

BEFORE THE
GOVERNING BOARD OF THE
TRAVIS UNIFIED SCHOOL DISTRICT
SOLANO COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KAREN COLEMAN, MARY FRAMSTED,
BRITTNEY HANSEN, SARAH NELSON, MARY
ELLEN QUINE, JUDITH RUGGIERO-REED,
DAVID VAN BUSKIRK, RHONDA YUNG, AND
MARIA ZENDROSKY,

Respondents.

OAH No. 2009060725

PROPOSED DECISION

On July 22, 2009, in Fairfield, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter.

Ingrid A. Scherschel, Attorney at Law, and Lawrence M. Schoenke, Attorney at Law, of Miller Brown Dannis, 71 Stevenson Street, 19th Floor, San Francisco, California 94105, represented Kate Wren Gavlak, Superintendent, Travis Unified School District.

Costa Kerestenzis, Attorney at Law, of Beeson, Tayer and Bodine, 1414 Franklin Street, Fifth Floor, Oakland, California 94612, represented Respondents in this matter.

The record was held open to afford an opportunity for the parties to file written closing arguments. On July 27, 2009, OAH received "Respondents' Post-Hearing Brief," which was marked as Exhibit "E," and received as argument. On July 31, 2009, OAH received a document captioned "Travis Unified School District's Closing Brief," which was marked as Exhibit "10," and received as argument.

On July 31, 2009, the parties were deemed to have submitted the matter and the record closed.

FACTUAL FINDINGS

1. On June 30, 2009, in her official capacity, Kate Wren Gavlak, Superintendent, Travis Unified School District, made the respective accusations regarding Respondents

Karen Coleman, Mary Framsted, Brittney Hansen, Sarah Nelson, Mary Ellen Quine, Judith Ruggiero-Reed, David Van Buskirk, Rhonda Yung, and Maria Zendrosky.

2. Respondents are certificated employees of the Travis Unified School District (the District), who contest the instant proposed teacher lay off action. And the respondents are all tenured (permanent) teachers with the District.

3. On June 9, 2009, the District Governing Board adopted Resolution No. 2008-09-49. The resolution recites that, pursuant to Education Code sections 44951, 44955 and 44955.5, because the total revenue limit per average daily attendance for the ensuing school year will not increase by at least two percent (2%) over the total revenue limit per average daily attendance for the 2008-2009 school year that it has become necessary for the District to decrease, not later than the beginning of the 2009-2010 school year, particular kinds of services in the form of 12.59 full-time equivalent (FTE) certificated positions as follows:

Number of Full-Time Equivalent Positions	Particular Kinds of Services
0.32 FTE	Middle School Electives;
1.67 FTE	Middle School English;
1.0 FTE	Middle School Mathematics;
1.0 FTE	Middle School Physical Education (PE);
1.0 FTE	Middle School Science;
1.0 FTE	Middle School Social Science;
0.2 FTE	High School Visual Arts;
0.2 FTE	High School Drama;
0.2 FTE	High School Music;
0.2 FTE	High School Computer Repair;
0.2 FTE	High School Information Technology;
1.0 FTE	High School English;
0.2 FTE	High School Spanish;
0.2 FTE	High School French;
0.2 FTE	High School Latin;
1.0 FTE	High School Mathematics;
0.6 FTE	High School PE;
0.8 FTE	High School Science;
1.0 FTE	High School Social Science;
0.4 FTE	Alternative Education Counselor; and
0.2 FTE	Alternative Education Principal.

4. The accusations along with required accompanying documents and blank Notices of Defense forms were timely served on respondents. Each respondent timely filed a

Notice of Defense to the respective accusation affecting his or her interest, either in person or through counsel.

5. All pre-hearing jurisdictional requirements were met.

Respondents' Contentions

6. Respondents together contend that the District's proposed layoff action, which follows the May 2009 layoff action that occurred as a "Spring RIF" (reduction in force) action involving 51.6 FTE positions for certificated teachers, is lawfully improper because the District has failed to establish financial necessity for the layoff of Respondents. Further, Respondents contend that the District failed to follow the procedures for layoff actions as prescribed under Education Code section 44955.5. Further Respondents aver that the District has adequate "funded reserves" and has received federal government "stimulus" money so that it is financially capable to avert the proposed layoff of the affected certificated employees of the District. Also Respondents jointly argue that Education Code section 44955.4 "does not permit school districts with a second opportunity to do the types of layoffs authorized by section 44955 including a particular kind of service, PKS, layoff." And Respondents contend that the District can only layoff the number of certificated employees that corresponds to the percentage of funds paid to certificated employees out of the total salary expenditures by the District.

