

BEFORE THE
GOVERNING BOARD
WILLIAMS UNIFIED SCHOOL DISTRICT
COUNTY OF COLUSA
STATE OF CALIFORNIA

In the Matter of the Reduction or Elimination
of Particular Kinds of Services and the
Employment Status of:

CERTAIN CERTIFICATED EMPLOYEES
OF THE WILLIAMS UNIFIED SCHOOL
DISTRICT,

Respondents.

OAH No. 2009030509

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter at the Williams Unified School District Office, Williams, California on April 3, 2009.

Kim Kingsley Bogard, Attorney at Law, and Elizabeth A. Tanner, Attorney at Law, of Kingsley, Bogard, Thompson, L.L.P., Attorneys at Law, represented the Williams Unified School District (District) Judith Rossi, Ed.D., Superintendent, appeared on behalf of the District.

Michael N. McCallum, Attorney at Law, represented respondents Emma Agnew-Gonzalez, Christy Correa, Gladys Fanning, Patrick Gonsalve, Sandro Magana, Jennifer Martins, and Rosa Thompson (the represented respondents).

Respondents Traci Lavaroni and Joy Barnett (the unrepresented respondents) appeared in pro per.

The matter was tried on April 3, 2009, and the record was left open for the receipt of points and authorities from the parties and closing arguments in writing. The parties moved for an extension of time for the filing of post trial briefs and legal arguments. The parties agreed to extend and waive the statutory deadlines for the submission of the Decision and the Board's action on the Decision accordingly.

The post hearing briefs and points and authorities were received from counsel for respondents on April 28, 2009. Counsel for respondents appended an Exhibit purporting to

be pages from the Commission on Teacher Credentialing's Assignment Manual to the post hearing brief and referred to it in the brief. The exhibit was not considered, nor were any references to it in the brief. The document is hearsay, lacks foundation and was untimely offered after the taking of evidence was closed. The post trial brief and written argument was received from counsel for the District on April 29, 2009.

The matter was initially submitted on April 29, 2009.

Counsel for respondents moved to reopen the record for the taking of additional evidence and/or submitting additional legal arguments on April 29, 2009. Counsel for the District strenuously objected, contending all evidence necessary for the Decision had already been presented. The motion to reopen the record was granted in part and denied in part. The motion to reopen to take additional testimony was denied. The motion to reopen to permit the parties to submit additional argument on the record already made was granted.

Respondents' supplemental post hearing brief was received May 6, 2009.

The District's supplemental post hearing brief was received May 8, 2009. The supplemental brief contained three Attachments, Attachment A, a purported copy of Board Policy BP 4112.24, subdivision (a), Attachment B, a copy of Board Policy BP 4112, 24, subdivision (b), and Attachment C, a copy of Board Policy BP 4112.24, subdivision (a). Each of these Attachments contain documents purporting to be policies adopted by the Board regarding No Child Left Behind Act provisions applied to certificated personnel working in the District. The District's supplemental brief referred to these additional documents to some extent in making the arguments the District has advanced.

On May 11, 2009, counsel for respondents filed a written objection to consideration of the Attachments and opposing the making of the documents contained in the Attachments part of the record. Counsel's objection is partially accurate. His objection that the Board policies were not offered in evidence during the evidentiary hearing is accurate, and thus the objection to the inclusion of these documents in the record is sustained, and these documents will not be considered in the making of the Decision. There exists no foundation in the record for these documents, they are hearsay and are not the type of documents that may be judicially noticed without an adequate foundation. However, counsel's contention that there was no testimony about these Board policies is not correct. The Superintendent, without naming or specifically describing these policies, or referring to these documents, did indeed refer to the policies in her testimony, and explained that her reference to those policies was a factor in the making of the decisions leading to this action. Thus, to this limited extent only, the objection is overruled, and the Superintendent's testimony about the policies is considered and weighed in the making of this Decision.

The record was closed on May 11, 2009.

Due to the time waivers and extensions of time granted to complete the record in this matter, Education Code sections 44949 and 44955 permit the deadlines for the preparation

and submission of the Proposed Decision and for the Board’s consideration and action on the Decision to be accordingly extended. The stipulations entered in this matter amounted to extensions of 38 days¹ to prepare and submit the Proposed Decision, and an additional seven days for the Board to act. Thus, the Proposed Decision is due to the Board 38 days from May 11, the date the record finally closed, or June 18, 2009. The Board’s time to consider the Decision and act is June 25, 2009.

FACTUAL FINDINGS

1. Judith Rossi, Ed.D., (Superintendent) made and filed the Accusation in her official capacity as Superintendent, Williams Unified School District (District).

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

3. On or just before March 5, 2009, in accordance with Education Code section 44949 and 44955, the Superintendent notified the Governing Board of the District (Board) in writing of the Superintendent’s recommendation that certain particular kinds of services would have to be reduced or eliminated for the upcoming school year. The Superintendent’s recommendation specified the particular kinds of services to be reduced or eliminated, as set forth below. The Superintendent also notified the Board that a corresponding number of certificated employees of the District, in this instance, 9.0 full time equivalents (FTE), would have to be laid off to effectuate the reduction or elimination of the particular kinds of services. The Superintendent notified the Board that respondents had been identified as persons to whom notice should be given that their services would not be required for the ensuing school year. The recommendation that respondents’ services for the District would not be required for the upcoming school year was not related to their skills, abilities or competencies as teachers.

REDUCTIONS/ELIMINATIONS OF PARTICULAR KINDS OF SERVICES

4. The Board adopted Resolution 15-030509 on March 5, 2009. The Board resolved to follow the Superintendent’s recommendation to reduce 9.00 FTE particular kinds of services. The Resolution authorized and directed the Superintendent to give notice to an equivalent number of certificated employees of the District that their services would not be required for the upcoming school year in order to effectuate the reduction. The Resolution authorized the elimination of the following services now offered in the District:

Elementary Education Grades K-6 Self-Contained	6.00 FTE
Grades 9 Mathematics	2.00 FTE
Social Sciences Grades 9-12	1.00 FTE
TOTAL	9.00 FTE

¹ April 3 to April 29, first extension, April 29 to May 11, second extension (total time 38 days)

5. The Resolution also authorized the reduction or elimination of 10 work days each of administrator services for a K-3 Principal; a Grades 4-6 Principal; a Grades 7-8 Principal; and a 9-12 Principal.

6. The Governing Board also adopted Resolution 16-030509 (Tie Breaker Resolution) on March 5, 2009, regarding the adoption of criteria for breaking ties in the event two or more certificated employees have the same first date of paid service.

7. The Superintendent caused each of the respondents to be served with a written Notice of Intention to Dismiss (preliminary notice) on March 10, 2009. The written preliminary notices advised respondents that their services would not be required for the upcoming school year. The preliminary notice set forth the reasons for the recommendation.

PROBATIONARY NONREELECTIONS

8. In separate proceedings and by separate notice, the Superintendent gave two probationary teachers notice of nonreelection, advising them that their services would not be required in the upcoming school year. Commensurate with the Education Code provisions permitting the District to make such decisions regarding nonreelection of probationary teachers during the probationary period, the District did not disclose the reasons for the Superintendent and Board's decision not to reelect these two teachers, and cause need not be stated for the action.

9. Counsel for the two probationary teachers not reelected moved for an Order requiring the District to disclose the reasons for their nonreelection decisions. "Probationary employees may be nonreelected without any showing of cause, without any statement of reasons and without any right of appeal or administrative redress."² "A school district may choose not to reelect a probationary employee 'without providing cause or other procedural protections to the terminated employee.'"³ The motion was denied.

10. However, in "an abundance of caution," as the Superintendent put it, the two probationary teachers not reelected were also each given a "precautionary" preliminary notice of layoff. As nearly as could be ascertained from some rather vague testimony, these two employees were given preliminary notices of layoff to provide the District the ability to still lay them off, in the event that these employees were determined in these proceedings to have status in the District other than probationary that might place either into a position to displace another teacher.

² Education Code section 44948.3, *Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911, 917, citing *Bellflower Education Association v. Bellflower Unified School District* (1991) 228 Cal.App. 3d 805, 808

³ *Kavanaugh, supra*, at p. 918, fn. 4, citing *Board of Education v. Round Valley Teacher's Association* (1996) 13 Cal.4th 269, 281.

WAIVER FOR FAILURE TO TIMELY FILE A REQUEST FOR A HEARING

11. With the exception three employees, Colson, Johnston and Petlock, respondents each timely filed written requests for a hearing to determine if there was cause for not reemploying them for the ensuing year. Employees Colson, Johnston and Petlock were timely served preliminary notices of layoff. These preliminary notices of layoff contained instructions that if the recipient of such a notice wanted a hearing, the recipient must timely file with the District a Request for a Hearing. The instructions advise the recipient that failure to timely file a Request for a Hearing will be deemed a waiver of the recipient's right to a hearing. Employees Colson, Johnston and Petlock failed to timely file a Request for a Hearing in response to receipt of a preliminary notice. These three employees receiving preliminary notice of layoff waived any right to a hearing.

DEFAULT FOR FAILURE TO FILE NOTICE OF DEFENSE

12. The District timely served Accusations on each respondent following receipt of their Requests for a Hearing. Unrepresented respondent LeGrande failed to timely file a Notice of Defense to the Accusation. It initially appeared that unrepresented respondent Barnette failed to timely file a Notice of Defense to the Accusation, as the District had no record of having received a timely signed Notice of Defense from her. She appeared at the hearing, and, after discussions off the record, the District stipulated that her Notice of Defense was timely filed through her site administrator. Unrepresented respondent Barnette was thus permitted to participate in the evidentiary hearing. The matter proceeded as a default with respect to respondent LeGrande only.⁴ All other named respondents who were served an Accusation timely filed a Notice of Defense to the Accusation. All prehearing jurisdictional requirements were met with respect to the remaining respondents.

STIPULATED WITHDRAWALS OF PRELIMINARY NOTICES

13. At the commencement of the evidentiary hearing, the District withdrew the preliminary notices issued to respondents Magano and Fanning. The District stipulated that these two respondents were "overnoticed" in an abundance of caution, in case unanticipated changes in the status of others receiving a preliminary notice occurred. Satisfied such changes had not occurred, the District withdrew the notices. As the evidentiary hearing developed, the District stipulated to withdraw the preliminary notices issued to respondents Levaroni and Colson. Each of these certificated employees is a probationary year 1 teacher. These two respondents are deemed rehired for the upcoming school year.

RESPONDENT ROSA THOMPSON'S FIRST DAY OF PAID SERVICE

14. Ms. Thompson is a first grade teacher in the District. She has a multiple subjects credential that permits her to teach in a self-contained classroom in grades K-12. She also has a CLAD-E certification. Ms. Thompson's first day of paid service to the

⁴ Government Code section 11520.

District was July 26, 2007. The first day of school in 2007 was August 6. Ms. Thompson was paid for the days before the first day of school for in-service training. There were two pre-first day of school in-services in 2007 for the Williams Elementary School where Ms. Thompson taught. The first in-service occurred on July 19 and 20, 2007, in Sacramento, and was a retreat. Ms. Thompson did not attend, as was her prerogative. Respondent LeGrande, who was new to the District in 2007, as was Ms. Thompson, did attend the retreat and received a first day of paid service date of July 19, 2007. Ms. Thompson elected to attend the July 26, 2007, in service and staff development ELD training, which started her contract. She received her first day of paid service on July 26, 2007, which was the first day she was paid by the District for teaching duties. Ms. Thompson was paid by the District for each work day after July 26, 2007 and to August 5, 2007, when classroom instruction began. Ms. Thompson offered no evidence regarding her activities on these pre-school in-service days before instruction began and for which she was paid.

15. Ms. Thompson contends her principal required her to report to work earlier than her first day of paid service. She testified her principal asked her to meet with the principal and the other first grade teacher at the elementary school to work out difficulties caused when the construction of a second classroom fell behind, as well as needs for supplies, class sizes and dividing the students to be assigned to each. The construction delay meant the two first grade teachers were going to have to share a classroom and work out a method to teach the children sharing cramped and limited facilities. The principal asked Ms. Thompson to attend the meeting when Ms. Thompson reported to the District office on July 3, 2007, to sign her contract. The meeting with the principal and other teacher took place on July 10, 2007. Ms. Thompson claims this date should be considered her first day of work, and her seniority date should be adjusted accordingly. At the meeting, Ms. Thompson testified the principal asked Ms. Thompson to contact the other teacher and arrange a mutually convenient time to meet again and work out the logistics for teaching in the classroom. Ms. Thompson claims she met with the other teacher three or four other times before the start of school to work out the curriculum and to organize the classroom. She acknowledged she was not paid for attending the meetings. She contends she is entitled to an earlier first day of paid service because she believed her attendance at the meeting with the principal was mandatory. She testified, "I would consider it a requirement, it was a special circumstance," when asked if she believed attendance at the meeting was mandatory. "I would consider it part of the contract." She acknowledged she did not begin to draw salary under her contract until July 26, as her contract provided. She also testified, "I do not know where we would have had the time to do it [have the meetings] after July 26."

16. The fact that the July 10, 2007 meeting occurred and was at the request of the principal was confirmed by the testimony of the principal and a letter she authored dated March 19, 2009, outlining her recollection of the meeting and the circumstances leading to it occurring. The principal's testimony and letter made clear that the meetings were by her request and were not mandatory. The principal confirmed that she did not make the meeting mandatory. She also confirmed that she did not tell either teacher the meeting she requested was not mandatory, but did provide both teachers the option to choose the date(s) of the meeting. The principal expressed her appreciation for Ms. Peterson's diligence and

willingness to meet with the other teacher and work out the issues related to having to share a classroom.

CONTINUATION HIGH SCHOOL POSITION (1.0 FTE SOCIAL SCIENCE)

17. A preliminary notice was given to employee Mr. Johnston corresponding to the Resolution’s intention to reduce Social Science by 1.0 FTE. Mr. Johnston currently teaches core subjects at the continuation high school, including social science.

18. The continuation high school teacher delivers educational service in a hybrid fashion. The setting is a self-contained classroom, but the delivery of instructional service is departmentalized. The curriculum at the continuation high school consists of teaching the core subjects of social science, math, science, and English. The assignment is considered a “specialized setting in secondary education,” within the flexibility afforded the District by the Education Code as a necessary small schools District. The Board authorized the flexibility exercised by the District in staffing this position but requires that the person assigned to teach in this position must be “HOUSSED⁵,” to wit, No Child Left Behind Act compliant. This means the teacher assigned to teach the core subjects in the continuation high school position must possess at least appropriate credentialing in one of the specialized core areas of English, math, social science and science that would qualify the teacher to teach that core subject in a departmentalized setting, and then to partner with other teachers who are credentialed and competent to teach in the core subjects areas the assigned teacher lacks to teach the other subjects.

19. Thus, like an elementary classroom, one teacher delivers all core subjects taught by him or herself. But very unlike an elementary classroom, the assigned teacher must have credentials in at least one of the core subjects. The Board has exercised its prerogative as a necessary small school district to provide the service in the continuation high school by authorizing the assigned teacher delivering the program at the continuation high school to have at least one of the designated credentials and competencies, subject to two conditions. The first is that the teacher partner with others who have the core credentials and competencies the assigned teacher lacks (in this instance, math, English and science) to review lesson plans, educational services delivery and grading of work done outside the teacher’s core competencies. Second, the teacher must agree to obtain additional authorizations in the core competencies lacking within three years of taking the assignment. As set forth above, the Board requires the District appoint a person to teach in the continuation high school who is NCLB compliant in at least one of the core competencies, and ultimately one who meets NCLB standards in all of the core subjects.

20. Due to these Board set requirements and criteria, possession of a multiple subjects credential, without more, is insufficient credentialing to hold the continuation high school position.

⁵ High Objective Uniform State Standard Evaluation (HOUSSE)

21. Mr. Johnston has a single subject social science credential. There was no evidence whether he is or is not NCLB compliant in Social Science, but his qualifications have become irrelevant because he is not being retained. For the past school year, Mr. Johnston was authorized by the Board to teach the core subjects in the continuation high school position by virtue of his single subject social sciences credential.

22. Respondents contend the most senior elementary teacher, Ms. Gonzalez-Agnew, being laid off as part of the 6.0 FTE reduction in elementary classes, has the right to take the continuation high school slot being vacated by Mr. Johnston being laid off. Respondents contend anyone with a multiple subjects credential is credentialed and competent to take the continuation high school position because it is a self-contained classroom teaching assignment, exactly like the elementary classes being eliminated, and that any multiple subjects credential holder can teach any self-contained classroom from kindergarten to 12th grade, which includes the continuation high school. Respondents contend that since the continuation high school position is actually termination of a self-contained classroom position, it is not an actual layoff of the 1.0 FTE Social Science position the Board authorized, and that, in actuality, the District is seeking to terminate a seventh self-contained position in excess of the Resolution's authorization. Respondents contend that laying Mr. Johnston off from what is a self-contained classroom setting that can be taught by anyone with a multiple subjects credential causes an over notice and over layoff of one unauthorized multiple subjects position, permitting Ms. Gonzalez-Agnew to be retained.

23. Respondents' contentions wholly lack merit and ignore the specialized and departmentalized nature of the manner in which the District delivers educational service at the continuation high school. The employee the District anticipates will teach the core subjects at the continuation high school in the upcoming year was not identified. The District produced a list of anticipated assignments for the upcoming school year. The assignment Mr. Johnston is vacating is not specifically identified on the list. However, there are a number of teachers who are anticipated to teach one or more of the core subjects at the high school level who might be the assignee. All of these teachers are senior to Ms. Gonzalez-Agnew and all of the other multiple subjects credentials holders who received a preliminary notice of layoff. None of those multiple subjects credential holders, including Ms. Gonzalez-Agnew, have any credential or authorization, or any NCLB compliance in any of the core subjects required by the position. All of those senior to these challengers making the contention here have at least one credential in one of the core subjects. There was no evidence any teacher junior to the teachers making the contention is being retained to perform this service.

24. The respondents' other contention about the nature of the termination of an extra multiple subjects position beyond the Resolution's authorization, and the contention that there was no actual termination of the Social Science 1.0 FTE authorized by the Resolution, is patently lacking in merit. Mr. Johnston's core competency that authorizes him to teach at the continuation high school is his credential in Social Sciences. His position was targeted for layoff as Social Sciences due to this authorization. There was nothing mysterious or difficult to understand about this action. Mr. Johnston delivers Social Science

as his core competency at the continuation high school. He got laid off in that capacity. He did not challenge his layoff. The evidence fails to prove that the elementary teacher challengers are not credentialed and competent to fill this position commensurate with the Board's criteria as elaborated by the Superintendent in her testimony. The fact that Mr. Johnston also delivered education by teaching subjects outside his core competency in partnership with other teachers in the modified departmental approach the District employs here is irrelevant.

25. In sum, none of the respondent employees possessed of multiple subjects credentials, including Ms. Gonzales-Agnew, have the right to teach the continuation high school class being vacated by the layoff of Mr. Johnston. Even if they did, there is no evidence that any of these persons is entitled to bump anyone being retained in the District that could be assigned this position in the upcoming school year. In fact, the evidence is to the contrary. The District is not retaining anyone junior to those employees to teach that assignment in the upcoming school year. Further, these respondents each indisputably lack additional credentialing in English, math, social science or science and none are NCLB compliant in any of these subjects. All of these elementary teacher respondents slated for layoff have only multiple subjects credentials.

26. The District acknowledged that in the previous school year, it misassigned Mr. Gonsalve to the position at the continuation high school. Mr. Gonsalve has a multiple subjects credential with a supplemental authorization in English. The District acknowledged that the supplemental authorization was insufficient to permit him to teach in the position, because the continuation high school has students grades nine through twelve, while the English supplemental authorization permitted Mr. Gonsalve only to teach English up through grade nine. Respondents contend that the District has set precedent by assigning a multiple subjects credential holder to this position. The contention lacks merit. The District corrected the error in this current school year. No respondent has the right to rely on a previous error to require the District to misassign one of them to the position in the upcoming school year, in derogation of the Board's directions about the position.

27. The parties stipulated that all respondents receiving a preliminary notice of layoff who possess multiple subjects credentials would consent to teaching at the continuation high school.

28. The District is facing intense financial pressure necessitating the reduction or elimination of the particular kinds of services set forth in the Resolution. The reductions and eliminations of particular kinds of services as set forth in the Resolution are therefore in the best interests of the District and its students.

29. The Superintendent, on behalf of the District, considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

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

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied. 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 is factually and legally appropriate.⁶

2. The services the District seeks to eliminate in this matter are “particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue these particular kinds of services was not demonstrated to be arbitrary or capricious, but constituted a proper exercise of discretion.

3. Respondent Thompson’s claim that she is entitled to an earlier seniority date lacks legal merit. Her first day of paid service to the District was July 26, 2007. Seniority is measured from the first day of paid service forward.⁷ No matter how praiseworthy the preschool, precontract activity may be, or how valuable the activity may be to the District, she does not even have a presumptive claim to have her seniority date moved back if the activity was uncompensated. The activity was not part of Ms. Thompson’s contract.

4. Ms. Thompson entered into a contract with the District for the school year in question that did not provide for paying her for the time she spent at the July 10 meeting. As with other District employees, the Memorandum of Understanding (MOU) between the District and its certificated employees calls for Ms. Thompson to serve 180 teaching days and five in-service paid days. In the school year in question, the in-service days began on July 19 with the retreat, or July 26, at the employee’s option. Ms. Thompson chose to begin her contract with in-service on July 26. There was no modification of Ms. Thompson’s contract providing for her to be paid for the July 10 meeting. There was no evidence that Ms. Thompson sought to be paid for the day or asked the District to change her contract to have it begin with her attendance at this meeting that she perceived as mandatory. The principal’s testimony made clear that at the time she asked Ms. Thompson for a favor to attend the meeting, and Ms. Thompson obliged. There was no discussion that the day was to be considered a contract work day, that Ms. Thompson should be paid for the day, or that Ms. Thompson was required to attend. In fact, she was given considerable flexibility in arranging the date of the meeting. There was no persuasive evidence that the meeting could

⁶ Education Code section 44949.

⁷ Education Code section 44845, which provides, in pertinent part, “Every probationary or permanent employee...shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position.”

not have taken place after July 26 but before the start of school, other than Ms. Thompson's vague testimony that such would have been "very difficult." If it was indeed Ms. Thompson's perception that she was required to attend this meeting and that it should have been a paid contract work or in-service work day, she made no effort at the time to communicate that to the District and seek to be paid and/or have her contract adjusted accordingly.

5. Nevertheless, factually, Ms. Thompson's contention has appeal and her willingness to do what was necessary to help and serve her students, her coteacher, principal and the District is worthy of praise. The District does not encourage its employees to participate in such "voluntary"⁸ preschool, precontract activity when it fails to take into account the employee's perception that saying "no" or "later" to one's site supervisor really do not appear to be prudent choices. Ms. Thompson invested a good deal of work in these meetings and she saw them as necessary to the successful start up of her classroom. The principal did not disagree with the value or amount of the work, only with her characterization of its voluntariness. Ms. Thompson shares responsibility for this unfortunate circumstance by failing to communicate to the District that she perceived this work to be mandatory, part of her contract and that her contract should be back-dated to cover this work. But absent a retroactive modification of Ms. Thompson's contract to start on July 10, when she had her first meeting, there is little that can be done at this point. There is no authority or jurisdiction in these proceedings to retroactively change unpaid activity that was not part of Ms. Thompson's contract with the District into contract compensated activity. There exists no authority to order the District to retroactively move her seniority and contract start dates back in time to the meeting. Discretion to do so rests entirely with the District at this point.

6. Ms. Thompson's first day of paid service to the District was thus July 26, 2007. That is the date the District carries on its records as her seniority date. Her effort to change the date through these proceedings fails legally. The date is correct.

7. The claims of the most senior holders of multiple subjects credentials receiving a preliminary notice of layoff that one of them is entitled to the position being vacated by the layoff of Mr. Johnston at the continuation high school lacks merit. As set forth in considerable detail in the Factual Findings, none of these employees can "bump" into the position. There is no evidence a less senior employee is being retained to teach the position in the upcoming school year. The claim that these employees are entitled to have the three year period to obtain the qualifying credential(s) to teach one of the required core courses also lacks merit. The three year period is provided for an employee who already meets the initial qualifying contingency of having a credential in at least one of the core competencies to obtain additional credentials and competencies. It is not provided to permit an employee who initially fails to have at least one of the required credentials to obtain the minimum qualifying requirements.

⁸ "Voluntary" depended on one's point of view, and was seen quite differently by the principal and the employee.

8. Respondents' contentions that the layoff fails to the most senior holder of a multiple subjects credential being laid off as part of the elementary school reduction of 6.0 FTE because of over-noticing and that the layoff of the 1.0 FTE of Social Sciences is not actually occurring also fails. As set forth in the Factual Findings, this contention and its reasoning defy logic and lack merit.

9. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The District is facing a projected deficit related to the loss of enrollment and funding. The reduction in particular kinds of services proposed is necessary to avert the District operating in a deficit in the upcoming school year.

10. Education Code section 44955 requires layoffs to take place in inverse order of seniority, with some notable exceptions. "Thus, the statute provides that seniority determines the order of dismissals, and that as between employees with the same first date of paid service, the order of termination is determined on the basis of the needs of the district and its students. Senior employees are given "bumping" rights in that they will not be terminated if there are junior employees retained who are rendering services which the senior employee is certificated and competent to render. Conversely, as in this case, a district may move upward from the bottom of the seniority list, "skipping" over and retaining junior employees who are certificated and competent to render services which more senior employees are not."⁹ There was no evidence any person receiving a preliminary notice of layoff is being laid off in favor of a junior employee being skipped, or that any employee being laid off is entitled to bump into a position held by a more junior employee where the employee being laid off has the credentials and competence to take the position of the more junior employee being retained. There was no evidence that any certificated employee of the District is being retained to provide a service any of the respondents who received preliminary notices are certificated and competent to render.

11. Legal cause exists pursuant to Education Code sections 44949 and 44955 for the Williams Unified School District to reduce or discontinue 9.0 FTE of particular kinds of services, as set forth in the District's Resolution #15-030509. The cause for the reduction or discontinuation of particular kinds of services relates solely to the welfare of the schools and the pupils thereof. Legal cause therefore exists to sustain the Accusation. The Board may give respondents final notices that their services will not be required by the District in the upcoming school year, in inverse order of seniority.

⁹ *Alexander v. Board of Trustees of the Delano Unified School District* (1983) 139 Cal. App. 3d 567, 571-2, *Moreland Teacher's Association v. Kurze* (1980) 109 Cal.App.3d 648, 655.

ORDER

The Accusation is SUSTAINED.

The Williams Unified School District action to reduce or eliminate 9.0 FTE of particular kinds of services for the 2009-2010 school year is AFFIRMED.

Final notice may be given to respondents by the District that their services will not be required for the upcoming school year. Notice shall be given in inverse order of seniority.

DATED: May 14, 2009


STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings