Academy of Design and Technology at Foothills High School because these courses are "much more advanced" than what Ms. Caddell's single subject business credential would allow. The State gives school districts flexibility to employ single subject teachers with a business credential to teach in the Regional Occupational Programs (ROP), which are now called Career Technical Education (CTE) Programs. Despite this flexibility, the District must still ensure that the materials being taught in the class are actually covered by the teacher's single subject credential. Ms. Bojanski concluded that Ms. Caddell has an appropriate credential to teach a CTE class. However, Mr. Hobbs' CTE credential authorizes him to teach courses that are much more complex than the "computer concepts and applications" Ms. Caddell can teach; it is specific to the career of information technology. Ms. Caddell would need actual experience working in the information technology sector to qualify to teach the advanced courses authorized by Mr. Hobbs' CTE credential.

Ms. Bojanski reached her conclusion by reference to the Commissions' leaflet that outlines subject areas in which holders of the CTE credential in information technology may teach.<sup>7</sup> This publication specifically provides that the holder of a CTE credential for the sector "information technology" may teach in a variety of computer related subjects, including programming, software operations, system operation, electronics, applications, and maintenance and repair. She also relied on course descriptions for Mr. Hobbs' classes.

34. Mr. Hobbs did not testify. As indicated in a printout from AERIES, the District's computer database system that contains master schedule data for each school's teachers, Mr. Hobbs is assigned to teach two ROP (CTE) courses at Foothill: ROP Multimedia (RYR600) and ROP Computer Graphics (RYA602). In pertinent part, the course description for ROP Multimedia provides: "Visual Design is a year-long, project based curriculum that develops skills in design and print production using Adobe tools. You can use the curriculum in graphic design education or in more general career and technical education. Visual Design develops key digital communication skills such as design, project management, and graphic and print technology..." In pertinent part, the description for ROP Computer Graphics

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<sup>7</sup> Ms. Bojanski testified that the District obtains credential information for its certificated employees from the County of Sacramento and occasionally has to interpret what is reported. Regarding Mr. Hobbs' credential, Ms. Bojanski assumed that "Subject Info Tech." meant "information technology" as reflected in the Commission's leaflet.

provides: “Digital Design is a year-long, project based curriculum that develops skills in web design and production using Adobe web tools. You can use the curriculum in web design education or in more general career and technical education. Digital Design develops key digital communication skills such as design, project management, and web technology...” Both courses align with various technology standards and prepare students for certification.

35. The course descriptions provided by the District fail to demonstrate that they are of a level beyond Ms. Caddell’s teaching authorization and experience. While Mr. Hobbs’ CTE credential authorizes him to teach more advanced computer courses, the evidence did not establish that these courses are of an advanced level that involves more complex computer subject matter. Rather, the courses are designed to guide students in computer applications using Adobe tools.

36. CCR Section 80005 authorizes Ms. Caddell to teach computer concepts and applications. The District has an affirmative obligation to reassign senior teachers to areas where they are credentialed and competent to serve. This obligation must be interpreted in light of the discretion CCR section 80005 gives the District to assign Ms. Caddell to teach a subject not expressly listed, “if the employing agency [District] has determined its subject-matter content is directly related to the broad subject area.” (Cal. Code Regs., tit. 5, § 80005, subd. (a)(3).) Beyond the bare course descriptions for Mr. Hobbs’ classes, the District provided no evidence about the actual content of the courses taught by Mr. Hobbs or their level of complexity. There was no evidence that the District analyzed Ms. Caddell’s actual experience in teaching computer concepts and applications before determining that she could not bump.

Ms. Caddell’s testimony established that she is authorized to teach computer concepts and applications and that she is currently teaching a computer course in the alternative education program. It also established that she has several years of teaching experience in web design, graphic arts, and video production, has developed on-line year books and has directed a business and technology academy. Ms. Caddell has experience guiding students through year-long project based curriculums with coursework in both academics and technology. Ms. Caddell established that she is credentialed and competent to bump Mr. Hobbs under section 44955, subdivision (b). Accordingly, the Accusation against Ms. Caddell will be dismissed.

37. *Terry Press-Dawson*: The PKS Resolution requires the elimination of 8.8 FTE in the District’s Elementary Counseling program and the reduction of 4.0 FTE in its secondary Academic Counseling program. Following the layoff, there will be no elementary counseling positions; however, an unknown number of positions remain in Academic Counseling.

Mr. Dawson is a licensed Marriage and Family Therapist (MFT) who holds a clear administrative services credential, a life standard pupil personnel services

credential and a life standard elementary teaching credential. Mr. Dawson was hired by the District as an elementary school counselor, based upon his pupil personnel credential. His seniority date is October 15, 2001. He is assigned to Harmon Johnson Elementary School. Mr. Dawson received a preliminary layoff notice as part of the Districts' elimination of the elementary counseling program. In identifying individuals for layoff, the District determined that Mr. Dawson could not bump into another position within the District.

Mr. Dawson testified to his belief that the District should retain him as an employee in some capacity, either by having him bump a junior employee due to his seniority or by reclassifying his position. Mr. Dawson explained that he has generated funds for the District via a seven-year grant for the Healthy Start Program, which he began at Johnson and which is in its third year of implementation. Mr. Dawson acts as and is considered by community members to be Healthy Start's Program Director; however, this is not his position as a certificated employee for the District. The thrust of Mr. Dawson's testimony was that the Healthy Start program provides valuable counseling services to District students and their families; that if the program is not implemented these grant funds can be reclaimed by the California Department of Education; and that the grant funds are sufficient to pay his salary as Healthy Start Program Director for several years. Further, Mr. Dawson emphasized that he is the only counselor who is able to obtain other money for the District through Medi-Cal Administrative Reimbursements, and that he has been able to obtain and expand counseling services to District students because his licensure allows him to supervised MFT and other counseling interns while they obtain required practice hours. Mr. Dawson asserted that his reclassification as the Healthy Start Program Director, rather than layoff, would be in the best interest of the schools as well as the District. Mr. Dawson did not claim that there was a junior employee who he was certificated and competent to bump.

38. Although Mr. Dawson's testimony demonstrated great commitment to providing and expanding counseling services to students in the District, he did not establish that he had a right to bump a less senior employee. The District now has access to the information and supporting documentation Mr. Dawson provided about the Healthy Start Program grant funds and his role in the Program. The District may chose to act on the information Mr. Dawson provided regarding the benefits of the Healthy Start Program and the risk that it may lose this grant funding if continuity of program leadership is not secured. These matters are within the District's sound discretion.

39. *Adult Education PKS; Veslas Orvin:* The District reduced Adult Education Instruction by 17 FTE. The District determined that approximately six or seven fee-based adult education programs would continue during the 2011-2012 school year. The fee-based programs retained were those that were 70 percent self-sustaining. The District has broad discretion to reduce or eliminate adult education classes, which are supported by unrestricted, formerly categorical Tier III funding.

As explained by Assistant Superintendent Ball, almost all of the District's Tier III programs including Adult Education have had their funds shifted to the District's general funds to maintain K-12 teaching positions.

In closing argument, respondents requested an order that the District be directed to assess and reassign adult education teacher Veslas Orvin to any position for which she may be able to teach in adult education services that are being retained, and specifically to teach any form of medical or pharmaceutical services. The District replied that no evidence was provided at the hearing about Ms. Orvin's situation that would support such an order.

Ms. Orvin is a permanent certificated employee with a seniority date of October 1, 1999. She holds a designated subjects vocational education credential, in English as a second language and therapeutic services. Ms. Abrams testified that she prepared a specific seniority list for adult education as a starting point for identifying employees to receive preliminary layoff notices. There are 23 permanent and probationary employees on this list.<sup>8</sup> This seniority list reflects that Ms. Orvin is the seventh most-senior permanent certificated employee in this PKS and that there are 16 less senior permanent and probationary employees below her on this list. While less senior employees on this list are currently assigned to "allied health" and to "ESOL [English Speakers of Other Languages]" each of these individuals also received a preliminary layoff notice. The District determined that Ms. Orvin was not able to bump into a position held by a more junior employee, either in Adult Education or in the regular program. Ms. Orvin did not testify at hearing and there is no evidence regarding into what position she believes she is certificated and competent to bump. There is insufficient evidence to address respondents' request.

#### *Early Childhood Education*

40. On July 1, 2008, when the District came into existence, it absorbed employees who had formerly worked in preschool/early childhood education (ECE) programs at the Rio Linda, North Sacramento, and Del Paso Heights elementary school districts. At the time of the merger, there were eight Early Childhood Development Center (ECDC) Preschool Permit Teachers from the Rio Linda predecessor district who had been designated by Rio Linda as "classified" employees. This ECE group included respondents Julie Bradford, Kimberly Gunter, Maria Heasley, and Miscelle Ward (referred to as the 'ECE respondents').<sup>9</sup> Preschool

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<sup>8</sup> The adult education seniority list also references two "- 75% temporary" employees, presumably subject to Resolution No. 232 (release and non-re-election of temporary certificated employees).

<sup>9</sup> The ECE group also included non-respondents Vicki O'Connor, Nancy Adams, Pam Van Parys, and Charlotte Godinez. Ms. O'Connor, Ms. Van Parys and Ms. Godinez each have seniority dates of March 1, 2004, are currently classified as

instructors who entered the District from the two other elementary school districts had been designated as “certificated” employees by those districts. Classified employees are represented by the California School Employees Association (CSEA). Within the District, certificated employees are represented by the Twin Rivers United Educators (TRUE).

41. Nearly two years later, in late June 2010, CSEA, TRUE, and the District entered into a Memorandum of Understanding (MOU). Pursuant to this MOU, effective July 1, 2010, the ECE group was assigned to the certificated bargaining unit. In pertinent part, the MOU provides that these employees “will bring their Preschool Instructor classification seniority with them and will be merged into the certificated seniority lists using said seniority.” The MOU further provides that these employees: (1) “will serve a probationary period for a period of two years of employment from July 2010-July 2012,” and (2) that they will “receive permanent status starting the third year after completing two years of successful teaching under probationary status.”

42. District’s ECE Services program provides primary instruction to children ages three to five years old. Pursuant to the PKS Resolution, the ECE Services program will be reduced by 16 FTE positions; an unknown number of ECE positions will remain after the layoff. Under the MOU, each of the ECE respondents is a probationary certificated employee in “Prob. 1” status. These respondents received preliminary layoff notices and were unable to bump permanent certificated employees under section 44955, subdivision (b), which provides in pertinent part that: “[e]xcept 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.”

For this layoff proceeding, the District determined that the ECE respondents were able to bump back into their former positions as “classified” employees. Ms. Bradford testified that there are 13 certificated ECE employees who have less seniority than she, but who are permanent and did not receive preliminary layoff notices, and that the classified bump will return her to a para-educator position with decreased wages, hours and benefits.

43. *Certificated Status:* The Commission on Teacher Credentialing (Commission) is the agency responsible for issuing teaching credentials. Employees holding such credentials are “certificated employees” subject to the protections of Education Code sections 44949 and 44955. The Commission issues six levels of “Child Development Permits” (CDPs) for service in child care and development

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Probationary 1 employees assigned to ECE positions, and were not noticed for layoff. Ms. Adams has resigned.

programs,” which are defined as “any state licensed center-based child care and development program operated by a person, association, organization or school district legally authorized to conduct such programs.” (CCR, §§ 80109, 80105, subd. (b).)<sup>10</sup> A permit authorizing such services constitutes a “credential” under the Education Code and implementing regulations. The Education Code expressly provides that a “credential” includes a credential, certificate, life document, life diploma, *permit*, certificate of clearance, or waiver issued by the commission. [Italics supplied.] (Educ. Code, § 44002; see also CCR, § 80001, subd. (e).) Section 44001 provides that a “position requiring certification qualifications” includes “every type of service for which certification qualifications are established by or pursuant to Sections 44000 to 44012 to, inclusive, . . .” Section 8366 provides that “each person employed by a public or private agency . . . in a position requiring a child development permit for the supervision and instruction of children, . . . or in the supervision of the child development program, shall be deemed to be employed in a position requiring certification qualifications.”

The Commission governs the rights of certificated employees to obtain and to retain the credentials necessary to their status as “certificated employees.” As part of this function, the Commission establishes the requirements for and issues permits to individuals to work in child care and child development programs. (CCR, §§ 80111-80114.) The Commission has plenary authority to discipline holders of “permits authorizing service in children’s centers or child development programs,” and it must do so according to “the laws and regulations that govern the denial, private admonition, public reproof, suspension or revocation of a credential.” (CCR, § 80116.)

44. Section 45104 provides that “every position not defined by this code as a position requiring certification qualifications and not specifically exempted from the classified service according to the provisions of Section 45103 or 45256 shall be classified as required by those sections and shall be a part of the classified service.” Section 45256, subdivision (b)(1), specifically provides that “positions which require certification qualifications” are “exempt from the classified service.”

45. Each of the ECE Respondents has been assigned to positions that require “certification qualifications” from the Commission since they began work as preschool instructors at Rio Linda. Since the 2008-2009 school year, the ECE

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<sup>10</sup> ‘Child Development Permits’ are defined as “any permit issued by the Commission on Teacher Credentialing which authorizes service in the care, development and instruction of children in a child care and development program.” (CCR, § 80105, subd. (a).) The six CDP permit levels are: Assistant Permit, Associate Teacher Permit, Teacher Permit, Master Teacher Permit, Site Supervisor Permit and Program Director Permit. (CCR, § 80109.)

respondents have continued to provide ECE services to the District pursuant to credentials issued by the Commission. The District has acknowledged their seniority dates, which reflect respondent's first date of paid probationary service. Their seniority dates and credentials are, as follows.

- a. *Julie Bradford* has a seniority date of August 9, 2004. Ms. Bradford is an Early Childhood Development Preschool Site Supervisor assigned to Kohler Preschool. She holds a Child Development Site Supervisor Permit issued by the Commission on February 29, 2008, and she held a CDP Associate Teacher Permit when she began working in Rio Linda as a preschool instructor in 2004.
- b. *Kimberly Gunter* has a seniority date of August 13, 2007. Ms. Gunter is an Early Childhood Development Preschool Site Supervisor assigned to Oakdale. She holds the following credentials issued by the Commission: a Child Development Teacher Permit, issued February 1, 2007 (CCR, § 80112, subd. (c); expiration date February 1, 2012), and a Child Development Site Supervisor Permit, issued February 18, 2011.
- c. *Maria del Carmen Heasley* has a seniority date of August 11, 2008. Ms. Heasley is an Early Childhood Development Teacher assigned to Oakdale. She holds a Child Development Teacher Permit issued by the Commission on July 16, 2008.
- d. *Miscelle Ward* has a seniority date of August 11, 2008. Ms. Ward is an Early Childhood Development Teacher assigned to Kohler. She holds a Child Development Teacher Permit issued by the Commission on September 10, 2007.

46. As a matter of law, the ECE respondents became “certificated employees” on the date of their first paid probationary service as preschool/ECE instructors pursuant to section 44845.<sup>11</sup> (See, *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 719.) The error in designating these respondents as “classified” rather than “certificated” employees was continued by the District until the adoption of the MOU. The consequences of this misclassification error are perpetuated by the MOU provision denying permanent status and requiring ECE respondents to complete a two-year probation beginning with the 2010-2011 school

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<sup>11</sup> 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.”

year. ECE respondents will not be permanent certificated employees until the commencement of the 2012-2013 school years.

47. *Contentions:* ECE respondents request an order that they be credited with certificated “seniority and permanency rights” based upon their first date of paid probationary service to the Rio Linda District as preschool instructors assigned to positions that required them to hold the qualifications of certificated employees. They argue that Section 44064 mandates that classified employees assigned to perform certificated duties retain all accrued “rights and benefits at the time of the assignment,” including both “seniority and permanency rights.” In their view, their rights to retain permanent status under 44064 cannot be waived by contract or collective bargaining.

The District does not dispute that ECE respondents were assigned as preschool teachers at Rio Linda in classified positions and that the District continued to assign them to classified positions after it began operations. It interprets section 44064 to require classified employees who are assigned to certificated positions to complete a mandatory two-year probation period required of all certificated employees as set forth in section 44929.21, subdivision (b).<sup>12</sup> The District contends that the ECE respondents were appropriately issued preliminary layoff notices because they are still serving the two-year probationary period required by the MOU and must be laid off prior to any permanent certificated employee.

48. Education Code section 44064, in pertinent part, provides:

If an employee of a school district . . . employed in a position in the classified service is assigned to a position in the same district requiring certification qualifications, the employee shall retain all sick leave, vacation, and other rights and benefits accumulated by the employee at the time he or she is assigned to a position requiring certification qualifications. All seniority and permanency rights shall be secured to the employee during the period of time he or she occupies a position in the certificated service. The employee’s return to the classified service at any time

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<sup>12</sup> Pursuant to section 44929.21, subdivision (b), in a district of 250 students or more, a certificated employee is required to complete two consecutive school years in a probationary status. If the employee is reelected for the next school year, the employee “shall . . . become a permanent employee of the district” effective at the commencement of the succeeding school year. If the school board fails to notify the probationary certificated employee of its decision to reelect or not reelect him/her for the next school year on or before March 15 of the employee’s second complete consecutive school year in a position requiring certification qualifications, the “employee shall be deemed reelected for the next succeeding school year.” (*Id.*)

shall be treated as if there had not been an interruption in his or her classified service.

49. The District's assertion that "the plain language" of section 44064 requires a classified employee who switches to a certificated position to serve a probationary period in certificated service is not persuasive. Respondents' position is persuasive for several reasons. First, section 44064 is part of a series of statutes that govern the interchange between certificated and classified positions. Section 44060 outlines several purposes of Article 3, Chapter 1, in which it is found, one of which is ". . . to provide an interchange of qualified personnel between the certificated and classified services of the public school systems; and to secure rights and benefits to employees moving between the two services, all to the end of assuring better educational systems for the students of the public school systems." Read in the context of Article 3, it is apparent that section 44064 protects the accrued rights of classified employees who venture into certificated positions by enabling them to do so without fear of losing crucial rights and benefits, such as permanent status. Substantially similar language is used in section 44063, relating to the retention of rights and benefits by certificated employees assigned to positions in the classified service. In both instances, interchanging employees who return to their originating positions "shall be treated as if there had not been an interruption in his or her" classified or certificated service. These twin provisions encourage employees with accrued rights and benefits to risk accepting new positions where their status is not assured "all to the end of assuring better educational systems for the students of the public school systems."

Second, the ECE respondents did not voluntarily switch from classified service to certificated service as contemplated by section 44064. Rather, ECE respondents were misclassified for years during a time when they were certificated employees as a matter of law. Based on this ongoing misclassification, the two-year period of probation under section 44929.21 cannot be indefinitely deferred until the mistake is discovered. To do so compounds an error not of respondents' making. Rather, the probationary period commenced on the first day of respondents' paid service in a certificated position, as required by section 44845.

Third, the ECE respondents did not waive their right to the protections of the Education Code. The parties presented evidence regarding the protracted period of negotiations which eventually led to the execution of the MOU. Throughout this period, ECE respondents argued that their permanent status should be retained. After the MOU was executed by the unions and the District, the ECE respondents were provided a single choice: to sign offers of certificated probationary employment or to exercise their bumping rights into their former classified positions. Ms. Bradford and the ECE respondents signed contracts for probationary employment.

The ECE respondents' rights to retain their permanent status as certificated employees cannot be waived by collective bargaining. Education Code 44924

provides that, with exceptions that are not applicable, “any contract or agreement, express or implied, made by any employee to waive the benefits of this chapter or any part thereof is null and void.”<sup>13</sup> The courts have indicated that public policy considerations counsel liberal enforcement of section 44924, and that this is “in keeping with the legislative policy of insuring ‘uniformity of treatment’ of teachers by governing boards.” (*United Teachers- L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal. App. 4th 1510, 1520, rehearing and review denied.) In this case, the gross disparity in treatment between the preschool teachers from other feeder districts and the ECE group has resulted in an ongoing disparity in their employment security and status.

50. *Remedy:* The District shall correct its records to reflect that respondents Julie Bradford, Kimberly Gunter, Maria Heasley, and Miscelle Ward are permanent certificated employees. As a certificated employee with a seniority date of August 9, 2004, respondent Julie Bradford became a permanent employee at the commencement of the 2006-2007 school year. As a certificated employee with a seniority date of August 13, 2007, respondent Kimberly Gunter became a permanent employee at the commencement of the 2009-2010 school year. As certificated employees with a seniority dates of August 11, 2008, respondents Maria Heasley and Miscelle Ward became permanent employees at the commencement of the 2010-2011 school year.

On May 5, 2011, the District filed its Position in response to the May 4, 2011, Order Re: Early Childhood Educator Respondents. While reasserting its argument that the ECE respondents are probationary certificated employees, the District provided its analysis of whether it would have issued layoff notices to these respondents if they are determined to be permanent employees.

The District would not have issued preliminary layoff notices to either Julie Bradford or Kimberly Gunter based on their seniority dates, because there are two less senior permanent certificated employees who were not issued preliminary layoff notices (Priscilla Contreras, 9/29/08 and Leanne Rae, 10/13/08). The Accusations against Ms. Bradford and Ms. Gunter will be dismissed.

The parties disagree about whether the Accusations of Maria Heasley and Miscelle Ward should be dismissed. Respondents assert that the Accusations against all ECE respondents must be rescinded if they are permanent certificated employees because there were 13 other ECE employees who did not receive layoff notices. The District asserts that it would have issued preliminary layoff notices to both Ms. Heasley and Ms. Ward, even as permanent employees. It notes that there are three

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<sup>13</sup> The exceptions are as provided in sections 44937 (waiver of hearing in a dismissal or suspension proceeding) and 44956 (rights of terminated permanent employee).

other permanent certificated ECE employees with the same August 11, 2008 seniority dates as Ms. Heasley and Ms. Ward who did not receive layoff notices. The District used its Tie Break Criteria from Resolution 235, and determined the order of seniority based upon relative years of experience.

- a. Cynthia Torrez 11 years experience
- b. Roberta Coker 7 years experience
- c. Christine Verner 4 years experience
- d. Miscelle Ward 3 years experience
- e. Maria Heasley 3 years experience

Because Ms. Ward and Ms. Heasley have the least experience, they would still have received notice. Respondents objected to the District's application of the experience criteria as unsupported by the record.

The District's analysis is correct. The District used the same experience criteria when it rescinded the notice issued to Susan Bridge (Factual Finding 19.) The Accusations against Ms. Ward and Ms. Heasley will not be dismissed but their records will be corrected to reflect their status as permanent certificated employees.

51. Any other assertions raised by respondents at hearing which are not addressed above are found to be without merit and are rejected.

52. Except as stated above, no more junior employees are being retained to render services that more senior respondents are certificated and competent to perform.

53. The District's reductions and discontinuances of particular kinds of services relate solely to the welfare of its schools and pupils.

## LEGAL CONCLUSIONS

1. Education Code section 44949 provides, in pertinent part, as follows:

- (a) 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 for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, 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. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

2. Education Code section 44955, subdivision (b), provides in pertinent part that:

(b) Whenever in any school year . . . 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 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. . .

3. The District has the burden of proving by a preponderance of the evidence that the proposed reduction or elimination of particular kinds of services and the preliminary notice of layoff served on respondents are factually and legally appropriate.

4. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly Factual Findings 1 through 10, all notice and jurisdictional requirements set forth in sections 44944 and 44945 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 Resolutions 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.)

5. The Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California*

*Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

6. As set forth in the Factual Findings and Legal Conclusions as a whole, the services identified in the PKS/Conforming Resolutions are particular kinds of services that may be reduced or discontinued under sections 44949 and 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

7. As set forth in Factual Findings 17 through 19 and 23, the District rescinded preliminary layoff notices issued to 23 certificated employees. Accordingly, the Accusations against the following respondent are dismissed:

Cynthia Corral	(8/11/08)
Adrienne Ruggles	(8/11/08)
Colleen Kinder	(9/14/09)
Andrea Cottrell	(8/01/07)
Tangelica Crates	(8/15/07)
Michelle Bricker	(10/24/07)
Daniel Grubbs	(8/09/07)
Carrie-Anna McCoy	(9/24/07)
Clay Schubert	(8/15/07)
Tessa McGarr	(2/05/07)
Megan Wooden	(8/01/07)
Susan Bridge	(8/17/06)
Autumn Sharpe	(8/01/07)

8. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly Factual Findings 29 through 36, the Accusation against respondent Alicia Caddell is dismissed.

9. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly Factual Findings 41 through 50, the District shall correct its personnel records and certificated seniority list to reflect that respondents Julie Bradford, Kimberly Gunter, Maria Heasley, and Miscelle Ward are permanent certificated employees. The Accusations against respondents Julie Bradford and Kimberly Gunter are dismissed.

10. As set forth in the Factual Findings and Legal Conclusions as a whole, except as is noted above, the District has established that no employees junior to respondents are being retained to perform the services which respondents are competent and certificated to render.

#### RECOMMENDATION

1. The Accusations against the following respondents are hereby dismissed, based on Legal Conclusion 7:

Cynthia Corral	(8/11/08)
Adrienne Ruggles	(8/11/08)
Colleen Kinder	(9/14/09)
Andrea Cottrell	(8/01/07)
Tangelica Crates	(8/15/07)
Michelle Bricker	(10/24/07)
Daniel Grubbs	(8/09/07)
Carrie-Anna McCoy	(9/24/07)
Clay Schubert	(8/15/07)
Tessa McGarr	(2/05/07)
Megan Wooden	(8/01/07)
Susan Bridge	(8/17/06)
Autumn Sharpe	(8/01/07)

2. The Accusation against Alicia Caddell is hereby dismissed, based on Legal Conclusion 8.

3. Based on Legal Conclusion 9, the District shall correct its personnel records and certificated seniority list to reflect that respondents Julie Bradford, Kimberly Gunter, Maria Heasley, and Miscelle Ward are permanent certificated employees. The Accusations against respondents Julie Bradford and Kimberly Gunter are dismissed.

4. The District may give notice to the remaining respondents that it will not require their services for the 2011-2012 school year. Notice shall be given in inverse order of seniority.

DATED: May 5, 2011

  
MARILYN A. WOOLLARD  
Administrative Law Judge  
Office of Administrative Hearings

**EXHIBIT A**  
**RESPONDENTS SERVED WITH ACCUSATIONS**

	<b>LAST</b>	<b>FIRST</b>
<b>1</b>	AMPARO	MICHAEL
<b>2</b>	BALLARD	JILL
<b>3</b>	BANKS	GENEVIEVE
<b>4</b>	BARO	CHE'
<b>5</b>	BAXTER	GEORGE
<b>6</b>	BETSCHART	BRAD
<b>7</b>	BRADFORD	JULIE
<b>8</b>	BRICKER	MICHELLE
<b>9</b>	BRIDGE	SUSAN
<b>10</b>	BROWN	JEFFREY
<b>11</b>	BUNCH	SANDRA
<b>12</b>	BUTTS	TIMOTHY
<b>13</b>	CADDELL	ALICIA
<b>14</b>	CAMMACK	STEVEN
<b>15</b>	CARPENTER	CHRISTINA
<b>16</b>	CARRAZANA	ETELVINA
<b>17</b>	CASTELLANOS	MARY
<b>18</b>	CASTELLANOS	PAUL
<b>19</b>	CATANIA	ANDREA
<b>20</b>	CISNEROS	MARGIE
<b>21</b>	CLARK	ANNIE
<b>22</b>	CORRAL	CYNTHIA
<b>23</b>	COTTRELL	ANDREA
<b>24</b>	CRATES	TANGELICA
<b>25</b>	CROSS	CALEN
<b>26</b>	CUCU	MARIA
<b>27</b>	DAHL TRUJILLO	KARA
<b>28</b>	DEANE-HANSON	DESIRE
<b>29</b>	DIXON	CARL
<b>30</b>	EARLEY	CONSTANCE
<b>31</b>	ESPINO	MICHAEL
<b>32</b>	FREEMAN	LINDE
<b>33</b>	GREEN	KATHRYN
<b>34</b>	GRIFFITH	EFFIE
<b>35</b>	GRUBBS	DANIEL

36	GUNTER	KIMBERLY
37	HAMILTON	NATALIE
38	HANSEN	STACY
39	HANSON	REBEKAH
40	HARBACK	KENDRA
41	HARRIS-HODNETT	BRANDY
42	HEASLEY	MARIA
43	HENDERSON	ELIZABETH
44	HUDDLESTON	MATTHEW
45	HUEZO	JESSICA
46	JACOBS	TARA
47	JENSEN	LYNN
48	JENSEN	STEVEN
49	JOHNSON	JANAE
50	KILCULLEN	ANNA
51	KINDER	COLLEEN
52	KLEINLE	JUSTIN
53	LINGENFELTER	MYSTI
54	LOPEZ	STELLA
55	LUND	MERLYN
56	LYMAN	JOHN
57	LYONS	KARI
58	MACIAS	ALBERTO
59	MARTIN	JOLIE
60	MCCARTHY	KATHLEEN
61	MCCOY	CARRIE-ANNA
62	MCGARR	TESSA
63	MICHELMAN	MARY
64	MYERS	RENEE
65	NESTA	DONATO
66	NEWBERRY	JESSICA
67	ORVIN	VESLAV
68	PANCARO	RICHARD
69	PEARSON	CARRIE
70	PERDIGONE	AMY
71	POLSON	MARYANN
72	PRENTICE	SUSAN
73	PRESS-DAWSON	TERRY
74	PRICE	CONNIE
75	RANAGAN	RON
76	RANSFORD	KELLY

77	REID	KAREN
78	RIERSON	MARGARET
79	RODMAN	LAURA
80	RODRIGUEZ	JOSE
81	RUGGLES	ADRIENNE
82	SALAZAR	TANIA
83	SCHUBERT	CLAY
84	SHARMA	PRITIKA
85	SHARP	AUTUMN
86	SHIBATA	GAYLE
87	SMITH	NICHOLE
88	STARRH	CARLY
89	STINSON	ANNA
90	TOLLE	SARA
91	TROXLER	REBECCA
92	VANG	CHENG
93	VOIGT	HEATHER
94	WARD	MISCELLE
95	WILKINS	OLIVIA
96	WOODARD	ERIC
97	WOODEN	MEGAN
98	WRIGHT	ROSE
99	YOUNG	JONATHAN

**EXHIBIT B**  
**REPRESENTED RESPONDENTS**

1	AMPARO	MICHAEL
2	BALLARD	JILL
3	BANKS (aka: Johnsen)	GENEVIEVE
4	<b>BARO</b>	<b>CHE</b>
5	BAXTER	GEORGE
6	BRADFORD	JULIE
7	BRICKER - <b>rescinded 4/12/11</b>	MICHELLE
8	BRIDGE - <b>rescinded 4/13/11</b>	SUSAN
9	BROWN	JEFFREY
10	CADDELL	ALICIA
11	CAMMACK	STEVEN
12	CARPENTER	CHRISTINA
13	CASTELLANOS	MARY
14	CASTELLANOS	PAUL
15	CATANIA (aka: Stephenson)	ANDREA
16	CISNEROS	MARGIE
17	CLARK	ANNIE
18	CORRAL - <b>rescinded 4/12/11</b>	CYNTHIA
19	COTTRELL - <b>rescinded 4/12/11</b>	ANDREA
20	CRATES - <b>rescinded 4/12/11</b>	TANGELICA (TANGIE)
21	CROSS	CALEN
22	CUCU	MARIA
23	DAHL TRUJILLO	KARA
24	DEANE-HANSON	DESIRE
25	DIXON	CARL
26	EARLEY	CONSTANCE
27	ESPINO	MICHAEL
28	GREEN	KATHRYN
29	GRIFFITH	EFFIE
30	GRUBBS - - <b>rescinded 4/12/11</b>	DANIEL
31	GUNTER	KIMBERLY
32	HANSEN	STACY
33	HARBACK	KENDRA
34	HARRIS-HODNETT	BRANDY
35	HEASLEY	MARIA
36	HUDDLESTON	MATTHEW
37	JACOBS	TARA
38	JENSEN	LYNN
39	JENSEN	STEVEN
40	JOHNSON	JANAE
41	KILCULLEN	ANNA
42	KINDER - <b>rescinded 4/12/11</b>	COLLEEN
43	KLEINLE	JUSTIN
44	LINGENFELTER	MYSTI M.
45	LOPEZ	STELLA
46	LYMAN	JOHN

47	LYONS	KARI
48	MCCARTHY	KATHLEEN
49	MCCOY - rescinded 4/12/11	CARRIE-ANNA
50	MCGARR - rescinded 4/13/11	TESSA
51	MICHELMAN	MARY
52	MYERS	RENEE
53	ORVIN	VESLAV
54	PANCARO	RICHARD
55	PEARSON-NELSON	CARRIE
56	POLSON	MARYANN
57	PRENTICE	SUSAN
58	PRESS-DAWSON	TERRY
59	PRICE	CONNIE
60	REID	KAREN
61	RIERSON	MARGARET (Meg)
62	RODMAN	LAURA
63	RODRIGUEZ	JOSE
64	RUGGLES - rescinded 4/12/11	ADRIENNE
65	SALAZAR	TANIA
66	SCHUBERT - rescinded 4/12/11	CLAY
67	SHARMA	PRITIKA
68	SHARP	AUTUMN
69	SHIBATA	GAYLE KIM
70	SMITH	NICHOLE
71	TOLLE	SARA
72	VANG	CHENG
73	VOIGT	HEATHER
74	WARD	MISCELLE
75	WILKINS	OLIVIA
76	WOODEN -- rescinded 4/13/11	MEGAN