Rhonda Yung, Maria Zendrosky, and Judith Ruggiero-Reed, are three certificated employees who advance particularized challenges to the proposed layoff action. Respondent Yung contends that she is competent to teach Ninth Grade English and that the District failed to "bump" her into such a position even though she is senior to three high school teachers who are being retained to teach Ninth Grade English at the high school. Respondent Zendrosky contends that she is competent to teach High School Spanish and that she is subject to being partially laid off at 0.16 FTE even though she is more senior than two High School Spanish teachers. And Respondent Ruggiero-Reed asserts that the District failed to ascribe her credit for having recently acquired teaching permits and thereby the District purportedly misapplied tie-breaking criteria that should have exempted her from a lottery, which went in the favor of another teacher who was retained.

7. Other than Respondent Ruggiero-Reed, no other respondent offered evidence, under oath, at the hearing of this matter. And respondents did not call any competent expert witness to offer evidence in support of their contentions regarding the District's miscalculations regarding financial necessity and supposed accounting errors that did not supposedly account for inclusion in the District's financial analysis of federal government provided "stimulus" money.

8. By the weight of the evidence offered by the District as described below, respondents' arguments and contentions are without merit.

The District's Financial Dilemma

9. Ken Forrest, the District's Assistant Superintendent, Business Services and Operations, (the Assistant Superintendent), provided compelling and credible evidence at the hearing of this matter.

The total revenue limit per ADA (Principal Apportionment per ADA) for 2009-2010 will not increase by two percent as measured against the 2008-2009 revenue. Mr. Forrest established that for the ensuing school year the Principal Apportionment per ADA will be negative two point one percent (-2.1%) relative to the 2008-2009 school year.

In calculating the two percent determination, Mr. Forrest followed the directive of Education Code section 44955.5 and he applied generally accepted accounting principles.

Mr. Forrest was reasonable in expressing a view that the District is not required to factor into its analysis a one-time infusion of federal government "stimulus" money. He refuted Respondents' contention that the "stimulus" money must be computed into the analysis. Mr. Forrest persuasively noted that even adding the "stimulus" money, that is \$1,778,220, to the District's revenue for the ensuing school year, the subject layoff could not be avoided under Education Code section 44955.5 guidelines because the federal government provided money has been allocated within the District's budget to pay the salaries and benefits for 19 or more teachers who are designated for retention after conclusion of the layoff action and with the final pronouncement regarding teacher placements for the coming school year.

The District's Assistant Superintendent for Business Services and Operations vividly described the "fiscal crisis" that the District confronts. Mr. Forrest noted that the District is enmeshed in a condition of ongoing structural deficits, which means that the District is spending more money than the District has available on a year-to-year basis. Accordingly, due to its grave financial condition the District has the pressing need to decrease expenditures by nearly \$6 million. Mr. Forrest noted that the District's fiscal crisis had led to cutting of administrators, classified and certificated employees for the ensuing school year.

Opinions and Actions Recommended by the District's Consultant

10. Suzanne Speck, a District consultant, appeared at the hearing of this matter to provide credible and persuasive evidence. Ms. Speck¹ showed depth of knowledge and

¹ Ms. Speck is the District's former Director of Human Resources. For the District's layoff action in May 2009 as well as for the current "Summer" layoff process, Ms. Speck assisted the District with the crafting and application of the PKS and tie-breaking resolutions, notices, bumping rights of teachers, seniority dates. She monitored the District personnel regarding the statutory directives for layoff action for certificated personnel

demonstrated a record of her training and education so that she may offer expert witness opinions on behalf of the District's analysis in attending to the subject layoff action.

Even though Resolution 2008-09-49 prescribed the reduction or elimination of 12.59 FTE positions, the 13 respondents, who were served with layoff notices, represent 9.23 FTE positions because the District has included retirements, vacancies and other attrition to account for the reduced positions so as to address the complete scope of the necessary prospective layoff of certificated employees of the District.

Respondent Judith Ruggerio-Reed

11. On June 9, 2009, the Governing Board adopted Resolution No. 2008-09-50, which is titled the "Same Date of Hire" (Tie-Breaking) resolution. That resolution prescribed the system the District would use to determine the order of seniority for those teachers hired on the same date. The tie-breaking resolution allocates a point value for various criteria so that a teacher who acquired a greater number of points would gain greater relative seniority. Thereafter teachers having an identical aggregate of points would have such tie settled by a lottery.

Ms. Speck established that Respondent's Ruggerio-Reed's claim was not accurate when the affected Respondent argued that the District had not given her credit for the number of points under the tie-breaking scheme with regard to the resolution's section A, "Credentials and/or Degrees." Section "A." of Resolution No. 2008-09-50 establishes the following:

Credentials and/or Degrees Held	
Preliminary Credential	+1
Professional Clear Credential	+2
Masters or Higher Degree (one award per degree)	+3
Additional Credentials or Supplementary Authorizations	+2

At the time the District applied the tie-breaking criteria in order to determine seniority for the current layoff action, Respondent Ruggerio-Reed possessed a Preliminary Single Subject Social Science credential. She was assigned one point for the credential. But the District did not assign any point to Respondent Ruggerio-Reed on account of her possession of a Limited Assignment Single Subject Teacher Permit because the District did not consider such a permit to be a credential or a degree within the meaning of the Section A of the tie-breaking resolution. Ms. Speck explained that a "limited assignment single subject teacher" permit only enables a certificated employee to teach in a particular discipline that is specific to the employing district that is named on the permit. In the instance of Respondent Ruggerio-Reed, the limited assignment single subject permit, which was issued by the Solano County Office of Education, regarding "Science, Biological" as the authorization, names only the Fairfield-Suisun Unified School District. The subject permit, which showed it was valid from June 11, 2009, to December 11, 2009, does not show the District's name so

as to indicate Respondent Ruggerio-Reed's authorization to teach biological science in the District.

Four days before the hearing of this matter, Respondent Ruggerio-Reed participated in the California Subject Examination for Teachers regarding her objective to obtain a credential in English. But as of time of the service of the Accusation and the Notice of Hearing for this matter, Respondent Ruggerio-Reed did not possess an English credential.

Ms. Speck established that the District was reasonable in its application of the tie-breaking criteria with regard to Respondent Ruggerio-Reed. The limited assignment single subject permit for biological science that names the Fairfield-Suisun Unified School District was properly excluded by the District as not meeting Section "A." of Resolution No. 2008-09-50 with regard to "credentials and/or degrees held." Furthermore at the commencement of the subject lay off action, Respondent Ruggerio-Reed did not possess an English credential; rather, she has only recently taken the test to prospectively obtain the credential. And no evidence exists that Respondent Ruggerio-Reed gave the District information that warranted inclusion in the tie-breaking analysis of any credential or degree other than the Preliminary Single Subject Social Science credential that is shown in the District's records.

Respondent Ruggerio-Reed provided no competent evidence that the District has retained any teacher junior to her for which Ms. Ruggerio-Reed possesses a credential and is currently competent to teach. Nor did Respondent Ruggerio-Reed establish that the District committed a procedural error in the initiation in the initiation of the layoff action that adversely affects her teacher position with the District

Respondent Rhonda Yung

12. Respondent Rhonda Yung has a first day of paid service to the District as of August 25, 2004. She holds a Clear Multiple Subject credential. And she possesses a supplemental English credential that permits her only to teach English curriculum through the Ninth Grade. Respondent Yung's teaching assignment for the immediate past school year was as an English teacher at Golden West Middle School.

The current layoff resulted in notice to Respondent Yung that she would be subject to reduction of a 0.67 portion of an FTE in English.

Respondent Yung has a greater seniority date than three teachers of high school level English.

In support of Respondent Yung's contention, respondents called Mr. Adam Lundy. But Mr. Lundy was not persuasive when he testified that four or five years ago the high school had teachers who only taught Ninth Grade English so that Respondent Yung should likewise fit such an assignment. Mr. Lundy is not privy to the District's Master Schedule for High School English assignments for the ensuing school year. And Mr. Lundy lacked documentary proof to corroborate the notion that the District has had a policy of assigning

English teachers at the high school to instruct only Ninth Grade classes for the entire school term.

Respondent Yung was not persuasive, through her counsel's argument that the District erred in failing to recognize her bumping rights so that she might take a portion of a Ninth Grade English teacher position so as to avert the lay off. Ms. Speck credibly noted that Respondent Yung cannot bump a junior English teacher at the high school level because the junior teachers have English credentials that permit those teachers to teach all levels of high school English. The three high school teachers, who are junior to Respondent Yung, can teach an entire English high school assignment so as to meet the needs of the District and the students of high school English classes. Ms. Speck emphasized that it would not be in the best interest of the District or its students to split an English assignment in order to meet the objective of Respondent Yung. Moreover, no evidence was offered to show that Respondent Yung has ever taught Ninth Grade English for the District or for any other school district.

Respondent Yung provided no competent evidence that the District has retained any teacher junior to her for which Ms. Yung possesses a credential and is currently competent to teach. Nor did Respondent Yung establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District.

Respondent Maria Zendrosky

13. Respondent Maria Zendrosky has a first day of paid service to the District of August 21, 2002. She holds a Clear Single Subject credential in Science: Biological Sciences. And she possesses a supplemental Spanish credential that permits her only to teach Spanish curriculum at the high school level. Respondent Zendrosky's teaching assignment for the immediate past school year was as a Spanish teacher at Golden West Middle School.

The current layoff resulted in notice to Respondent Zendrosky that she would be subject to reduction of a 0.16 FTE in Spanish.

Respondent Zendrosky has a greater seniority date than two teachers of high school level Spanish for the District.

However, Respondent Zendrosky cannot bump a more junior high school Spanish teacher because Respondent Zendrosky's credential entails only "Introductory Spanish" at the high school level, which generally is offered at the Ninth Grade level. The junior teachers, whom the District seeks to retain for the ensuing school year, teach "advanced" sections of Spanish, which Respondent Zendrosky did not show by evidence that she is competent and credentialed to teach. Also, Respondent Zendrosky cannot bump any current high school teacher because the Spanish sections at the high school are prescribed by increments of 0.20 FTE, while Respondent Zendrosky seeks a partial FTE of 0.16. Should

the District move Respondent Zendrosky to the high school she would hold 1.04 FTE, which would violate, among other things, the rule of *Hildebrandt et al. v. St. Helena Unified School District*² (2009) 172 Cal.App.4th 334.

Respondent Zendrosky provided no competent evidence that the District has retained any teacher junior to her for which Ms. Zendrosky possesses a credential and is currently competent to teach. Nor did Respondent Zendrosky establish that the Superintendent committed a procedural error in the initiation of the lay-off action that adversely affects her teacher position with the District.

Ultimate Findings

14. Respondents offered no competent expert witness evidence in support of their arguments regarding the proper use by a school district of the process contemplated under Education Code section 44955.5. The District's authority to implement a layoff under section 44955.5 is not limited because the District engaged in the Spring (March 15 through May 15) layoff process. Respondent failed to prove that the District cannot proceed with the instant Summer (June-August 15) layoff action.

15. No competent and credible evidence establishes that as a result of the proposed elimination of the full-time equivalent positions respectively held by Respondents, the District will retain any teacher who is junior to Respondents to perform services for which respondents have been certificated or found to be competent to teach in such FTE positions for the next school year.

16. Respondents offered no argument or presentation of evidence that suggests the District's action is improper insofar as the prospective elimination of 12.59 FTE positions. Respondents did not present evidence that the corresponding layoff of credentialed employees, relative to the elimination of the subject FTE positions of the District, is contrary to law and unnecessary.

17. Respondents offered no competent evidence to establish that the District failed to comply with Education Code section 44955 and the principles for bumping rights.

18. The decision of the District's Board to eliminate or discontinue a total of 12.59 FTE positions as specified in Resolution 2008-09-49, including the positions held by each respondent, was neither arbitrary nor capricious. Rather, the District's determination was within the proper exercise of the discretion bestowed by law upon the District.

19. The Board's proposed elimination or discontinuation of the subject full-time equivalent positions, including the positions respectively held by Respondents, for the

² *Hilderbrant v. St. Helena Unified School Dist.*, *supra*, 172 Cal.App.4th 334, supports the proposition that a school district is not compelled to split an existing full-time FTE position into parts so as to accommodate certificated employees who are subject to a layoff action.

ensuing school year, is related to the welfare of the District and its overall student population.

20. The Board determined that it will be necessary, due to the elimination of particular kinds of services, to decrease the number of teachers before the beginning of the next academic year. At the direction of the Board, the Superintendent lawfully directed the notification to Respondents of the elimination of the certificated positions held by each Respondent.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44951, 44955 and 44955.5 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 described 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. Education Code section 44955.5, subdivision (a), provides as follows:

During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board.

Education Code section 44955 provides in pertinent part:

(b) Whenever in any school year . . . whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it

shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

Education Code section 44955.5, which was enacted under SB 813 in 1983 as a major “education reform” bill establishes that school district governing boards have the authority to layoff certificated employees when the board determines that its total revenue limit per average daily attendance has not increased by at least 2 percent and that the subject school’s plight makes it necessary to reduce certificated staff. The companion statute-Education Code section 44955-also permits a school district to reduce the number of certificated employees, but under a separate and distinct time scheme and rationale than Education Code section 44955.5. Section 44955 authorizes a school district to serve final notice of the layoff action of teachers before May 15 when services are reduced/eliminated or when student enrollment declines. Education Code section 44955.5 directly makes reference to section 44955 so as to require a school district to follow the procedural provision of the latter statutory provision so that affected teachers have during an “August layoff” the same procedural rights, including administrative adjudication scheme under Chapter Five of the Administrative Procedure Act (Gov. Code §, 11500 et seq.), seniority principles for layoff that contemplates a reverse order for layoff relative to initial hiring; bumping privileges and other well-established practices.

3. Evidence Code section 664 establishes a presumption that the action or official duties of a public entity, such as the District and its governing board, have been regularly performed. Respondents offer no evidence to rebut the presumption that the District has properly performed actions related to the procedures that seek the non-reemployment of respondents.

4. As noted in Findings 3 and 9, the District’s total revenue limit per unit of average daily attendance will not increase by at least two percent. The District’s Governing Board has determined that as a result it needs to reduce the number of certificated employees in the District. The District’s revenue limit will actually decrease to a level that is -2.1% of revenue received for the preceding school year.

5. Respondents contend that the District has not demonstrated that it is financially necessary to reduce certificated employees by 12.59 FTE. But Respondents’ argument is without merit.

Education Code section 44955.5 authorizes a public school governing board to “terminate the services of any permanent or probationary certificated employees” where the “total revenue limit per unit of average daily attendance for the fiscal year . . . has not increased by at least 2 percent.” It is undisputed in this case that the District’s total revenue limit per unit of average daily attendance will not be increased by at least two percent. Education Code section 44955.5 makes no mention of the need to also consider other revenue sources, including federal “stimulus” or other fund balances on reserve. It does appear that once a threshold determination is made that the two percent increase has not been satisfied, the District Governing Board has discretion to opine that it “is therefore necessary to decrease the number of permanent employees in the district. . . .”

6. The “necessity” language is similar to the wording of Education Code section 44955. The determination of the necessity to reduce or discontinue particular kinds of services should therefore be reserved to the discretion of the District Governing Board. The policymaking decisions of a district governing board, an elected legislative body, should not be subject to arguments as to the wisdom of their enactment, the necessity of the resolution, the selection of services, or questions as to the board’s motivation. (*California Teacher’s Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529; *Horwath v. Local Agency Formation Comm. of San Mateo County* (1983) 143 Cal.App.3d 177, 182.) The board’s action need only be reasonable under the circumstances. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796.) Here, the District articulated its rationale for using the financial analysis of its Assistant Superintendent for Business Services and Operations, Mr. Forrest, in calculating its base revenue limit. The District has accounted for its use of federal stimulus and other funding sources to pay teacher salaries. There was no evidence that the District Governing Board acted arbitrarily or capriciously in passing Resolution No. 2008-09-49. It was within the discretion of the District Governing Board to make such fiscal and policy decisions.

7. Respondents contend that section 44955.5 allows layoffs for only one reason – necessity due to a shortfall in the district’s revenue limit – and that a school district should not be allowed to proceed with layoffs for the reasons stated in section 44955. They argue that to interpret section 44955.5 otherwise would impermissibly infringe upon the reach of section 44955 which Respondents believe by its terms permits a school district to layoff employees due to the type of long-term programmatic changes in how the school district will conduct its operations such as decreases in average daily attendance, decisions to reduce or discontinue a particular kind of service, and state law mandated changes in a district’s curriculum. (Ed. Code, § 44955, subd. (b).) Respondents believe that to proceed with such layoffs necessitated by long-term programmatic changes, the District must comply with a timeline designed to give employees notice in advance of the next school year of their employment status. And Respondents argue that requiring such advance notice is the “quid pro quo” for allowing school districts to make such programmatic reductions in force. But, the arguments and contentions are not persuasive.

Education Code section 44955.5 specifically incorporates by reference the reasons for layoffs in section 44955. Code section 44955.5 allows for additional adjustments upon an

event trigger – a determination that the base revenue limit per average unit of daily attendance has not increased by more than two percent. The statute then allows a school district to account for fiscal changes and to make additional reductions in force, including those based on the reasons specified in section 44955, as the budget revenue picture changes. Respondents' characterization of a section 44955 layoff as being limited to long-term programmatic changes is not persuasive. The District Governing Board is authorized to make programmatic changes, even long term, when changes in fiscal circumstances dictate that such is necessary. The administrative law judge then performs much the same evaluation under Education Code section 44955.5, as under sections 44951 and 44955. The same consideration is given to issues relating to seniority, bumping, skipping, tie-break criteria, teacher certification, competency and classification. In contrast and as already noted, review of the necessity or wisdom of the governing board's decision is very limited. Board actions should not be subject to independent de novo review. Rather, the administrative law judge should look only to whether there is any evidence that a board's decision was arbitrary or capricious. In this case the action taken by the District's Governing Board was reasonable under the circumstances.

Education Code section 44955 authorizes a school district's governing board to notice the layoff of teachers prior to May 15 in situations pertaining to reduction or elimination of services and also for a decline in student enrollment for the ensuing year. Education Code section 44955.5 enables a district to further engage in teacher layoff actions prior to August 15 in the district's resource to declining revenue. Neither statute contains any language that precludes a district from implementing a layoff of teachers in May under Code section 44955 and then initiating a layoff action in August of the same year under Code section 44955.5. The two statutory provisions are not mutually exclusive. Moreover, under rules of statutory construction, statutes *in pari material*-that is, statutes relating to the same subject matter-should be construed together. The rule of *in pari material* is a corollary of the principle that the goal of statutory interpretation is to determine legislative intent. (*Apartment Assoc. of Los Angeles Cnty., Inc. v. Los Angeles* (2009) 173 Cal.App.4th 13.) To interpret Education Code sections 44955 and 44955.5 as mutually exclusive would be to add words or meaning to the statutes that were not intended by the Legislature. Had mutual exclusivity of the subject provisions been intended by the lawmakers, the Legislature would have included such a proviso in the language of the statutes to prohibit a school district from using the two statutes in a single year. No such legislative intent is evident. Moreover, Education Code section 44955.5 was enacted following the adoption of section 44955. And by directly making reference to section 44955, Education Code section 44955.5 must be read to mean that the procedural due process rights of notice and hearing procedures for a layoff embraced the procedures of Code section 44955 are applicable here. Respondents did not establish that the District's authority to implement a "summer time" layoff under section 44955.5 is limited in any manner by having conducted a May layoff.

8. As set forth in the Factual Findings 12 and 13, the District applied bumping rules correctly, allowing bumping based upon the more senior teacher holding a credential or authorization to teach the assignment of the less senior teacher.

9. No permanent or probationary certificated employee with less seniority is being retained to render a service which Respondents are certificated and competent to render.

The District articulated the rationale for its bumping decisions and properly applied them, along with tie-break criteria, when the process so required.

10. The services identified in Board Resolution No. 2008-09-49 are particular kinds of services that may be reduced or discontinued under Education Code sections 44955 and 44955.5. The District Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

11. The discontinuation of the subject particular kinds of service provided by each Respondent relates solely to the welfare of the District and its students within the meaning of Education Code sections 44951 and 44955.

12. Cause exists for the reduction of the particular kinds of services and for the reduction of full-time equivalent certificated positions at the end of the 2008-2009 school year pursuant to Education Code sections 44951, 44955 and 44955.5. Therefore, cause exists to give Respondents notice that their services will be reduced or will not be required for the ensuing 2009-2010 school year.

RECOMMENDED ORDER

1. The accusation served on each respondent is sustained.

2. Final notice may be given to Respondents Karen Coleman, Mary Framsted, Brittney Hansen, Sarah Nelson, Mary Ellen Quine, Judith Ruggiero-Reed, David Van Buskirk, Rhonda Yung, and Maria Zendrosky, that their respective services will not be required for the 2009-2010 school year because of the reduction or discontinuance of the particular kinds of services by the Travis Unified School District.

DATED: August 5, 2009

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings