

BEFORE THE
GOVERNING BOARD OF THE
ROCKLIN UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction In Force of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE ROCKLIN UNIFIED
SCHOOL DISTRICT,

OAH No. 2009030849

Respondents.

PROPOSED DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Rocklin, California, on April 23 and 24, 2009, and May 11, 2009.¹

Michelle L. Cannon, Attorney at Law, of Kronick, Moskovitz, Tiedemann & Girard, represented the Rocklin Unified School District (District).

Andrea Price, Attorney at Law, of Langenkamp & Curtis, represented all respondents.

Oral and documentary evidence was presented and the parties offered oral closing arguments. The record was then closed and the matter was submitted for decision on May 11, 2009.

FACTUAL FINDINGS

1. The Rocklin Unified School District (District) serves 10,368 students in ten elementary schools, two middle schools, two comprehensive high schools and an alternative high school. Kevin Brown is the District's Superintendent. His actions

¹ At the conclusion of the hearing on April 24, 2009, the matter was continued for good cause. As set forth in the April 27, 2009 Continuance and Scheduling Order, pursuant to Education Code sections 44949, subdivisions (c) and (e), and 44955, subdivision (c), the proposed decision is due Thursday, May 28, 2009. The notice of termination required under Education Code section 44955 shall be given in the manner prescribed in Education Code section 44949, by Friday, June 12, 2009. Ms. Price agreed to accept service of the proposed decision on behalf of all respondents.

Art	1.00	F.T.E.
P.E.	1.84	F.T.E.
Home Economics	0.17	F.T.E.
AVID	0.17	F.T.E.
<u>I.T. Exploration</u>	<u>1.00</u>	<u>F.T.E.</u>
Middle School Total	15.18	F.T.E.

High School Total Positions

Language Arts	2.84	F.T.E.
Math	3.50	F.T.E.
Science (Biological)	1.50	F.T.E.
Social Studies	2.00	F.T.E.
CAD/CAM	1.00	F.T.E.
ROTC	1.00	F.T.E.
<u>P.E.</u>	<u>0.50</u>	<u>F.T.E.</u>
High School Total	12.34	F.T.E.

Total Full Time Equivalent reduction = 106.17 F.T.E.

Pursuant to Resolution Number 08-09-17, the Board directed the Superintendent “to take the proper steps, pursuant to sections 44949 and 44955, to send the appropriate notices to all employees whose positions may be affected by virtue of this action.”

4. On March 6, 2009, Superintendent Brown timely sent a “Notice of Intent to Dismiss” letter (Notice) to each of the respondents to advise them that he had recommended to the Board that they be given preliminary written notice that their services might not be required for the 2009-2010 school year due to reductions in PKS. Respondents were appropriately advised of their rights to request a hearing. With the Notice, respondents were provided copies of the PKS Resolution Number 08-09-17, sections 44949 and 44955, and a blank Request for Hearing form.

5. There is no dispute that respondents timely filed their requests for hearing to determine whether there was cause for not reemploying them for the 2009-2010 school year.

6. On March 27, 2009, Superintendent Brown made and signed the Accusation for layoffs against respondents, alleging that they are employed as permanent or probationary certificated employees who rendered their first day of paid service to the District on the date indicated in the 2008-2009 Certificated Seniority List attached to the Accusation. The Accusation alleged that respondents’ positions were being terminated based upon the reduction or discontinuation of PKS pursuant to Resolution Number 08-09-17, either directly as within the affected PKS reductions, or because their regular positions were taken by employees with greater seniority, whose positions were eliminated by the reduction or discontinuation of PKS. The

Accusation asserted that the District will not retain any certificated employees with less seniority than the respondents during the 2009-2010 school year to render services that the respondents are certificated and competent to perform.

The District served the Accusation and accompanying documents, including Notice of Accusation/Statement to Respondent, copies of relevant sections of the Education and Government Codes, blank Notice of Defense forms, and a Notice of Hearing, on all respondents.

7. Susan Clarke, Shannon Knepper-Maveety, Alison Parrott, Mary Rau, were each served with an Accusation after they filed a request for a hearing; however, these respondents did not file Notices of Defense and did not appear at the hearing directly or through counsel. Accordingly, the District may proceed with the layoff of these individuals by default. (Gov. Code, § 11520.)

8. On March 30, 2009, respondents' counsel filed a Notice of Defense on behalf of all respondents, except those identified in Findings 7 and 9, with a request for discovery. Respondents' names are set forth in the attached Exhibit A.

9. On April 23, 2009, the District advised that it had withdrawn the Accusations filed against Julie Asaro, Lyndsay Atlas, Karlene Bittler, Jennifer Bradley, Kelly Brown, Rose Marie Caballero, Gina Coiner Lacoste, Kristin Doehrer, Rosemary Elston, Susan Firchau, Craig Haviland, Heather McCoy, Sheri Morgan, Michael Patten, Kelsy Patterson, Deirdra Piazza, Richard Pitts, Krista Radmilovic, Robin Richie, Christina Schuler, Brett Shirhall, Marcie Solomon, Rebecca Spainhour, Deborah VanLiew, Dylan Vaughan, Nichol Weber, Christine Weilepp-Oglesby, and Robyn Winblad. The Accusations against these individuals are dismissed.

10. *Who Are Respondents?* Of the 56 respondents, 21 are permanent District employees, with seniority dates ranging from August 14, 2004 through September 11, 2006.³ The remaining respondents are probationary employees with seniority dates as recent as August 14, 2008. Most of respondents are from the District's elementary schools. They hold multiple subject credentials and were affected by the PKS reduction of self contained elementary teachers; several have single subject physical education (P.E.) credentials. Several respondents have single subject credentials and teach in the District's high schools. Forty one respondents testified.⁴

³ The names and seniority dates of respondents who are permanent employees are as follows: Michelle Rabe (8/12/04); Allicia Balzer, A. Michelle Hutton, Jennifer Newton, and Rebecca Taber-Giacomini have August 17, 2005 seniority dates; Catherine Zanetti (8/18/05); James Cook (9-6-05); an August 17, 2006 seniority date is shared by Cathy Bardet, Ann Feliz, Amanda Hargrove, Nell Hildebrand, Karen Jansz, Natalie Jorgensen, Kate Kirk, Carissa Kuehn, Charise Montera, Holly Runsten, and Rebecca Vestal; Kimberly Bay-Menacho (8/18/06); David Lacoste (8/22/06) and Nancy Bronte (9/11/06).

⁴ The following respondents did not testify: Jennifer Corcoran, Joanne Evers, Timothy Farnan,

11. The District did not serve any “precautionary” notices or Accusations on temporary employees. Claire Fortenbery is not a respondent in this matter and did not appear at the hearing. Ms. Fortenbery was classified by the District as a temporary employee and was released from her position. Respondents’ request to litigate her classification as a temporary employee, and its theoretical impact on their layoffs, was denied.⁵

12. *PKS*: Superintendent Brown testified that, after the Board adopted the PKS Resolution, several changes occurred which allowed the District to rescind some of the PKS reductions. Specifically, the layoff of 23 F.T.E. self contained elementary teachers, 2 F.T.E. nurses, 4.0 F.T.E. guidance counselors, 1 F.T.E. secondary art (music), and 1 F.T.E. ROTC were rescinded.

Respondents did not dispute that the items selected for reduction or elimination by the Board are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

13. There was no evidence that the District proposes to reduce any services that are mandated by state or federal laws or regulations below mandated levels.

14. District Certificated Personnel Analyst Charlotte Caldwell, in consultation with Assistant Superintendent for Human Resources David Pope, was primarily responsible for implementation of the technical aspects of the layoff. On November 5, 2008, in anticipation of a potential reduction in force, Ms. Caldwell sent a letter to each of the District’s certificated employees regarding “verification of seniority and credentials.” Employees were asked to verify information provided from their personnel files about their credentials, dates of hire/seniority, and to return a signed verification document by no later than Thursday, November 20, 2008. Employees were advised that the information in the District’s files would be “deemed correct” if the verification letter was not signed and returned by the stated deadline. Despite this deadline, Ms. Caldwell continued to accept new information and made changes as appropriate.

Using this information, the District created its 2008-2009 Certificated Seniority List (seniority list), which contains employees’ seniority dates (first date of paid service), credentials and special authorizations, assignments and status as

Rosemarie Groth, Amanda Hargrove, Stephanie Holm, Whitney Isetta, Janice Johnson, Robert Klingensmith, Carissa Kuehn, Danielle Martling, Leah Mast, Patricia Onorato, Daniel Parker, and April Taylor.

⁵ On April 23, 2009, respondents argued that Ms. Fortenbery should properly have been classified as a probationary employee who was entitled to notice and a hearing under Educations Code sections 44949 and 44955. Respondents further argued that, due to this asserted error by the District, the Accusations for layoff of all employees with more seniority than Ms. Fortenbery must be rescinded.

permanent, probationary, or temporary. The seniority list was updated on seven occasions from January 21 through March 27, 2009.

Ms. Caldwell used the information from the seniority list to develop a proposed layoff list. She broke the seniority list into PKS categories and identified the necessary number of FTE for reduction, beginning with the least senior employees. Ms. Caldwell developed a 2009 Certificated Bumping Chart and considered the attrition from one retirement and five resignations before the Notice was sent out. She interpreted and applied the competency criteria contained in the PKS Resolution to determine whether any employee who was laid off from a PKS reduced or eliminated by the Resolution had displacement rights or could “bump” a less senior employee. Ms. Caldwell determined that none of the respondents could bump into other positions. Ms. Caldwell also developed a Tie-Breaking Chart that incorporated the criteria contained in the Tie-Breaking Resolution; she interpreted and applied the tie-break criteria to break seniority date ties where necessary and she conducted a lottery where necessary.

15. *The Role of Seniority in Economic Lay Offs:* 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.⁶ The District has an affirmative obligation to reassign senior teachers who are losing their jobs 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 by a senior teacher is known as “bumping.” The seniority rule is not absolute, however, and a junior teacher with a needed credential or skills may be retained even if a more senior teacher is terminated. In order to depart from a seniority-based economic layoff by “skipping” a more junior employee, section 44955, subdivision (d)(1), requires the District to “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.”

⁶ Education Code section 44955, subdivision (b), provides in pertinent part that, “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.” (Italics added.) Pursuant to section 44955, subdivision (c), certificated employees are to be terminated in the “inverse of the order in which they were employed” and the “governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.”

Competency and Experience Criteria – Bumping Issues

16. As discussed above, section 44955 expresses a legislative intent to protect the seniority rights of certificated employees within the context of economic layoffs. Consequently, school districts may not erode the statute’s seniority protections by imposing unreasonable competency requirements on the ability of senior employees to bump into positions held by junior employees. Under the statute, a senior employee wishing to bump a junior employee must establish both that he holds the appropriate certificate for the position and that he is “competent.” Section 44955 does not define “competent”; however, from its use of the disjunctive, it is apparent that the term “competent” means more than merely holding the certificate necessary to teach a position held by a junior employee.

17. In Resolution Number 08-09-17, the Board set forth the following definition of the term “competency,” with instructions that it was to be used when a more senior employee selected for layoff due to the reduction in PKS wishes to bump into the position of a more junior employee:

for purposes of potential displacement rights, competency shall mean, at a minimum, possession of a preliminary, clear, professional clear, lifetime, or other full credential, and at least one semester actual teaching experience in the subject area in a comparable setting (elementary, secondary, alternative education) within the last five years. Additionally, competency shall also require that the teacher is qualified to teach the subject area under NCLB [No Child Left Behind].

The District’s definition of competence has four requirements: (1) the senior employee, at a minimum, must possess a preliminary, clear, professional clear, lifetime, or other full credential; (2) the senior employee must have at least one semester actual teaching experience in the subject area within the last five years; (3) the senior employee’s actual teaching experience within those previous five years must be in a “comparable setting,” defined as “(elementary, secondary, alternative education)”; and (4) the senior employee must be qualified to teach the subject area under NCLB.

18. *Respondents’ Challenge to the Board’s Competency Definition:* Respondents challenge this “competency” definition as being impermissibly vague, narrow, and generally destructive of their seniority rights. An analysis of respondents’ argument and evidence reveals that their challenge focuses on the “comparable setting” requirement (number 3). Specifically, respondents assert that the requirement that teachers have one semester of actual teaching experience within

the last five years teaching in a “comparable setting” allows the District to “cherry pick” junior employees, regardless of seniority.⁷

Respondents assert that the detrimental effect on them is demonstrated in two broad areas. First, more senior elementary school physical education (P.E.) teachers are prohibited by the competency definition from bumping into middle or high school P.E. positions held by junior employees. Second, elementary school teachers who have taught English Language Learners (ELLs) in their self-contained classrooms are prohibited from bumping into two junior positions (1.5 FTE) in the District’s elementary English Language Development (ELD) program.

19. The meaning of “certificated and competent” has been characterized as “a watershed inquiry.” (*Duax v. Kern Community College District* (1987) 196 Cal. App. 3d 555, 564.) In *Duax*, the appellate court reviewed a competency standard contained in a PKS resolution passed by the board of trustees of a community college district under former section 87743, which required one year of full-time experience teaching or providing service in the particular subject area within the last 10 years. In analyzing this resolution, the court relied on appellate decisions issued in the context of reemployment rights following layoffs which construed similar statutory language, “certificated and competent,” under section 44956 and its predecessors. The court relied on *Martin v. Kentfield School District* (*Martin*) (1983) 35 Cal. 3d 294, 299, in which the California Supreme Court characterized the decision of whether an employee is certificated and competent as a “discretionary” decision within the “special competence” of the school district. A subsequent case, *Forker v. Board of Trustees* (1984) 160 Cal. App. 3d 13, 19, noted that as interpreted by *Martin*, the term “competent” relates to the specific skills or qualifications required of the applicant. From these authorities, the court in *Duax* concluded that “a board’s definition of competency is reasonable when it considers the skills and qualifications of the teacher threatened with layoff.” The court held the board’s competency resolution standard was one “clearly relating to skills and qualifications to teach,” and did not too narrowly define competency. While “other factors might have been taken into consideration” and other competency standards “might have been imposed by the board, there is no mandate that the board do so.” (*Id.* at 567.)

20. Superintendent Brown testified that the “comparable setting” component was included in the PKS Resolution’s competency definition because each setting within the District has unique program offerings with different methodologies, and the District has invested in training its staff based upon a standards based curriculum framework. To allow a senior teacher to bump a junior teacher without the opportunity to be apprised of the new standards or to have experience in teaching those standards within the last five years is not in the best interests of the District’s students. For example, in the alternative education centers, teachers need multiple

⁷ Because there are no specific challenges to other parts of the competency definition, they are not addressed in this decision.

compliances with NCLB to enable them to teach various classes within the same room. Superintendent Brown testified that the competency definition approved by the Board in the PKS resolution was to be used to assess competency for purpose of the reduction in force. It is not designed to be applied to new District hires and it has not been approved by the Board for hiring.

21. *Comparable Setting for PE:* It is undisputed that a single subject PE credential authorizes its holder to teach PE from kindergarten through the 12th grade (K-12). There is no NCLB requirement for PE. In the PE arena, the District considers middle school (grades 7 and 8) and high school PE to be “comparable” settings. As a consequence, elementary PE teacher respondents seeking to bump into PE assignments of junior PE teachers at the District’s middle and high schools are “certificated” to do so, have taught PE at least one semester within the past five years, and must only satisfy the comparable setting component of the “competency” requirement. Based upon the comparable setting component of the PKS resolution, Ms. Caldwell determined that none of the more senior elementary PE teachers had displacement rights into secondary PE positions. Elementary PE teachers affected by this requirement are permanent employees Michelle Rabe (8/12/04) and David Lacoste (8/22/06), and probationary employee Dina Lachemann (8-16-07), who holds a .6 FTE position.

22. The District explained its rationale for requiring PE teachers to have experience in “comparable” settings in order to meet the competency requirement for bumping.

As set forth in the testimony of Superintendent Brown, Ms. Caldwell, Whitney High School Principal Debra Hawkins, and Spring View Middle School Principal Marge Crawford, the kindergarten through 6th grade (K-6) elementary PE program is “totally different” from secondary PE programs due to different format, grading, and standards. Elementary PE is conducted in small self-contained classes; it does not occur on a daily basis; students are not required to dress out; there are no grades; there is no teacher of record and activities may be conducted by instructional aides. The emphasis is on developing age-appropriate moving skills. In contrast, secondary PE occurs on a daily basis; students are required to dress out; PE teachers have locker room supervision responsibilities for large groups of adolescents; the PE teacher is responsible for over 200 students a day on rotating block schedules; the PE teacher must maintain students’ grades up on the computer; and the emphasis is on socialization for decision making in PE and on team building. A background in addressing adolescent behaviors is essential. All middle and high school PE teachers coach at least one sport, but as an additional duty.

23. Respondents note that they are certificated to teach PE at secondary grade levels; that they are able to learn new standards, can work with students of different age levels, and supervise locker rooms. Testimony of Ms. Rabe and Mr. Lacoste revealed that they have coaching experience with adolescents at the middle

and high school levels and have provided PE to large groups of students. Ms. Rabe testified that she was actively discouraged from applying for secondary coaching and teaching positions by her principal. Both Ms. Rabe and Mr. Lacoste demonstrated that, but for the comparable setting component, they are certificated and competent to bump into secondary PE positions of junior PE teachers.

24. In a unified school district, the imposition of a “comparable setting” requirement as a condition of competency for an elementary PE teacher to bump into a secondary PE teaching position is not reasonable, and impermissibly undercuts seniority rights. Under these circumstances, the competency requirement becomes an insurmountable barrier to the senior employee and shifts the burden from the District to make an individualized showing of its need to skip a junior employee under section 44955, subdivision (d). As applied to respondent PE teachers, this requirement is an abuse of discretion. Whether the District established that it was appropriate to skip junior secondary PE teachers is discussed below.

25. *Comparable Setting Requirement for Elementary ELD Positions:* Forty of the 56 respondents are elementary school teachers with multiple subject (MS) credentials and authorizations to teach ELL students who were selected for layoff due to the PKS reduction for self contained elementary classroom teachers. For ease of reference, these respondents will be referred to as the classroom teachers. They contest the District’s use of the “comparable setting” competency requirement to determine that they are not competent to displace two junior elementary ELD employees.

26. As a threshold matter, the testimony of the classroom teachers persuasively established that they hold appropriate credentials which authorize them to teach ELL students. Among the tenured classroom teachers, eight hold the CLAD credential; 10 hold an English Language Authorization (ELA); and one holds the ELD/SDAIE credential.⁸ Among probationary classroom teachers, 11 hold CLAD certificates; another 10 hold ELA authorizations.⁹ The testimony of classroom

⁸ Tenured classroom teachers hold the following EL certificates/authorizations: (1) CLAD: A. Michelle Hutton (8/17/05); Jennifer Newton (8/17/05); Rebecca Taber-Giacomini (8/17/05); James Cook (9-6-05); Karen Jansz (8/22/06); Kate Kirk (8/22/06); Kimberly Bay-Menacho (8/18/06); and Nancy Bronte (9/11/06); (2) ELA: Alicia Balzer (8/17/05); Catherine Zanetti (8/18/05); Ann Feliz (8/22/06); Amanda Hargrove (8/22/06); Nell Hildebrand (8/22/06); Natalie Jorgensen (8/22/06); Carissa Kuehn (8/22/06); Charise Montera (8/22/06); Holly Runsten (8/22/06); Rebecca Vestal (8/22/06); (3) ELD/SDAIE: Cathy Bardet (8/17/06).

⁹ Probationary classroom teachers hold the following EL certificates/authorizations: (1) CLAD: Jennifer Corcoran (10/18/07); Laurie Gin (8/16/07); Mary Hammond (8/16/07); Whitney Isetta (8/16/07); Lara Kikosicki (8/16/07); Chaunte Martin (8/16/07); Heather Marziale (8/16/07); Patricia Onorato (8/16/07); Alicia Perkins (8/16/07); Maryann Younger (8/16/07); Joanne Evers (8/16/07; .83 FTE); and (2) ELA: Jodi Ciesco (1/9/07); Meghan Darby (8/16/07); Cari Elcock (8/16/07); Stephanie Holm (8/16/07); K. Scott Hutton (8/16/07); Jeremy Miller (8/16/07); Lacey Spear (8/16/07); April Taylor (8/16/07; .5 FTE); Jeni Weeks (8/16/07); and Janice Johnson (8/14/08).

teachers holding a CLAD that they met the employment standards for the District's ELD position [i.e., to hold a CLAD Certificate] was undisputed and was confirmed by several District witnesses. Further, as reflected in various District job descriptions, ELD authorization includes ELA, CLAD, BCLAD, and the ELS/SDAIE. As indicated by ELD program specialist Shari Anderson, classroom teachers must be appropriately certified to have EL students in their classrooms. This is reinforced by the District's English Language Learner Program brochure, which advised the public that both the District's elementary ELD teachers and classroom teachers who teach EL students "are trained and certificated to address the needs of a second language learner."

27. Whether any of the classroom teachers can bump into junior ELD positions turns on whether they are "competent" to do so. Ms. Caldwell testified that, in analyzing potential displacement rights, she reviewed the PKS Resolution and determined that respondents did not meet the PKS Resolution's competency definition, because they had not taught ELD within the past five years. She based this determination on her understanding that classroom teaching was not a "comparable setting" to the elementary ELD Program, even though more senior classroom teachers had credentials and EL certifications.

28. The comparable setting component of the PKS Resolution's competency definition limited "comparable setting" to three circumstances, expressly delineated as "(elementary, secondary, alternative education)." The definition did not include programs within the District's elementary schools like the elementary ELD program. The application of the "comparable setting" requirement to a condition not expressly encompassed by the PKS resolution is an abuse of discretion that impermissibly undercuts seniority rights. Its use created an insurmountable barrier to the senior classroom teacher employees and shifted the burden from the District to make an individualized showing of its need to skip a junior employee under section 44955, subdivision (d).

Accordingly, the most senior classroom teachers with CLAD authorizations were certificated and competent to bump junior ELD teachers. Whether the District met its burden to skip two junior ELD certificated employees is addressed below.

Skipping Issues: Section 44955, subdivision (d)

29. *District's English Language Development (ELD) program:* Approximately 390 of the District's 10,368 students are English Language Learners or ELLs. Addressing the needs of ELL students has been a District priority, particularly since 2001 when the California Department of Education (CDE) found the District to be noncompliant in the area of ELD instruction. Since that time, the Board has made providing sufficient appropriate ELD instruction one of its top strategic priorities. The District has developed an ELD program, with distinct elementary and secondary ELD programs. The District's elementary ELD Program

(hereafter ELD Program) has five ELD teachers filling 4.5 F.T.E. positions at 10 elementary school sites: Barbara Scott (8/27/87); Debra Kilbourne (8/23/94); Shamryn Cole (8/17/06); Shannon Moore (8/16/07); and Amanda Withers (8/16/07). Both Ms. Moore and Ms. Withers are probationary employees; Ms. Moore holds a .5 FTE position. The ELD program was not included in the District's PKS reductions. Because none of the senior classroom teacher respondents with CLAD credentials was allowed to bump into their positions, neither Ms. Moore nor Ms. Withers received a layoff notice.

30. The District argues that it met its burden of establishing a specific need to skip two junior elementary ELD Program employees from the layoff under section 44955, subdivision (d).¹⁰ The District's need for specific personnel to teach a specific course of study in English language development was expressed in the testimony of various witnesses, including English Learner Program Specialist Shari Anderson and Cobblestone Elementary principal Kathy Goddard. Their testimony established that the ELD program is a specific course of study for which the District has a specific need for specially trained and experienced personnel.

The District's ELD program is a separate class that is taught outside of the self-contained elementary classrooms. It has a distinct curriculum, "On Our Way into English," that is not used by the classroom teachers. When this curriculum was initially purchased, EDL teachers received a half-day training in its use. ELD teachers are itinerant and are assigned a caseload of students to work with at multiple school sites. The ELD teachers "pull out" eligible ELD students for individual instruction or to work in small groups. Occasionally, the ELD teacher will provide "push-in" support by working with the classroom teacher in the classroom. On rare occasions, an instructional aide, under the supervision of the ELD teacher, will provide "push-in" ELD support to EL students in the classroom. The ELD teachers are also responsible for working with the parents of EL students in the English Language Advisory Committee [ELAC].

¹⁰ Section 44955, subdivision (d), provides that: Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

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

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

ELD teachers use distinct assessment instruments to determine the proficiency levels of ELL students, pursuant to federal legal requirements known as the *Castaneda* standards. These assessment tools are the “California English Language Development Test” or CELDT, and the “A Developmental English Proficiency Test” or ADEPT, a less frequently used instrument. The CELDT assesses the EL students’ English language listening, speaking, reading and writing skills. Based upon these assessments, the EL students are assigned to proficiency levels 1 through 5. ELD teachers conduct periodic reassessments of EL students with the CELDT to determine any changes in their proficiency levels. ELD teachers receive an annual one-day mandated training in administering and scoring the CELDT, which is necessary to ensure inter-rater reliability. An additional training of unspecified duration is provided in the ADEPT; and ongoing on the job training is provided.

CELDT levels 1 through 3 are, respectively, beginner, early intermediate, and intermediate ELL students. These students are pulled out of the classroom, generally two to five times a week for up to an hour, for individualized or small group instruction by the ELD teacher. Levels 4 and 5 are ELL students considered as, respectively, early advanced and advanced. These students do not receive pull out ELD instruction; the classroom teachers are responsible for their language development. ELL students at proficiency levels 1 through 3 do not receive ELD instruction in their classrooms. Classroom teachers use “Specially Designed Academic Instruction Delivered in English” or SAIDE strategies to support ELL students’ ability to access the core curriculum, including the English language arts (ELA). Classroom teachers teach the ELA standard, which focuses on literacy in reading, writing, listening and speaking. ELD teachers specialize on language development instruction, including semantics, under the ELD standards. While there is some overlap between ELA and ELD standards, the ELA standard does not supplant the unique ELD standard.

Replacement of a trained ELD teacher with a classroom teacher would negatively impact the ELD program due to the loss of experience and need to retrain the teacher.

31. Classroom teacher respondents strongly disagree that they are unable to teach ELD. Collectively, their testimony established that multiple subject classroom teachers are frequently called upon to quickly learn and master new curriculums and standards. This typically occurs when their assignments are made or are suddenly switched just before the start of the school year (for example, a first grade teacher being assigned to a fourth grade class). Classroom teachers have EL students with various languages and cultures in their classrooms; they are responsible for meeting the English language needs of their level 1 through 3 EL students at all times except when they are pulled out for ELD services; they are completely responsible for the English language development of the level 4 and 5 ELLs. The Houghton Mifflin curriculum used in K-6 contains the ELD standards that they must teach to levels 1 through 5. Many of the classroom teachers attended a 2007-2008 day long workshop

in Strategies for English Learners, which addressed providing effective ELD instruction. Many of the classroom teachers have volunteered and been designated as ELL “cluster” teachers at their school sites, demonstrating ongoing interest in working with this student population. Respondents never applied for the ELD positions because they had jobs at the time the vacancies became available. After receiving layoff notices, none of the classroom teachers was asked by the District if they were interested in teaching within the ELD program.

32. The weight of the evidence establishes that both Ms. Moore and Ms. Withers currently have special training and experience necessary to teach in the elementary ELD program which more senior classroom teachers do not currently possess. Respondents attempted to demonstrate that Ms. Moore and Ms. Withers did not have certain types of experience on the date they were hired into ELD positions by the District. It is incorrect to focus on their skills on the date of hire.¹¹ As demonstrated by the District, these junior employees have received specialized training and now have had nearly two school years of experience in delivering ELD services to EL students. While classroom teacher respondents have strong skills and experience, the District met its burden of establishing a need to skip these junior teachers under section 44955, subdivision (d), and as recently interpreted by the appellate court in *Bledsoe v. Biggs Unified School District* (2009) 170 Cal. App. 4th 127, 142.

33. *Junior Secondary PE Teachers:* Amber Petersen (8/16/07) is a PE teacher at the District’s middle school. She has less seniority than either Michelle Rabe or David Lacoste. At the District’s high schools, PE teachers Michael Gimenez (8/17/05) and Bret Hunter (9/7/05) have less seniority than Ms. Rabe.

The District did not meet its burden under section 44955, subdivision (d), that these junior secondary PE teachers have special training and experience necessary to teach PE that respondents Ms. Rabe and Mr. Lacoste do not possess. As a result, Ms. Rabe and Mr. Lacoste are entitled to bump junior PE teachers. The Accusations against Michelle Rabe and David Lacoste are dismissed.¹²

¹¹ When hired by the District, neither Ms. Moore nor Ms. Withers had experience teaching in a specific ELD program. Ms. Moore had 7 years of experience as a classroom teacher, was involved in a pull out intervention program serving EL and Title I students, and spoke some Spanish. Ms. Withers had 8 years of experience as a classroom teacher, taught ELD to levels 1 through 5 in the classroom, and a family history with ELL.

¹² Amber Peterson and Ms. Lachemann have the same seniority date and the District did not conduct a tie-breaking analysis between them. However, even if Ms. Lachemann were to be determined the more senior employee, as a part-time teacher, she cannot bump into a full time position. (*Hildebrandt v. St. Helena School District* (2009) 172 Cal. App. 4th 334.)

Individual Bumping/ Skipping Issues

34. Three District employees who were not issued lay off notices have August 14, 2008 seniority dates: Christopher Purdy, Amber Adams, and Benjamin Barnholdt. The District argues that it appropriately skipped these employees under section 44955, subdivision (d), because no more senior employee was credentialed or competent to bump into the course of study taught by these individuals.

35. *Skipping of Christopher Purdy:* Mr. Purdy has a clear single subject credential in PE and a clear Adapted Physical Education (APE) Specialist certificate. He was hired by the District on August 14, 2008, and is assigned as the District's APE specialist. As indicated in the District's job description for APE Instructor, the minimum qualifications for the position are a bachelor's degree with a valid credential authorizing the holder to teach APE.

The APE teacher is supervised by Betty Diregolo, director of the District's special education/special programs division. She testified that the APE instructor is an itinerant position serving special education students throughout the District, from kindergarten through 12th grade. Of the District's approximately 1,000 special education students, 50 receive APE from Mr. Purdy. In addition to his duties of providing direct services to students, Mr. Purdy participates as a member of individualized education program (IEP) teams, develops IEP goals and objectives for special education students who receive APE services, recommends appropriate levels of APE services, and has personal knowledge of various disabilities. Mr. Purdy had special skills that motivated the District to hire him: he had significant experience providing APE services at another school district, and with the Placer County Office of Education.

Because he was skipped from the layoff, the District did not apply the tie breaker to Mr. Purdy, who shared the seniority date of August 14, 2008 with many of the respondents. The following respondents challenged the skipping of Mr. Purdy:

Regina Manibusan was hired to teach PE at Granite Oaks Middle School on August 14, 2008. She holds a clear single subject credential in PE and a clear APE credential. Ms. Manibusan was given a notice of layoff, but she retains .16 FTE (one period) in PE for the 2009-2010 school year. Ms. Manibusan testified that she taught APE to special education students from K through 12th grade in school years 2000-2001, 2001-2002, and 2002 -2003; she also taught APE summer school for the San Juan Unified School District, in the summer schools. She put this information on her job application and resume that is on file with the District. While Ms. Manibusan currently uses her APE knowledge and skills to modify PE for her seventh and eighth grade students as needed, Mr. Purdy provides direct APE services to special education students.

Dina Lachemann is a probationary employee who was hired by the District on August 16, 2007. Ms. Lachemann currently teaches elementary PE at Valley View Elementary in a .6 FTE position. Ms. Lachemann testified that she taught APE 1 for one semester in 1993. Currently, Ms. Lachemann modifies her PE class for a student who is pulled out for APE by Mr. Purdy once a week.

Neither Ms. Manibusan nor Ms. Lacheman is competent to bump into the APE position held by Mr. Purdy. Further, the District met its burden under section 44955, subdivision (d). The District appropriately skipped Mr. Purdy, based upon his specific training and experience to teach APE, a special program which must be provided to students with disabilities under the Individuals with Disabilities in Education Act.

36. *Skipping of Amber Adams:* Amber Adams was hired by the District on August 14, 2008 as a Dance/PE Teacher at Whitney High School (Whitney). The District's February 29, 2008 Dance/PE Teacher job announcement indicates that the position requires a bachelor's degree "with a valid California Single Subject Teaching Credential... (P.E. – Experience teaching dance is required)." Ms. Adams has a preliminary multiple subject credential, with a special authorization in physical education, a preliminary single subject P.E. credential, and an English Language Authorization (ELA).

Whitney's principal, Debra Hawkins, testified that Ms. Adams was hired as a dance teacher, not as a PE teacher, based upon her significant experience in performing and teaching dance, as well as running dance/drill shows. The position was listed as Dance/PE, but the high school did not need a PE teacher. Ms. Adams teaches four levels of dance. These classes meet students' needs for either a Visual and Performing Arts (VAPA) credit or a PE elective credit. Students learn various dance styles and techniques, choreography and are required to perform in the high school's annual Dance Show.

Ms. Caldwell testified that, in determining whether any respondents had bumping rights into Ms. Adams' position, she looked at the applications and resumes of senior PE teachers to determine whether they had experience in teaching dance. While she assumed that any PE teacher teaches some dance as part of the curriculum, this was not considered because it was probably a small part of the curriculum. She did not talk to the PE teachers about their dance experience.

Regina Manibusan was affected by the District's skipping of Ms. Adams. Although she and Ms. Adams share a seniority date of August 14, 2008, Ms. Manibusan received 10 points in the Tie-Break analysis; Ms. Adams only received 9 points. As a result, Ms. Manibusan is more senior than Ms. Adams and could bump into her position, if competent to do so. Ms. Manibusan did not provide any persuasive evidence of her experience and training in dance.

Kerrienne Reed holds a preliminary single subject PE credential. She was hired by the District on August 14, 2008 and holds the same seniority date as Ms. Adams. Ms. Reed is assigned as a .5 FTE elementary PE teacher. Ms. Reed challenged the District's failure to conduct a Tie Break between herself and Ms. Adams. She asserted that, if the tie break had occurred, she may have had greater seniority than Ms. Adams and been able to bump into her position. Ms. Reed explained that she has dance experience. On review of the tie break charts, however, Ms. Reed acknowledged that a tie break analysis had been applied to her and Ms. Adams and that she received fewer points (7) than Ms. Adam (9). (see also, footnote 12, supra.)

Neither Ms. Manibusan nor Ms. Reed is competent to bump into the Dance position held by Ms Adams. In addition, the District met its burden under section 44955, subdivision (d). The District appropriately skipped Ms. Adams, based upon her specific training and experience in dance, a specific course of study offered to the District's high school students.

37. *Skipping of Benjamin Barnholdt:* Mr. Barnholdt was hired by the District on August 14, 2008, to teach broadcasting at Whitney High School. He has a clear single subject credential in English with an emergency CLAD credential. As indicated in the District's March 10, 2008 certificated job posting for broadcasting teacher, the minimum job requirements are a bachelor's degree with a valid single subject teach credential authorizing service in the subject and a "preferred technical degree in broadcasting and/or film making." Other desirable qualifications are "experience in educational broadcasting and film making..." The broadcasting (B) courses Mr. Barnholdt teaches include BI: "Introduction to Broadcast Journalism;" B II/II: Television Production; BII/III: Advanced Broadcast Journalism; Graphic Communications I and II; and Journalism I and II.

Ms. Hawkins testified that Whitney has a "very sophisticated" broadcasting room with extensive and expensive multimedia equipment. They did not want to hire someone who would be getting "on the job" training in how to use this equipment. Instead, the District wanted to hire a video expert who was familiar with how to use its equipment and who had "real world" broadcasting experience. Mr. Barnholdt ran a journalism program in Nevada, and was a video expert with an NBC affiliate, so he had experience in both broadcast and print journalism.

Respondents who seek to bump Mr. Barnholdt are as follows:

Cruz Ordonez was hired by the District on August 16, 2007. He has a clear single subject credential in English, teaches Language Arts at Whitney, and has more seniority than Mr. Barnholdt. Mr. Ordonez testified that he meets the employment standards for the broadcasting position. In addition, Mr. Ordonez hosted a radio show for a year while in college in 1998 and 1999, and sat on the board of a "real" radio station during its development; he produced his own radio show; and taught a

journalism class. Mr. Ordonez agreed he had no experience in television broadcasting or film making.

Valerie Kramer was hired by the District on August 16, 2007. She has a preliminary single subject credential in English, teaches Language Arts at Whitney High School, and has more seniority than Mr. Barnholdt. Ms. Kramer testified that she meets the employment standards for the broadcasting position. She has extensive experience in writing copy for radio and journalism experience. She has no experience in television broadcasting or film making.

Katelin Marsh was hired by the District on August 14, 2008. She holds a preliminary single subject credential in English, and teaches Language Arts at Whitney. Ms. Marsh has the same seniority date as Mr. Barnholdt; there was no Tie-Break analysis between them.¹³ Ms. Marsh testified that she holds the same credential as Mr. Barnholdt and meets the employment standards for the broadcasting position. Ms. Marsh has no broadcast experience in film or radio and limited experience in operating Whitney's filmmaking equipment.

There is no more senior employee competent to bump into the broadcast position held by Mr. Barnholdt. In addition, the District met its burden under section 44955, subdivision (d). The District appropriately skipped Mr. Barnholdt, based upon his specific training and experience in broadcast, a specific course of study offered to the District's high school students.

Tie-Breaking

38. Pursuant to the Tie-Breaking Resolution (Finding 2), the Board adopted the following criteria for the purpose of breaking seniority date ties and determining the order of termination in the event of certificated layoffs:

1. Credentialing:

- | | |
|--|---------------|
| a. Credentials(s) | 3 points each |
| b. Subject authorizations(s)
<i>(No Child Left Behind [NCLB] Compliant)</i> | 2 points each |
| c. EL authorization
<i>(BCLAD = 3 points)</i> | 2 points |
| d. Following certificates(s) | 1 point each |
| 1. Possession of National Board Certification | |
| 2. GATE Certification | |

¹³ Initially, Ms. Marsh challenged her seniority date and asserted her belief that she was more senior than Mr. Barholdt because her first day of paid service with the District was on August 11, 2008. Ms. Marsh understood that her attendance at this inservice was mandatory; however, on review of the District's July 29, 2009 Memorandum to New Certificated Personnel, she acknowledged that she had been given incorrect information and that the stipend paid was not the same as the regular teaching daily rate.

2. Experience:

- a. Full time equivalent of credentialed public school experience.
 - 1. 5-10 years 2 points
 - 2. 11 years plus 3 points

3. Education:

- a. Graduate Degrees:
 - 1. Masters 1 point each
 - 2. Doctorate 2 points each

4. Service:

- a. Extra Curricular Assignments as paid on the Extra Compensation Pay Schedule within the last two years.
 - 1. Year #1 1 point max.
 - 2. Year #2 1 point max.

5. Lottery: If two or more certificated employees who first rendered paid probationary service on the same date still have the same ranking after application of the points provided above, the ranking of such employees shall be determined by a lottery conducted by the Superintendent or designee, in the presence of the Rocklin Teachers' Professional Association.

Ms. Caldwell prepared a blank "Tie-Breaking Points Chart" which incorporated the Board's criteria from the Tie Breaking Resolution. She then completed tie breaking charts for certificated employees with the same first dates of paid service as probationary employees with the District. To complete these charts, Ms. Caldwell reviewed personnel files and assigned tie breaking points to each employee pursuant to the Tie Breaking Resolution, as it was interpreted by her following discussion with Mr. Pope. When the total points on the Tie Breaking Charts were identical, Ms. Caldwell conducted a lottery in the presence of Mr. Pope and Mary Dick, who is the President of the Rocklin Teachers' Association. The first name selected in the lottery was deemed to be the least senior employee.

Ms. Caldwell testified that she interpreted the Tie-Breaking Criteria's credentialing requirement in Item 1(b) as follows. Subdivision (b) authorizes 2 points for "Subject authorizations (*No Child Left Behind [NCLB] Compliant*)." NCLB authorizations only cover core academic subjects. There is no NCLB authorization for certain subjects such as health and psychology. The District determined that, to be fair to all employees, tie breaking points could be given under Item 1(b) to

certificated employees with supplemental authorizations for courses taught in the District which were not covered by the NCLB and therefore could not be NCLB compliant.

39. *Respondents' Challenge to Interpretation of Item 1(b)*: Respondents contend that the District inappropriately granted tie-breaking points to Caitlin Conheim for a supplementary authorization in a subject –psychology – that was not governed by the NCLB and could not therefore be “NCLB compliant.” In their view, only supplementary authorizations in core areas covered by NCLB can be awarded tie-breaking points.

Ms. Conheim has a preliminary single subject credential in English with a supplemental authorization in psychology. She teaches language arts at Whitney. The District applied the tie break criteria and gave Ms. Conheim 2 points for her supplemental authorization in psychology. The District determined that both Ms. Conheim and Patrick Gale received 8 points, and Cruz Ordonez received 7 points. In a lottery to determine rank between Ms. Conheim and Mr. Gale, Mr. Gale was selected first, making him the least senior and giving him the lay off notice. Ms. Conheim was selected second, thereby removing her from the lay off.

Patrick Gale has a preliminary single subject credential in English and teaches Language Arts at Whitney. Mr. Gale testified that if Ms. Conheim had not been given two extra points for a subject that was not NCLB compliant, he would have had more points on the Tie-Breaker than Ms. Conheim and he would not have had to be subject to the lottery which resulted in his lay off.

Cruz Ordonez has a clear single subject credential in English and teaches Language Arts at Whitney. Mr. Ordonez testified that if Ms. Conheim had not been given two extra points for a supplemental authorization that was not NCLB compliant, he would have had two more points on the Tie-Breaker than she did and he would not have had to be subject to lay off.

40. The District’s interpretation and application of Item 1(b) of the Tie-Breaking Resolution is reasonable. Respondents’ challenges are denied.

Other Challenges By and Between Respondents

41. **Nancy Bronte** is a permanent employee hired by the District on September 11, 2006. She holds a clear multiple subject credential and teaches kindergarten/first grade. Ms. Bronte challenged her seniority date. She asserted that she began working with the District as a long term substitute on August 17, 2006, worked all year, and at least 75 percent of the school days, and was rehired the following school year. Ms. Bronte did not provide sufficient evidence to support this assertion. Further, she failed to respond in any fashion to the District’s efforts since November 2008 to verify and update information for the seniority list.

42. **Jody Ciesco** was hired by the District on January 9, 2007. She holds a clear multiple subject credential and teaches kindergarten. Ms. Ciesco challenged her seniority date and asserted that her seniority date should be October 30, 2006. Ms. Ciesco testified that she worked as a long term substitute and recently had Substitute Services pull her substitute dates. From this, Ms. Ciesco learned she had worked 75 percent of the 2006-2007 school year, and that she was then reemployed by the District for the 2007-2008 and 2008-2009 school years. Ms. Ciesco acknowledged that she received the District's seniority verification letter in November 2008, did not dispute her seniority date and that, even if her seniority date challenge was determined to be accurate, it would not affect her layoff. Ms. Ciesco did not provide sufficient evidence to support her assertion about long term substitute teaching beginning October 30, 2006. She failed to respond in any fashion to the District's efforts since November 2008 to verify and update information for the seniority list.¹⁴

43. **Jeremy Miller** was hired by the District on August 16, 2007. He holds a preliminary multiple subject credential and teaches sixth grade. Mr. Miller challenged his seniority date, which he asserted should be October 2006, thereby removing him from the Tie-Breaking process. Mr. Miller testified that he was a day-to-day substitute with the District during the 2005 and 2006 school years. In 2006-2007, he became a long term substitute in a severely handicapped K-3 special education class at Breen Elementary School, after he received an emergency special education credential. This occurred in approximately September 2006. Mr. Miller testified that he remained in this position the entire school year and was returned as a probationary teacher for both the 2007-2008 and 2008-2009 school years. Mr. Miller acknowledged receipt of the District's seniority verification letter and testified that he did not dispute the information in the verification. Mr. Miller did not provide sufficient evidence to support his assertion and he failed to respond in any fashion to the District's efforts since November 2008 to verify and update information for the seniority list.

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

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

¹⁴ Ms. Ciesco provided a copy of her Offer of Temporary Employment from the District, dated January 25, 2007, for work as a part-time temporary teacher beginning January 9, 2007. This document indicates that the District failed to provide Ms. Ciesco with her temporary contract before she began work as a temporary teacher. Consequently, she was a probationary employee as a matter of law in the 2006-2007 school year, not a temporary employee. (*Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal. 4th 911, 926.) Insufficient information was provided to determine whether Ms. Ciesco should be a permanent, not a probationary District employee. The District is directed to review this matter and make appropriate corrections.

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

LEGAL CONCLUSIONS

1. As set forth in Factual Findings 1 through 8, all notice and jurisdictional requirements set forth in Education Code 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 Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. 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.)

3. The services identified in the PKS Resolution are particular kinds of services that may be reduced or discontinued under Education Code 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 Education Code section 44949.

4. As set forth in the Factual Findings and Legal Conclusions as a whole, with the exceptions noted, 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 are dismissed as to the following respondents: Julie Asaro, Lyndsay Atlas, Karlene Bittler, Jennifer Bradley, Kelly Brown, Rose Marie Caballero, Gina Coiner Lacoste, Kristin Doehrer, Rosemary Elston, Susan Firchau, Craig Haviland, Heather McCoy, Sheri Morgan, Michael Patten, Kelsy Patterson,

Deirdra Piazza, Richard Pitts, Krista Radmilovic, Robin Richie, Christina Schuler, Brett Shirhall, Marcie Solomon, Rebecca Spainhour, Deborah VanLiew, Dylan Vaughan, Nichol Weber, Christine Weilepp-Oglesby, and Robyn Winblad.

2. The Accusation against respondent Michelle Rabe is DISMISSED.
3. The Accusation against respondent David Lacoste is DISMISSED.
4. The District may proceed with the layoffs of Susan Clarke, Shannon Knepper-Maveety, Alison Parrott, Mary Rau by default. (Gov. Code, §11520.)
5. The District may give notice to the remaining respondents that it will not require their services for the 2009-2010 school year.

DATED: May 28, 2009

MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings