

BEFORE THE
GOVERNING BOARD OF THE
ELK GROVE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED EMPLOYEES OF
THE ELK GROVE UNIFIED SCHOOL
DISTRICT,

Respondents.

OAH No. 2011020091

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, in Elk Grove, California, on April 4, 5, 6, 7, 8, 12, 13, and 14, 2011.

Karen M. Rezendes, Jane Harrington, and Courtenay L. Bravmann, Attorneys at Law, represented the Elk Grove Unified School District (District).

Margaret A. Geddes, and A. Eugene Huguenin, Jr., Attorneys at Law, represented the respondents listed on Attachment A hereto.

Evidence was received on April 4, 5, 6, 7, 8, 12, 13, and 14, 2011. The record was left open to allow the parties to submit updated information. On April 19, 2011, the District submitted: (1) a summary data layoff sheet, which was marked as Exhibit 21 and admitted into evidence in place of the prior draft; (2) summary layoff data as of April 18, 2011, which was marked as Exhibit 39 and admitted into evidence; (3) lists of certificated employees who were skipped pursuant to paragraphs B and C of the Skipping Resolution, which were marked as Exhibit 40 and admitted into evidence; (4) a list of rescissions as of April 14, 2011, which was marked as Exhibit 41 and admitted into evidence; (5) a list of additional rescissions as of April 18, 2011, which was marked as Exhibit 42 and admitted into evidence; and (6) a list of the precautionary notices of layoff that were rescinded, which was marked as Exhibit 43 and admitted into evidence. Exhibit 39 (summary layoff data as of April 18, 2011) is attached hereto as Attachment B and made a part hereof. Exhibit 42 (precautionary notices rescinded) is attached hereto as Attachment C and made a part hereof.

On April 25, 2011, respondents filed: (1) an updated Exhibit OOO, which was added to the existing Exhibit OOO; (2) a chart of secondary science teachers who were noticed and

not noticed for layoff, which was marked as Exhibit SSS¹; and (3) additional argument, which was marked as Exhibit TTT. On April 25, 2011, the District filed a letter setting forth its response to the updated Exhibit OOO and Exhibit SSS, which was marked as Exhibit 44. The District also filed a chart regarding the math skips, which was marked as Exhibit 45, and a chart regarding the physical science skips, which was marked as Exhibit 46. The updated Exhibit OOO, and Exhibits SSS, TTT, 44, 45, and 46 were included in the record as additional argument from the parties. The record closed and this matter was submitted for decision on April 25, 2011.

FACTUAL FINDINGS

1. On February 22, 2011, the District’s Governing Board adopted Resolution No. 32, entitled “Resolution of Intention to Dismiss Certificated Employees due to a Reduction of Particular Kinds of Services” (PKS Resolution). As set forth in the PKS Resolution, the Governing Board has determined that it is necessary to reduce or discontinue particular kinds of services (PKS) at the close of the 2010-2011 school year, and to terminate the employment of certain certificated District employees as a result of this reduction or discontinuance. In the PKS Resolution, the Governing Board directed the Superintendent to send appropriate notices to all employees whose services will be terminated by virtue of the reductions. The reductions are based upon the severe budget cuts that the District is facing, and are not related to the work performance of the affected teachers.

2. As set forth in the PKS Resolution, the particular kinds of services and programs being reduced at the end of the 2010-2011 school year are as follows:

<u>Services</u>	<u>FTE</u> ²
1. Director, Instructional Support	1.0 FTE
2. Director, Career Technical Education and Educational Options	1.0 FTE
3. Program Specialist, Special Education	1.0 FTE
4. Program Specialist, Curriculum/Professional Learning	3.0 FTE
5. Program Specialist, Learning Support Services	1.0 FTE
6. Program Specialist, Pre K	2.0 FTE
7. Program Specialist, Student Support and Health Services	1.0 FTE
8. Program Administrator, Adult and Community Education	2.0 FTE
9. Vice Principal – Elementary	5.0 FTE
10. Vice Principal – Middle School	2.0 FTE
11. Vice Principal – High School	6.0 FTE
12. Instructional Coach, Program Improvement,	

¹ Respondents designated the chart of secondary science teachers as “Proposed Exhibit RRR,” but since there was already an Exhibit RRR, respondents’ chart was marked as Exhibit SSS.

² “FTE” stands for full-time equivalent.

	Curriculum/Professional Learning	19.0 FTE
13.	Instructional Coach, Pre K	.8 FTE
14.	Transition Specialist	2.0 FTE
15.	Teacher – Special Education – Moderate/Severe	2.1 FTE
16.	Teacher – Special Education – Visually Impaired	1.0 FTE
17.	Teacher – Pre K	24.8 FTE
18.	Elementary Teacher (K-6)	182.8 FTE
19.	Elementary/K-6 Resource Teacher (Computer)	38.0 FTE
20.	Elementary/K-6 Resource Teacher (P.E.)	1.0 FTE
21.	Middle School Teacher (26.4):	
	a. Social Studies	4.5 FTE
	b. English Language Arts	4.5 FTE
	c. Math	4.5 FTE
	d. Science	4.5 FTE
	e. Physical Education	4.5 FTE
	f. World Languages (Spanish)	1.4 FTE
	g. Health	2.5 FTE
22.	High School Teacher (46.4):	
	a. Social Studies	9.0 FTE
	b. English Language Arts	9.0 FTE
	c. Science	4.5 FTE
	d. Physical Education	6.0 FTE
	e. Visual and Performing Arts	4.5 FTE
	f. Business/Computer	4.5 FTE
	g. Automotive	.4 FTE
	h. World Languages (Spanish 3.0, French 1.5)	4.5 FTE
	i. Health	3.0 FTE
	j. Driver’s Ed.	1.0 FTE
23.	High School (9th Grade Class Size Reduction) Teacher (9.0):	
	a. English	4.5 FTE
	b. Math	4.5 FTE
24.	High School Small But Necessary School Teacher (2.0)	
	a. English	1.0 FTE
	b. Social Studies	1.0 FTE
25.	Alternative Education Teacher (6.4):	
	a. Social Studies	2.0 FTE
	b. English Language Arts	3.0 FTE
	c. Math	1.0 FTE
	d. World Languages (Spanish)	.4 FTE
26.	Library Media Teacher (Secondary)	8.0 FTE
27.	Counselor (Secondary)	22.0 FTE
28.	Counselor, Student Support and Health Services	1.8 FTE
29.	Resource Teacher, Curriculum/Professional Learning	1.1 FTE
30.	Resource Teacher, Student Support and Health Services	1.3 FTE
31.	School Nurse	.5 FTE
32.	Social Worker, Student Support and Health Services	2.0 FTE

terminated at the close of the current school year pursuant to Education Code sections 44949 and 44955.”⁴

5. The parties stipulated that all respondents: (1) were properly and timely served with a Preliminary Notice and timely requested a hearing; (2) were properly and timely served an Accusation, Statement to Respondent, form Notice of Defense, Notice of Hearing, and relevant statutes; and (3) timely filed a Notice of Defense.

6. The District has rescinded some of the Preliminary Notices that it had previously served. Attachment B lists all the certificated employees who were served with Preliminary Notices, and the Preliminary Notices that the District rescinded as of April 18, 2011. The listed certificated employees whose Preliminary Notices have been rescinded are no longer respondents in this matter. The listed certificated employees whose Preliminary Notices were not rescinded by the District remain respondents.

Skipping Resolution

7. Section 44955 sets forth legal rules that the District must follow when determining which certificated employees to lay off. Subdivision (b), in relevant part, provides:

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.

Pursuant to subdivision (b), a senior certificated employee who is rendering a particular kind of service that is designated for reduction may “bump” a more junior employee who is rendering a service that the senior employee is competent and credentialed to render.

Subdivision (c), in relevant part, provides that a school district “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.”

Subdivision (d)(1) permits a school district to deviate from terminating certificated employees in order of seniority (i.e., “skip” a junior certificated employee) when the school district “demonstrates a specific need for personnel to teach a specific course or course of study ... [and] the certificated employee has special training and experience necessary to teach that course or course of study ... which others with more seniority do not possess.”

⁴ All further statutory references are to the Education Code unless otherwise indicated.

8. In the Skipping Resolution, for the 2011-2012 school year, the Governing Board established the following skipping criteria:

- A. Individuals fully-credentialed to serve in special education assignments

For purposes of the above-referenced criteria specific to special education, “fully-credentialed” is defined to mean an employee who possesses a preliminary or clear credential.

- B. Individuals fully-credentialed to serve in secondary mathematics assignments
- C. Individuals fully-credentialed to serve in secondary physical science assignments
- D. Individuals fully-credentialed to serve in secondary agricultural science assignments

For purposes of the above-referenced criteria for secondary mathematics, secondary physical science, secondary agricultural science assignments, “fully-credentialed” is defined to mean an employee who possesses a preliminary, clear or internship single subject credential (authorizing instruction in grades 7 – 12) in the specified academic subject areas.

- E. Individuals fully-credentialed and in possession of specialized training and qualifications to serve in secondary marching band/music assignments
- F. Individuals fully-credentialed, currently assigned to and in possession of specialized, required training and qualifications to serve in secondary Advanced Placement (AP) assignments
- G. Individuals fully-credentialed, currently assigned to and in possession of specialized, required training and qualifications to serve in secondary International Baccalaureate (IB) or pre IB program assignments
- H. Individuals fully-credentialed, currently assigned to and in possession of specialized, required training, experience and qualifications to serve in the core areas of the secondary California Partnership Academy (CPA)/career academy programs for CPA coordinator and academy core teacher positions

9. In determining who would receive Preliminary Notices, the District did not implement the skipping criteria set forth in paragraphs F and G of the Skipping Resolution.⁵ Due to teachers' seniority dates, Preliminary Notice rescissions, and attrition, the District did not end up skipping any junior teachers under the skipping criteria set forth in paragraphs A and D of the Skipping Resolution. Because these skipping criteria were not implemented by the District, there is no need to address whether they are proper under section 44955, subdivision (d)(1). During the hearing, respondents challenged the District's implementation of all the other skipping criteria set forth in the Skipping Resolution.

Single Subject Credential Skips

10. Pursuant to paragraphs B and C of the Skipping Resolution, the District did not give Preliminary Notices to certificated employees who possess a preliminary, clear or internship single subject credential in math or physical sciences. Credentials that qualified as physical sciences credentials included single subject credentials in physical science, chemistry, physics, earth science, and geosciences.

11. Brandon Krueger, Ed.D., Director of Certificated Personnel, Human Resources, explained that the District designated the credential areas described in paragraphs B and C of the Skipping Resolution because it is difficult for the District to find sufficient teachers with these credentials to fill all the District's teaching assignments. After the hearing ended, the District submitted lists of the junior teachers it skipped under paragraphs B and C because they hold either single subject math or physical sciences credentials. Some of the skipped junior single subject credential holders are currently teaching either math or a physical science in high school. Given the District's difficulty in finding credentialed and qualified teachers to teach in these difficult to fill positions, it was appropriate for the District to skip the teachers who are currently teaching math or a physical science in high school under their single subject credential in that area.

The District also skipped junior math and physical sciences single subject credential holders who are teaching math in middle schools, integrated science in middle schools, and general science in high schools. Respondents challenged these skips.

12. Middle School Math Skips. Of the junior teachers that the District skipped, 11 are currently teaching math in middle schools, grades seven and eight. These 11 junior teachers have seniority dates that range from January 7, 2009, to January 3, 2011.⁶

⁵ During closing argument, the District stated that respondent Justin Sousa was qualified to be skipped under paragraph G of the Skipping Resolution due to his training and qualifications to serve in the secondary pre-IB program, but that, given his seniority date, his Preliminary Notice would be rescinded even if he were not skipped.

⁶ These 11 skipped middle school math teachers are: Kelly Lebsock (seniority date: January 7, 2009); Juliet Reck (seniority date: August 11, 2009); Adrienne Avila (seniority date: August 11, 2009); Adam Wood (seniority date: August 16, 2010); Jessica Rigsby (seniority date: August 16, 2010); Kimberly Milan (seniority date: August 16, 2010); Casey

13. There are 10 respondents with multiple subject credentials with supplementary authorizations in math who are also currently teaching math in middle schools, grades seven and eight. These respondents have seniority dates that range from August 24, 2004, to August 19, 2008.⁷ In addition, Randall Rubiales, who has a seniority date of August 22, 2006, and holds a single subject physical education credential, with supplementary authorizations in economics, introductory business, and introductory mathematics, is currently teaching math in a middle school.

14. Middle School Science Skips. Of the junior teachers skipped by the District because they possess single subject physical sciences credentials, three are currently teaching integrated science in middle schools, grades seven and eight: Michael Weiler (seniority date: August 16, 2010), Laura Bradford (seniority date: October 15, 2008), and Jason Allen (seniority date: August 22, 2006).

15. There are three respondents who are currently teaching integrated science in middle school and, due to their seniority, would otherwise be able to bump these three skipped teachers but for the physical sciences skip: (1) Emily Blum-Amick has a seniority date of August 23, 2005,⁸ and holds a multiple subject credential with a subject matter authorization in biological sciences; (2) Bryce Davies has a seniority date of August 22, 2006, and holds a multiple subject credential with a supplementary authorization in science; and (3) Courtney Chow-Pun has seniority date of July 18, 2007, and holds a multiple subject credential with subject matter authorizations in biological science and chemistry, and supplementary authorizations in math and science.

16. High School General Science Skips: Of the junior teachers skipped by the District because they possess single subject physical sciences credentials, four are teaching general science in high schools: Charles Bennett IV (seniority date: August 11, 2009), Michael Rosales (seniority date: August 21, 2008); Gurpreet Sangha (seniority date: August 21, 2007); and Michelle Abriani (seniority date: August 20, 2007).

Behney (seniority Date: August 16, 2010); Ramneek Bajwa (seniority date: August 16, 2010); Erin Gress (seniority date: November 5, 2010); Melissa Heintz (seniority date January 3, 2011); and Garrett Lebsock (seniority date: January 3, 2011).

⁷ The 10 respondents are Gabrielle Bajar (seniority date: August 24, 2004); Elaine Lee (seniority date: August 24, 2004); Nhung Le (seniority date: August 23, 2005); Loren Runsten (seniority date: August 23, 2005); Daniel Seto (seniority date: August 23, 2005); Cary Smallwood (seniority date: August 23, 2005); Mary Chung (seniority date: January 25, 2006); April Dorman (seniority date: August 21, 2007); Valarie Heng (seniority date: August 21, 2007); and Jeannette Deml (seniority date: August 19, 2008).

⁸ Ms. Blum-Amick's seniority date was changed from August 22, 2006, to August 23, 2005, during the hearing.

17. There are four respondents who are credentialed and competent to teach general science in high school, and, due to their seniority, would otherwise be able to bump these four skipped teachers but for the physical sciences skips: (1) Kelli Quan has a seniority date of August 22, 2006, and holds a single subject credential in biological sciences; (2) Kayla Martin has a seniority date of August 22, 2006, and holds a single subject credential in biological sciences; (3) Diana Brooks has a seniority date of August 22, 2006, and holds a single subject credential in biological sciences; and (4) Sarah Reed has a seniority date of January 22, 2007, and holds a single subject credential in biological sciences with supplementary authorizations in computer concepts and applications, and introductory health science.

18. The District has not yet assigned any of the skipped single subject math and physical sciences credential holders to teaching assignments for the 2011-2012 school year. At the hearing, the District conceded that it has not yet finally determined in which assignments its retained junior teachers will be teaching next year.

19. With regard to the skipping criteria identified in paragraphs B and C of the Skipping Resolution, respondents asserted that the District skipped junior certificated employees solely because they possess the described credentials, and not because they are now teaching, or have been assigned next year to teach, a specific course or course of study that requires them to have special training and experience that the more senior respondents do not possess. Respondents argued that the District, through its single subject math and physical sciences credential skips, is attempting to prevent more senior respondents from exercising their bumping rights under section 44955, subdivision (b), by skipping junior employees who are now teaching courses that more senior respondents are credentialed and competent to teach. According to respondents, these skips, based solely upon the possession of credentials, and not upon the teaching of any specific courses or courses of study that require the possession of these specific credentials, violate section 44955.

20. During closing argument, the District asserted that the criteria for determining whether certificated employees are “fully-credentialed” as set forth under paragraphs B and C of the Skipping Resolution are “competency criteria.”⁹ The District argued that, because the terms “competence” as used in section 44955, subdivision (b), and “qualifications” as used in subdivision (c) are not defined, it was within the District’s discretion to define these terms as it did in its “competency criteria” in the Skipping Resolution. According to the District, once it established its “competency criteria,” and determined that certain certificated employees met these criteria by possessing the designated single subject credentials, the District could skip these employees without first having to determine whether they met any of the requirements of section 44955, subdivision (d)(1). As set forth below, the District’s argument is not persuasive.

⁹ It is noted that the Skipping Resolution does not call the skipping criteria set forth under paragraphs B and C “competency criteria.” District counsel designated them as such during closing argument.

21. The District cannot protect its junior teachers who hold the specifically identified credentials from being bumped by more senior respondents simply by labeling its skipping criteria “competency criteria.” As the court in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 567 (*Duax*) explained, “The mandate is that the governing board establish a standard of competency that relates to the skills and qualifications of the teacher.” School districts usually establish competency criteria to determine whether senior teachers, who have been rendering services that are designated for reduction, can bump into the assignments of more junior teachers, when the senior teachers, although credentialed to teach the junior teachers’ assignments, have either never or not recently taught in such assignments. As respondents argued, the District adopted its single subject credential skips not to assure that senior teachers have the competence to bump into junior teachers’ assignments. Instead, the District adopted these skipping criteria to protect the junior teachers who hold the designated credentials from being bumped from regular classroom assignments that more senior respondents, while not possessing the designated credentials, may nonetheless have the credentials, skills, qualifications, training and experience to teach. The District cannot use its skipping criteria in this fashion.

22. The issues the parties have raised in this proceeding are comparable to those addressed in *Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567 (*Alexander*). The court in *Alexander* was asked to determine whether a school district could retain junior teachers with Spanish-speaking skills over more senior teachers who did not possess such bilingual skills. The court began its discussion by making clear that, “Upon determining a need for a reduction in the number of permanent employees, a school district is required to comply with the lay-off procedures enumerated in section 44955.” (*Id.* at p. 570.) As the court explained:

Thus, the statute [section 44955] provides that seniority determines the order of dismissals, and that as between employees with the same first date of paid service, the order of termination is determined on the basis of the needs of the district and its students. Senior employees are given “bumping” rights in that they will not be terminated if there are junior employees retained who are rendering services which the senior employee is certificated and competent to render. Conversely, as in this case, a district may move upward from the bottom of the seniority list, “skipping” over and retaining junior employees who are certificated and competent to render services which more senior employees are not. [Citations.]

(*Id.* at page 571.)

The *Alexander* court noted that the junior teachers in question were not teaching in the school’s bilingual program. Instead, they were teaching courses that: (1) did not require them to have or use their bilingual skills, and (2) more senior teachers were credentialed and competent to teach. The court “in effect nullifie[d]” the school district’s decision to “skip the junior teachers who possessed Spanish language skills but were not employed to teach

classes in the formal bilingual program.” (*Alexander, supra*, 139 Cal.App.3d at p. 576.) Because junior teachers were skipped solely because they possessed Spanish-speaking skills, the court ordered that a corresponding number of the layoff notices given to the most senior teachers without such skills be rescinded. (*Ibid.*) The clear implication of *Alexander* is that junior teachers may only be skipped when the credentials, certifications, training or skills they possess: (1) are required to render the teaching services they are assigned to provide, and (2) are not possessed by more senior teachers.

23. The District argued that *Alexander* should not be followed because, shortly after it was issued, subdivision (d) was added to section 44955. While the District is correct that subdivision (d) was added to section 44955 after *Alexander* was issued, subdivision (d) did not overturn *Alexander*; it codified it.

24. In *Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127 (*Bledsoe*), the court was called upon to determine whether a school district could lay off a more senior certificated employee when it skipped two more junior employees who were teaching in a community day school. The court in *Bledsoe* determined that, even though the more senior employee was credentialed and competent to teach in the positions that the more junior employees occupied, the school district demonstrated that it had a specific need for the two junior teachers to teach in the community day school, and the two junior teachers had special training and experience necessary to teach in a community day school that the more senior teacher did not possess. The *Bledsoe* court therefore found that, consistent with section 44955, subdivision (d)(1), the school district could skip the two junior employees and lay off the more senior employee.

25. In its opinion, the *Bledsoe* court made clear that the determination of whether a school district may lay off senior employees and retain more junior employees involves a two-step analysis: (1) pursuant to section 44955, subdivision (b), the school district must first determine whether the senior employees are credentialed and competent to render the services that the junior employees have been retained to render; and (2) if the school district determines that the senior employees are credentialed and competent to render these services, the school district must then decide whether, pursuant to section 44955, subdivision (d)(1): (i) it has a specific need for the junior employees to teach a specific course or course of study, and (ii) the junior employees have special training and experience necessary to teach that course or course of study that the more senior employees do not possess.

26. In adopting skipping criteria that allow all certificated employees who possess the designated single subject credentials to be skipped without concern as to whether the skipped employees are assigned to teach in positions that mandate these particular credentials, the District is seeking to short-circuit the analysis required under section 44955. As the *Alexander* court made clear, the District cannot issue competency criteria that are divorced from the courses that the affected teachers are assigned to teach. As is evident from *Bledsoe*, the District cannot retain junior employees to render services that more senior employees are credentialed and competent to render based solely upon the junior employees’ possession of designated credentials, without conducting the full analysis under section 44955, subdivision (d)(1).

27. The District raised a number of arguments as to why it needs to retain teachers with the single subject credentials described in paragraphs B and C of the Skipping Resolution.

a. Teacher Preparedness and Qualifications. Associate Superintendent De Graw testified that the District seeks to retain certificated employees with single subject credentials in math and physical sciences because it believes that these employees are best able and most prepared to serve the District's students in seventh through twelfth grades. According to Mr. De Graw, he has read published studies that found that students who are taught by teachers who have the college credits required to obtain a single subject credential in mathematics or physical sciences perform better on standardized tests.

Assistant Superintendent De Graw's testimony was not persuasive. First, the District did not offer into evidence any of the published studies to which he referred. Second, his testimony did not address if these studies analyzed whether more junior teachers with single subject credentials in math and physical sciences are more effective teachers than more senior teachers who hold other credentials or have only subject matter or supplementary authorizations in these areas. There was compelling testimony from respondents that, to be effective, teachers must: (1) have rigorous knowledge of the subject matter; (2) be able to make the subject matter relevant to students; and (3) relate to students in a way that encourages them to learn. According to these respondents, while new teachers with single subject credentials may possess the academic rigor necessary to teach math or physical sciences, it often takes teachers time to develop the teaching skills needed to make the subject matter relevant and to relate successfully to students to promote learning.

b. Recruiting Difficulties and Assignment Flexibility. As set forth above (Finding 11), Dr. Krueger explained that the District designated the credential areas described in paragraphs B and C of the Skipping Resolution because it is difficult for the District to find sufficient teachers with these credentials to fill all the District's teaching assignments. According to Dr. Krueger, teachers with single subject credentials offer the District more flexibility when making assignments in the seventh through twelfth grades. Sharon Smith, a District Personnel Analyst, explained the types of courses that single subject math or physical sciences credential holders can teach when compared to teachers who hold other credentials or only subject matter or supplementary authorizations in math or physical sciences. From Ms. Smith's testimony, it appeared that some of the skipped single subject credential holders could be assigned to teach a wider array of courses in the tenth through twelfth grades than some of the more senior respondents with other credentials and/or subject matter or supplementary authorizations.

The recruiting difficulties and assignment flexibility that Dr. Krueger cited for including the credential skips described in paragraphs B and C of the Skipping Resolution are understandable. The District is being forced by unprecedented budget cuts to substantially reduce its teaching staff. These reductions may have a lasting adverse impact on its ability to retain sufficient credentialed staff to provide all the education services its students need and deserve. But the desire to preserve the flexibility to make possible changes in staffing assignments in the future cannot trump the mandate of section 44955, subdivision (d)(1), which requires a school district to demonstrate that it has a “*specific need* for personnel to teach a *specific course* or course of study.” (Emphasis added.) If the District cannot show that it now intends to assign the skipped junior single subject credential holders to specific assignments that more senior respondents without such credentials cannot teach, the mandate of subdivision (d)(1) prevents the District from laying off more senior teachers who are credentialed and competent to teach the classes that the skipped junior single subject credential holders are now teaching.

c. NCLB Compliance. Ms. Smith explained that the District is currently in “program improvement status” and, as a result, is being monitored by the state for its compliance with federal requirements under the No Child Left Behind Act (NCLB). According to Ms. Smith, teachers who hold single subject credentials and those with subject matter authorizations are automatically deemed to be subject matter competent under NCLB; teachers who hold supplementary authorizations in a subject area are not automatically deemed to be subject matter competent under NCLB in that subject area, but these teachers may establish subject matter competence either by taking the CSET exam or by demonstrating that they have sufficient college credits in that subject area. The District argued that the NCLB compliance that single subject credential holders automatically have in their subject areas supports the District’s decision to skip the teachers who hold the credentials described in paragraphs B and C of the Skipping Resolution.

While it is important for the District to take appropriate steps to ensure that its teachers comply with NCLB requirements, the District did not submit sufficient evidence to establish that the junior single subject credential holders that it has skipped are teaching in courses that require the NCLB subject matter competence that only their single subject credentials can confer. The District also did not submit sufficient evidence to establish that the more senior respondents, who are credentialed and competent to teach these courses, are not NCLB-compliant to do so. In addition, the District did not submit evidence to show that it has established competency criteria that mandate NCLB compliance.

28. The 11 respondents identified in Finding 13 are credentialed and competent to teach the middle school math courses that the 11 skipped junior teachers with single subject math credentials identified in Finding 12 are currently teaching. The District did not demonstrate that it currently has a specific need for the skipped middle school math teachers to teach a specific course or course of study which requires them to have special training and experience that the 11 respondents, who are now also teaching middle school math, do not possess. Consequently, the District did not establish that, consistent with the requirements of section 44955, subdivision (d)(1), it may skip junior middle school math teachers with single subject math credentials, while laying off the more senior respondents identified in Finding 13. The District must therefore rescind the Preliminary Notices given to: Gabrielle Bajar, Elaine Lee, Nhung Le, Loren Runsten, Daniel Seto, Cary Smallwood, Mary Chung, April Dorman, Valarie Heng, Jeannette Deml, and Randall Rubiales.

29. The respondents identified in Finding 15 are credentialed and competent to teach the middle school integrated science courses that the skipped junior teachers with single subject physical sciences credentials identified in Finding 14 are currently teaching. The District did not demonstrate that it currently has a specific need for the skipped junior middle school integrated science teachers to teach a specific course or course of study which requires them to have special training and experience that the identified respondents, who are now also teaching middle school integrated science, do not possess. Consequently, the District did not establish that, consistent with the requirements of section 44955, subdivision (d)(1), it may skip junior middle school integrated science teachers with single subject physical science credentials, while laying off the more senior respondents identified in Finding 15. The District must therefore rescind the Preliminary Notices given to: Emily Blum-Amick, Bryce Davies, and Courtney Chow-Pun.

30. The respondents identified in Finding 17 are credentialed and competent to teach the high school general science courses that the skipped junior teachers with single subject physical sciences credentials identified in Finding 16 are currently teaching. The District did not demonstrate that it currently has a specific need for the skipped junior general science teachers to teach a specific course or course of study which requires them to have special training and experience that the identified respondents do not possess. Consequently, the District did not establish that, consistent with the requirements of section 44955, subdivision (d)(1), it may skip junior high school general science teachers with single subject physical sciences credentials, while laying off the more senior respondents identified in Finding 17. The District must therefore rescind the Preliminary Notices given to: Kelli Quan, Kayla Martin, Diana Brooks, and Sarah Reed.

Marching Band Skips

31. Paragraph E of the Skipping Resolution authorizes the District to skip:

Individuals fully-credentialed and in possession of specialized training and qualifications to serve in secondary marching band/music assignments

32. Dr. Krueger testified that, in order to be skipped under paragraph E, the certificated employee currently had to be teaching in a secondary marching band assignment. Dr. Krueger explained that paragraph E was adopted by the Governing Board due to the difficulty of recruiting teachers who have marching band experience. According to Dr. Krueger, the District has award-winning marching bands that require the teaching skills of experienced marching band directors.

33. During closing argument, the District identified Aaron Smith and John Natelli as the two marching band directors that it skipped pursuant to paragraph E. The District's seniority list indicates that Mr. Smith has a seniority date of August 16, 2010, holds a clear single subject credential in music, and is currently teaching music at Monterrey Trail High School. The seniority list indicates that Mr. Natelli has a seniority date of August 16, 2010, holds a preliminary single subject credential in music, and is currently teaching a .6 FTE at Valley High School, and a .4 FTE at Samuel Jackman Middle School. Other than the information set forth in the seniority list about Mr. Smith and Mr. Natelli, the District did not submit any evidence to establish that these two certificated employees have special training and experience necessary to direct marching bands.

34. Four respondents testified that they should also have been skipped under paragraph E:

- a. Florin Baros has a seniority date of August 19, 2008. He holds a preliminary single subject credential in music. He is currently teaching three choir classes and two piano classes at Florin High School. He also teaches a choir class at a middle school. He has not directed a marching band. He believes that his training in music and his experience leading choirs have provided him with sufficient skills, knowledge and ability to direct a marching band.
- b. Karissa Hofer has a seniority date of August 11, 2009. She holds a preliminary single subject credential in music. She is currently teaching band and choir at Elizabeth Pinkerton Middle School. She directs the eighth-grade marching band, and often collaborates with the Cosumnes Oaks High School marching band. The middle school marching band that she directs has competed in state-wide competitions.
- c. Corey Hoggard has a seniority date of August 22, 2006. He holds a clear single subject music credential in music. He is currently teaching music at Edward Harris, Jr. Middle School. He teaches seventh- and eighth-grade beginner band, intermediate concert band, and choir. He is the director of the marching band at the middle school. His middle school marching band played at the Elk Grove Middle School Band Festival and was awarded a superior rating. A middle school pep band that he directs performs at basketball games, open houses, and rallies.

d. Coleen Hogge has a seniority date of August 19, 2008. She holds a preliminary single subject credential in music, with a supplementary authorization in introductory business. She is currently teaching a music appreciation class, a piano lab, a vocal ensemble, and concert choir at Franklin High School. She has not directed a marching band, but she believes that her training and experience in music qualify her to do so.

35. During closing argument, the District agreed that both Ms. Hofer and Mr. Hoggard possess the specialized training and qualifications needed to serve in secondary marching band/music assignments. The District therefore concluded that both Ms. Hofer and Mr. Hoggard should be skipped under paragraph E of the Skipping Resolution. The District's April 14, 2011 list of rescissions shows that the District has rescinded the Preliminary Notices it served on Ms. Hofer and Mr. Hoggard.

36. As set forth in Finding 25, the determination of whether a school district may lay off more senior employees and retain more junior employees involves a two-step analysis: (1) pursuant to section 44955, subdivision (b), the school district must first determine whether the senior employees are credentialed and competent to render the services that the junior employees have been retained to render; and (2) if the school district determines that the senior employees are credentialed and competent to render these services, pursuant to section 44955, subdivision (d)(1), the school district must then decide whether: (i) it has a specific need for the junior employees to teach a specific course or course of study, and (ii) the junior employees have special training and experience necessary to teach that course or course of study that the more senior employees do not possess.

37. The evidence established that the two certificated employees who were skipped – Mr. Smith and Mr. Natelli – and the four respondents who testified – Mr. Baros, Ms. Hofer, Ms. Hogge and Mr. Hoggard – are all credentialed and competent to serve in secondary marching band/music assignments. Dr. Krueger's testimony established that the District has a specific need for certificated employees to direct marching bands. Ms. Hofer and Mr. Hoggard established that they have the special training and experience necessary to direct secondary marching bands. Accordingly, the District established that, pursuant to section 44955, subdivision (d)(1), Ms. Hofer and Mr. Hoggard qualify to be skipped pursuant to paragraph E of the Skipping Resolution, and their Preliminary Notices were properly rescinded.

38. The District did not, however, present sufficient evidence about Mr. Smith and Mr. Natelli to establish that these junior employees have the special training and experience necessary to direct marching bands that Mr. Baros and Ms. Hogge, who are both more senior, do not possess. Because of this lack of sufficient evidence, the District did not establish that the skips of Mr. Smith and Mr. Natelli satisfy the second prong of section 44955, subdivision (d)(1). Consequently, the District may not skip Mr. Smith and Mr. Natelli while laying off Mr. Baros and Ms. Hogge. The Preliminary Notices served on Mr. Baros and Ms. Hogge must therefore be rescinded.

Career Academy Skips

39. Paragraph H of the Skipping Resolution authorizes the District to skip:

Individuals fully-credentialed, currently assigned to and in possession of specialized, required training, experience and qualifications to serve in the core areas of the secondary California Partnership Academy (CPA)/career academy programs for CPA coordinator and academy core teacher positions

40. The District has established career academies in accordance with the Education Code. Section 54690, in relevant part, provides:

(a) The Legislature hereby finds and declares that the partnership academies program has proven to be a highly effective state-school-private sector partnership, providing combined academic and occupational training to high school students who present a high risk of dropping out of school, and motivating those students to stay in school and graduate. Partnership academies are functioning in 45 high schools spread throughout the state, with occupational training successfully offered in over 15 different skill fields, including such diverse skills as electronics, computer technology, finance, agribusiness, graphic arts and printing, international business, and space. ...

(b) The Legislature finds the partnership academies are in the forefront of school efforts to integrate academic and vocational education and that they can be effective in providing an integrated learning program and high motivation toward pursuing skilled occupational fields to students at risk of dropping out of school and to students not motivated by the regular educational curriculum. Further, the Legislature finds the partnership academies can make a very positive contribution towards meeting the needs of the state for a highly skilled and educated work force in the 21st century.

(c) Therefore, the Legislature hereby states its intent to expand the number of partnership academies in this state's high schools, hereafter to be known as California Partnership Academies; to broaden the availability of these learning experiences to interested students who do not meet the full criteria of "at-risk" students; and to encourage the establishment of academies whose occupational fields address the needs of developing technologies....

41. The California Department of Education has described career academies as follows:

Academies incorporate many features of the high school reform movement that includes creating a close family-like atmosphere, integrating academic and career technical education, and establishing viable business partnerships. Emphasis is also placed on student achievement and positive postsecondary outcomes. Academies have been carefully evaluated and shown to have positive impacts on school performance. Key components of the Academy model are:

- **CURRICULUM** focused on a career theme and coordinated with related academic classes.
- **VOLUNTARY** student selection process that identifies interested ninth graders.
- **TEAM OF TEACHERS** who work together to plan and implement the program.
- **MOTIVATIONAL ACTIVITIES** with private sector involvement to encourage academic and occupational preparation, such as: integrated and project-based curriculum, mentor program, classroom speakers, field trips, and exploration of postsecondary and career options.
- **WORKPLACE LEARNING OPPORTUNITIES** such as job shadowing, student internships, and work experience.

(www.cde.ca.gov/ci/gs/hs/cpaoverview.asp. Bolding and capitalization in the original.)

42. At the beginning of the hearing, the District asserted that paragraph H of the Skipping Resolution authorized it to skip junior certificated employees who are currently assigned to career academies and working as: (1) academy coordinators; (2) career technical education (CTE) teachers; and (3) core academic teachers. Although the District believed that paragraph H allowed it to skip these certificated employees, the District sent Preliminary Notices to all the employees it asserts should be skipped under this skipping criteria. Partway through the hearing, the District determined that it would not skip any junior core academic teachers who are currently teaching in career academies. Because the District sent Preliminary Notices to the junior core academic teachers that it initially intended to skip under paragraph H, there is no reason to address the issues raised at the hearing regarding these junior teachers.

43. During the hearing, the District proposed to skip the following four academy coordinators: (1) Susan DeHerrera; (2) Susan Hubbard; (3) Rebecca Hunter; and (4) Carlos Garcia. The District also proposed to skip the following four CTE teachers: (1) Cristin Smith; (2) Jennifer Moore; (3) Bryan Jilka; and (4) Jason Brennan.¹⁰ As set forth above, after the hearing concluded, the District submitted lists of its post-hearing rescissions. These lists show that the District has rescinded the Preliminary Notices served on Ms. DeHerrera and Mr. Brennan. From the information provided by the District, it appears that these rescissions were not based upon the skipping criteria set forth in paragraph H of the Skipping Resolution. It is therefore not necessary to address these certificated employees in this proposed decision.

44. The parties presented the following evidence regarding the three remaining academy coordinators that the District proposes to skip:

a. Susan Hubbard has a seniority date of August 16, 2010. She holds a preliminary single subject credential in business education. She is an academy coordinator, CTE teacher, and core academic teacher in the Green Renewable Energy Engineering Network (GREEN) Academy at Franklin High School. Ms. Hubbard started the GREEN Academy approximately two year ago. The purpose of the GREEN Academy is to provide students with a four-year course of study that gives them the opportunity to explore a variety of fields based on green and clean technology, including those in wind, solar energy, hydroelectricity and bio fuel.

As the GREEN Academy coordinator, Ms. Hubbard works with: (1) the administration to build the framework for the academy, including teacher recruitment and class scheduling; (2) teachers to develop a comprehensive project-based program, which requires coordination of curriculum, class schedules and prep periods; (3) counselors to oversee the students' schedules; and (4) students to recruit, coordinate schedules, and check attendance to ensure that at-risk students are in compliance with academy and school requirements to earn a certificate of completion. She prepares and produces all required reports for the District and the state. She organizes and facilitates the eleventh-grade mentorship program, advisory panels, and field trips. She works closely with the community to build relationships that will benefit and enhance the academy. She organizes teacher development and training to make sure that the academy is meeting the requirements of the CPA grant. She work to develop relationships with businesses to work with academy students.

¹⁰ The District submitted a declaration from Erin Goldman, but did not otherwise argue that she was an academy coordinator or a CTE teacher who should be skipped pursuant to paragraph H of the Skipping Resolution. The District did not present sufficient evidence to establish that Ms. Goldman should be skipped under paragraph H of the Skipping Resolution.

Ms. Hubbard teaches computer technology and general business in the GREEN Academy. Before joining the District, she worked for 25 years in a variety of different positions in businesses, including as an in-house marketing director and a small business owner. With her extensive business experience, she is able to bring a wide array of workplace skills and knowledge to her academy students.

b. Rebecca Hunter has a seniority date of August 23, 2005. She holds a clear single subject credential in English. For the past six years, she has been teaching in Pleasant Grove High School's Computer Aided Drafting/Design and Digital Communications (CADD/COMM) Academy. For the past four years, she has been the academy's coordinator. The CADD/COMM Academy is a technology-driven program with two academic pathways: Computer Aided Drafting/Design and Digital Communications. CADD students learn the fundamentals of both architectural and mechanical CADD, experience a hands-on engineering lab, and create animated 3D models. Communication students explore digital animation, video production, broadcasting, and 3D animation.

As the CADD/COMM Academy coordinator, Ms. Hunter meets with: (1) district personnel regarding academy certification; (2) school site staff regarding course scheduling; and (3) counselors to ensure all academy students are enrolled in proper classes. She recruits eighth-grade students to join the academy. She maintains the academy's budget. She: (1) coordinates and runs all academy staff meetings; (2) ensures that the academy is in compliance with all Education Code requirements; (3) ensures all academy teaching assignments are filled; (4) facilitates the development of specialized academy curriculum; (5) organizes extra-curricular events for students, including field trips, guest speakers, social events, and award banquets; (6) monitors all academy students' grades, standardized test scores, behavior, at-risk status, attendance, graduation requirements, and scheduling; (7) counsels academy students and parents regarding academy issues; (8) communicates with the District, academy staff, academy students, and academy parents regarding academy issues; (9) prepares all mandated reporting for the academy; and (10) develops and implements academy-specific curriculum.

Ms. Hunter has received extensive academy-related training. Of particular note is Ms. Hunter's involvement with the Ford Partnership for Advanced Studies (Ford PAS) program. The Ford Motor Company has developed the Ford PAS program to train teachers, employers, and community leaders to help students graduate from high school, ready to go to college and/or start careers, and better able to compete successfully in the 21st century economy. Ms. Hunter has participated in numerous Ford PAS training, and has been a nationally-accredited Ford PAS trainer since 2009.

c. Carlos Garcia has a seniority date of August 19, 2008. He holds a clear single subject credential in social science. He is the academy coordinator for Florin High School's Domestic and International Law Academy (LAW) Academy. He is also a core academic teacher in the academy, teaching two sections of academy world history. He has taught in the LAW Academy and has been its coordinator since its inception in 2009. He is responsible for developing the academy's budget, scope and sequence, as well as conducting recruitment for the academy. He attended the CPA Conference in fall 2009 and spring 2010. He attended Ford PAS training in April 2009, August 2009, and Fall 2010. He has attended academy team meetings weekly at the site level since Spring 2009, and quarterly at the District level.

45. The parties presented the following evidence regarding the three remaining CTE teachers that the District proposes to skip:

a. Cristin Smith has a seniority date of August 11, 2009. She holds a preliminary full-time designated subjects career technical education teaching credential in hospitality, tourism, and recreation. Ms. Smith is the CTE teacher in the Culinary Arts Academy at Cosumnes Oaks High School. The purpose of the Culinary Arts Academy is to provide students with a four-year sequenced curriculum that prepares them for National Restaurant Certification. Students learn nutrition science, restaurant management, food chemistry, and culinary skills to prepare them for employment in the hospitality, tourism and recreation industries.

Because the Culinary Arts Academy coordinator is also the vice principal of the school, Ms. Smith has been tasked with performing many of the academy duties ordinarily performed by academy coordinators. Ms. Smith wrote 40 percent of the state grant for the Culinary Arts Academy. Last year, she was the only teacher in the academy. She is currently trying to expand the academy and recruit more teachers to join the academy staff. She is designing the academy's curriculum. She monitors academy students to ensure that they continue to meet academy requirements. She attended CPA training in March 2011. She has taught four courses in the academy this school year. She has five years of work experience as a chef. With her industry background, she is working to build community relationships. She believes that her experience in business provides her with business skills that other more senior home economics teachers do not possess.

b. Jennifer Moore has a seniority date of July 29, 2008. She holds a preliminary single subject credential in art. In the current school year, she is teaching two sections of computer and graphic design, and one section of digital art in Elk Grove High School's Technology and Digital Arts (TDA) Academy. This academy is designed for students interested in media advertising and entertainment industries, and who want to learn filmmaking, photography and digital design.

She attended the CPA Conference in 2010 and 2011. She attended Ford PAS training in 2008. She attends monthly academy meetings throughout the school year. She has significant training and experience in graphic design and computer software. She worked as a layout designer for a magazine and as a photographer in private industry before becoming a teacher. She has been using the contacts she made as a photographer to arrange for students to gain practical work experience in photography.

c. Bryan Jilka has a seniority date of August 23, 2005. He has clear single subject credentials in health science and physical education. Mr. Jilka is one of the original members of the Sports Careers Academy at Laguna Creek High School. In this academy, students learn skills in athletic training, physical therapy, and fitness instruction. They receive a background in anatomy and physiology, ethical and legal issues involved in medicine, and medical terminology.

Mr. Jilka is the academy's CTE teacher. He is currently teaching introduction to sports medicine (a junior core CTE class), introduction to sports therapy (a senior core CTE class), and Health B (a freshman core class that sets the foundation for the junior and senior classes). He has spent the past four years developing the curriculum for these classes. He has created a fully functioning exercise physiology lab.

Mr. Jilka has also spent the past four years developing community relationships with his academy. He has modeled the academy's program on Sacramento State's exercise physiology program. He is working with the chairs of Sacramento State's exercise physiology and kinesiology programs. He is teaching his junior class with a professional certified athletic trainer. He has arranged to have physical therapists visit academy classes, and has taken the students on field trips to fitness centers to expose them to the fitness world.

Mr. Jilka has had many years of industry experience. He has been a fitness director at a racquet club. He has over 18 years of coaching experience, and has coached both track and cross country. He is a certified CPR and first aid instructor.

46. The District described its career academies as small schools within big high schools. The District's evidence about the academic success of students who participate in career academies was compelling. The District's evidence about the special training and experience that the identified academy coordinators and CTE teachers possess, and the significant amount of work that these teachers perform for their career academies, was also compelling. The District did not contest that some more senior respondents may be credentialed and competent to perform the work that junior academy coordinators and CTE teachers are currently performing. But, pursuant to section 44955, subdivision (d)(1), the District demonstrated that it has a specific need for the identified junior academy

coordinators and CTE teachers to teach the specific courses of study provided to students in its career academies. The District also demonstrated that the certificated employees identified in Findings 44 and 45 all have the special training and experience necessary to be academy coordinators and/or CTE teachers that more senior respondents do not possess. The District therefore established compliance with section 44955, subdivision (d)(1). Accordingly, the District may apply the skipping criteria set forth in paragraph H of the Skipping Resolution to skip these certificated employees.

47. There were three other respondents who argued that they, too, should be deemed to meet the skipping criteria set forth in paragraph H of the Skipping Resolution¹¹:

a. Jon Russell has a seniority date of August 21, 2007. He holds a clear single subject credential in health science, with a supplementary authorization in introductory physical education. For three years prior to this school year, Mr. Russell was assigned as the CTE teacher for the Health Tech Academy at Valley High School. This academy provides a four-year program that combines advanced technology, student workplace experience, and direct contact with local health officials for students interested in a health-related occupation.

As a CTE teacher within the Health Tech Academy, Mr. Russell taught health courses. He developed the ninth-grade curriculum for the academy's health course. He was instrumental in organizing the annual Health Fair.

This year, Mr. Russell was asked by his principal, Keven MacDonald, to pilot a program that teams him with the California GEAR-UP grant. In this role, Mr. Russell supports key needs within several other programs and departments at Valley High School. A portion of his current role consists of conducting rallies and recruitment at the District's elementary school to promote a pathway to college and create a mentoring program. As a result of this assignment, Mr. Russell is not currently teaching any classes in the Health Tech Academy. But he has continued to work as an advocacy teacher for academy students. He meets with students in his advocacy class every Wednesday for 45 minutes and after school.

Although Mr. Russell is not currently teaching any CTE classes in the Health Tech Academy, Mr. MacDonald confirmed that Mr. Russell is still considered to be an integral member of the academy team, and is scheduled to

¹¹ Derrick Milgrim testified that, prior to the current school year, he was both an academy coordinator and CTE teacher in a career academy. After the hearing, the District rescinded Mr. Milgrim's Preliminary Notice. There was no indication that this rescission was related to the skipping criteria set forth in paragraph H of the Skipping Resolution. Consequently, it is not necessary to address the issues raised by Mr. Milgrim regarding the career academy skip.

return to the academy as a CTE teacher for the next school year. Mr. Russell continues to work to promote full enrollment in the academy. He is the academy's tobacco prevention coordinator. He has worked on seminars and workshops in campaigns against drugs, and for health and fitness. He is certified as a CPR, first aid, and AED instructor. He is the assistant activities director and the assistant athletics director at Valley High School. Prior to working for the District, he worked for three year at Kaiser Permanente. He has established important links between the Health Tech Academy and Kaiser, U.C. Davis, and the Roseville Fire Academy.

b. Kasha Maslowski has a seniority date of August 27, 2007. She holds a preliminary single subject credential in biological sciences (specialized), with a supplementary authorization in introductory science. Prior to this school year, beginning in 2007, she was the CTE teacher in the Design and Technology Academy at Monterey Trail High School. This academy provides students the chance to learn about computers and engineering, transportation technology, and interior and landscape design.

Ms. Maslowski developed the curriculum for the academy's Envirosapes class, which is focused on environmental engineering. She is not teaching the Envirosapes class in the academy this year because not enough students signed up to take it. But more than enough students have already signed up to take the class in the academy next year, and she is currently scheduled to teach it.

Although Ms. Maslowski is not teaching a class in the academy this year, she is still actively involved in the academy. In March 2011, she participated in the annual statewide CPA conference. At one of the conference's break-out sessions, she was a presenter on behalf of the Design and Technology Academy. In addition, she still works closely with the academy coordinator, who is teaching an architectural engineering class that builds upon her Envirosapes class. She also attends academy articulation meetings, during which she collaborates with other academy teachers. The CPA funding for the academy depends upon her Envirosapes class, since it is the basis for the green funding the academy receives.

Ms. Maslowski participated in the Ford PAS professional development providers' workshop in October 2009.

c. Margaret Souliere has a seniority date of August 21, 2007. She holds a clear single subject credential in art. She is currently on a child-rearing leave of absence.

Before going on a leave of absence, Ms. Souliere was a CTE teacher in the TDA Academy for three years. She taught three academy sections per year. The academy sections that she taught included Computers and Graphic Design I (a CTE foundation class for all TDA ninth graders) and Computers

and Graphic Design II (an advanced class for eleventh- and twelfth-grade TDA students). She attended the statewide CPA conference in November 2008 and March 2009. She attended the Ford PAS training in May 2009. She has attended numerous meetings regarding the TDA Academy. She has extensive educational and business experience in graphic design.

Ms. Souliere designed the foundational CTE course for ninth graders and the advanced CTE course for eleventh and twelfth graders for the Graphic Design Pathway in the TDA Academy. She piloted project-based learning in the TDA Academy, and is one of the two people who designed and implemented the project-based, industry-aligned curriculum for the academy. According to Ms. Souliere, her industry experience “brings the reality of the design field into the classroom” and her “industry contacts create opportunities for TDA academy students to work on real design work beyond the confines of the classroom.”

During the hearing, Ms. Souliere was concerned that, when she returns to work from her child-rearing leave, she might not be assigned to be an academy teacher. From her testimony, it appeared that Ms. Souliere was very interested in continuing to teach in the TDA Academy.

48. Mr. Russell, Ms. Maslowski, and Ms. Souliere all demonstrated that they have the special training and experience necessary to be CTE teachers in career academies that more senior respondents do not possess. They therefore established that they meet the second prong of section 44955, subdivision (d)(1). They are not, however, currently assigned to teach career academy classes.

49. During oral argument, the District did not dispute that Mr. Russell, Ms. Maslowski and Ms. Souliere all have had recent experience as CTE teachers.¹² The District argued in the alternative with regard to whether Mr. Russell and Ms. Maslowski should be included in the career academy skip. On the one hand, the District argued the term “currently assigned” in paragraph H of the Skipping Resolution should be respected. On the other hand, the District recognized that both Mr. Russell and Ms. Maslowski have provided valuable CTE services to students in their academies, are still actively involved with their academies in areas other than classroom teaching, are expected to teach academy classes during the next school year if they are not laid off, and are not currently teaching academy classes due to no fault of their own. From its closing argument, it appeared that the District would not object if the skipping criteria set forth in paragraph H were interpreted to allow the District to skip Mr. Russell and Ms. Maslowski. In fact, the District included Mr. Russell on

¹² The District did not specifically discuss Ms. Souliere in its closing argument. It did, however, submit a declaration from Ms. Souliere, which details her training and experience as a CTE teacher in the TDA Academy. Given this declaration, this proposed decision assumes that all the arguments that the District made in its closing argument regarding Mr. Russell and Ms. Maslowski also apply to Ms. Souliere.

its list of academy coordinators and CTE teachers to be skipped, with an asterisk next to his name noting that he is not currently teaching in an academy.

50. Paragraph H states that, in order to be skipped, certificated employees must be “currently assigned to” career academies. But paragraph H does not explicitly state that certificated employees must currently be *teaching classes* in a career academy to qualify for the skip. The determination of whether a teacher should be included in the skip set forth in paragraph H should not be based upon the fortuity of their current year’s class assignments. Both Mr. Russell and Ms. Maslowski established that they are still considered to be CTE teachers in their academies, and are currently actively involved in aspects of academy work other than teaching academy classes. The “currently assigned” language set forth in paragraph H should not be read so narrowly as to preclude Mr. Russell and Ms. Maslowski from being skipped. Mr. Russell and Ms. Maslowski both established that they comply with the prerequisites of section 44955, subdivision (d)(1). They should therefore be deemed to fall within the skipping criteria set forth in paragraph H of the Skipping Resolution.

51. Ms. Souliere also demonstrated that she has the special training and experience necessary to be a CTE teacher in a career academy that more senior respondents do not possess. She therefore established that she meets the second prong of section 44955, subdivision (d)(1). She also is not currently assigned to teach career academy classes this school year. From the evidence, it appeared that the only reason that she is not currently teaching in a career academy is because she is on a child-rearing leave. The provisions of paragraph H of the Skipping Resolution should not be interpreted and applied so narrowly as preclude Ms. Souliere from being included in the career academy skip. If the District plans to assign Ms. Souliere to be a CTE teacher in a career academy in the 2011-2012 school year, it may include Ms. Souliere within the skipping criteria set forth in paragraph H of the Skipping Resolution.

52. The academy coordinators and CTE teachers that the District seeks to skip under paragraph H of the Skipping Resolution are not teaching full time in career academies. They are teaching both academy classes and non-academy classes. The District argued that, even though the academy coordinators and CTE teachers are not teaching full time in career academies, they should nonetheless be fully skipped. According to the District, these certificated employees would not stay with the District and perform all the work they do for the academies if they were skipped only for that portion of their FTE’s during which they are employed teaching academy classes or performing academy services.

53. The District’s argument is not persuasive. The authority to deviate from terminating certificated employees in order of seniority set forth in section 44955, subdivision (d)(1), is an exception to the mandate of subdivision (b) that “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.” As an exception, the provisions of subdivision (d)(1) must be read narrowly and applied only under the limited circumstances to which they apply. There was no showing that District has a specific need for the academy coordinators and CTE teachers to teach their non-academy

courses, or that they have special training and experience necessary to teach their non-academy courses that more senior respondents do not possess. As such, the District cannot skip these academy coordinators and CTE teachers under section 44955, subdivision (d)(1), for any FTE's during which they are not actually assigned to teach career academy courses or otherwise perform work for career academies.

54. In sum, the District may skip Susan Hubbard, Carlos Garcia, Rebecca Hunter, Cristin Smith, Jennifer Moore, Bryan Jilka, Jon Russell, Kasha Maslowski, and Margaret Souliere under paragraph H of the Skipping Resolution. The skips of these certificated employees shall be only for the number of FTE's during which they are actually assigned to teach career academy courses or otherwise perform work for career academies during the 2011-2012 school year. The District may therefore rescind the Preliminary Notices given to these respondents by the percentage of FTE's they are assigned to teach courses in or otherwise perform work for career academies in the 2011-2012 school year.

55. All the other assertions and arguments made by respondents with regard to career academy assignments and paragraph H of the Skipping Resolution that are not addressed above are found to be without merit and are rejected.

Individual Seniority Date, Tie-Breaking and PKS Issues

56. The District maintains a certificated seniority list that contains the name, seniority date, position, site, FTE, credential, credential subject, English language authorization, and tenure status of each District probationary and permanent certificated employee. On November 15, 2010, December 15, 2010, and January 21, 2011, the District sent emails to all certificated employees asking them to verify that the information about them on the seniority list was current and accurate. The emails included information about how the employees could access the seniority list, locate their names, and request that information about them be updated and/or corrected. Attached to these emails were "Request to Change Seniority List Employment Information" forms (request to change forms), which certificated employees could fill out and return to the appropriate personnel analysts to update and correct the information included about them on the seniority list. The District received responses from employees to its emails. The District's personnel analysts reviewed all the information that was submitted, and the seniority list was corrected and updated upon verification of that information.

57. The District's November 15, 2010 email asked all certificated employees to: (1) update and/or correct the information that the District had about their: (a) legal name; (b) seniority date; (c) number of degrees (bachelor's, masters, and doctorate); (d) credentials; (e) certificates; (f) licensure; and (g) currently assigned position(s); (2) complete the request to change forms; and (3) return the completed forms to the appropriate personnel analyst by December 6, 2010. The December 15, 2010 email provided the same information, and asked certificated employees to return completed request to change forms by January 7, 2011. The January 21, 2011 email provided the same information and asked certificated employees to return completed request to change forms by January 28, 2011. According to the District, it informed all certificated employees that they had to submit their updated and corrected

information to their assigned personnel analysts no later than March 15, 2011, in order for that information to be considered for the purposes of this layoff.

58. A reduction in force the size of this one is a massive undertaking for a school district. To successfully effectuate a teacher layoff, a school district must comply with the very strict and tight deadlines set forth in the Education Code. (§§44949, 44955.) It was appropriate for the District to impose a March 15, 2011 deadline by which certificated employees had to submit all their updated and corrected information.

59. During the hearing, a number of certificated employees raised individual issues and concerns regarding their seniority dates, the points they were awarded during tie-breaking, and the reduction of their particular PKS. To the extent these certificated employees are still respondents in this case, their concerns are addressed below.¹³

Individual Seniority Date Issues

60. The seniority date of certificated employees is determined in accordance with section 44845, which provides:

Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position.

61. Daniel Seto. The District's seniority list reflects that Mr. Seto has a seniority date of August 23, 2005. At the hearing, Mr. Seto contended that his seniority date should be changed to June 20, 2005. According to Mr. Seto, on June 20 and 21, 2005, he attended two pre-service training days. He believed that he was required to attend these two days. He was paid a stipend of \$125 for his time. Mr. Seto submitted a copy of the agenda for the two pre-service training days. The agenda labels this time as a "retreat." At this retreat, topics including "Describing & Building Our Team," "Mapping Our Context," "Envisioning Our School's Future," and "Department Team Planning," were discussed.

Mr. Seto testified that between June 21 and August 23, 2005, he went to his school on one day to meet parents. According to Mr. Seto, he was paid for this one day. Mr. Seto submitted a document that showed that on August 17, 2005, he was paid a stipend of \$100.

¹³ This proposed decision does not address the issues and concerns raised during the hearing by certificated employees whose Preliminary Notices have since been rescinded, because they are no longer respondents in this matter. This proposed decision also does not address the testimony of respondents whose issues and concerns were resolved by the District during the hearing. (For examples, during the hearing, the District agreed with: (1) Rebecca Drake that one point would be added to the tie-breaking matrix for her master's degree; and (2) Emily Blum-Amick that her seniority date would be changed from August 22, 2006, to August 23, 2005.)

The District argued that Mr. Seto's seniority date should not be changed from August 23, 2005, to June 20, 2005, based upon the two pre-service days and one parent-meeting day for which he was paid stipends. According to the District, it does not consider a teacher's attendance on these types of days to be the rendering of paid service in a probationary position. The District contended that while new teachers may feel compelled to attend pre-service training, their attendance is not mandatory. The District argued further that it applies its policy consistently for all teachers: it pays teachers only stipends for attendance at pre-service training, and does not adjust any teachers' seniority dates based upon their pre-service training attendance.

Many factors are often considered when determining whether attendance during pre-service training days constitutes the first date of paid probationary service, including whether: (1) the pre-service training days are recognized as part of the negotiated school year in a collective bargaining agreement; (2) pre-service training attendance is mandatory or voluntary; and (3) certificated employees receive regular pay, a stipend, or some other form of compensation. The consistent application of these factors across all certificated employees is also an important consideration, because seniority establishes the relationship among all certificated employees. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal. App. 4th 1260, 1293, n. 20.)

In this case, there was no evidence about whether there may be a collective bargaining agreement that contains language relevant to attendance at or payment for pre-service training days. There was conflicting evidence about whether attendance at pre-service training days was mandatory. But it was clear from the evidence that Mr. Seto was paid a stipend, and not his regular pay, for attending the two pre-service training days and the parent-meeting day. It is important for the District to maintain and apply a consistent policy to ensure that all employees are treated equitably and fairly. When all the evidence is considered, Mr. Seto did not establish that his seniority date should be changed.

62. Laura (Lolly) Jones. The District's seniority list reflects that Laura (Lolly) Jones is a first-grade teacher with a seniority date of August 18, 2005. At the hearing, Ms. Jones testified that August 18, 2005, was not the first day she rendered paid service to the District in a probationary position. According to Ms. Jones, when she began working for the District, she took over for a teacher who was retiring. Ms. Jones testified that, for reasons that she could not explain relating to retirement, the retiring teacher had to work two days at the beginning of the 2005-2006 school year. Ms. Jones stated that she worked the same two days as a substitute in the retiring teacher's classroom. Ms. Jones requested that her seniority date be changed to August 16, 2005. Ms. Jones did not submit any documents to substantiate her request to change her seniority date. Consequently Ms. Jones did not provide adequate support for an earlier seniority date.¹⁴

¹⁴ Ms. Jones also requested changes to her credentials noted on the seniority list, bumping chart, and tie-breaking matrix. These issues are addressed below.

63. Melinda Morris. The seniority list reflects that Ms. Morris has a seniority date of September 16, 2005. She holds a multiple subject credential with a CLAD, and is a first-grade teacher. At the hearing, Ms. Morris testified that September 16, 2005, was not the first day she rendered paid service to the District in a probationary position. According to Ms. Morris, on July 20 through 22, 2005, she attended pre-service days, for which she was paid, and then worked as a substitute teacher from July 25 through August 19, 2005, until she went off track. While she was off track, she received a 2005/06 Probationary Employment Agreement, dated August 17, 2005, which reflected that she would begin work as a probationary employee on September 16, 2005.

Ms. Morris submitted timesheets, which showed that, from July 20 through August 19, 2005, she was paid as a substitute for a teacher who was on leave. Ms. Morris also submitted salary information which showed that she began receiving pay as a probationary employee on September 16, 2005.

Ms. Morris did not submit sufficient information to establish that her first date of paid service in a probationary position with the District should be changed from September 16, 2005, to July 20, 2005. Her request for a change to her seniority date must therefore be denied.

64. Joseph Candelaria. The seniority list reflects that Joseph Candelaria has a seniority date of August 21, 2007. Mr. Candelaria has a preliminary single subject credential in physical education, with supplementary authorizations in dance and drama/theater. He is currently teaching visual and performing arts and dance at Franklin High School.

At the hearing, Mr. Candelaria contended that his seniority date should be changed to August 21, 2006. According to Mr. Candelaria, during the 2006-2007 school year, he worked full time as a long-term substitute, under a provisional internship permit, in the same position that he now holds. Mr. Candelaria submitted a memo written by Charlotte Phinizy, the principal of Franklin High School, which requested that Mr. Candelaria's seniority date be changed. In relevant part, Ms. Phinizy's memo states that:

[Mr. Candelaria] began work on Monday, August 21, 2006, by attending a new teacher orientation from 1:00 pm to 4:00 pm in the afternoon. On Tuesday, August 22, 2006, he started his classroom preparation during preservice days attended by all teachers. During the 2006-2007 school year, he was paid as a .8333 FTE long-term substitute teaching in the same subject area that he currently teaches.

The District did not submit any evidence or argument in opposition to Mr. Candelaria's request to change his seniority date.

Section 44918, subdivision (a) provides:

Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year.¹⁵

Mr. Candelaria presented sufficient evidence to establish that he served as a long-term substitute for at least 75 percent of the 2006-2007 school year, performing the duties normally required of a certificated employee. Because he was employed as a probationary employee for the 2007-2008 school year, pursuant to section 44918, he should be deemed to have served a complete school year as a probationary employee in the 2006-2007 school year. There was no evidence submitted about whether Mr. Candelaria was regularly paid on August 21, 2006. Because a review of the seniority list reveals that the vast majority of teachers who started in August 2006 have a seniority date of August 22, 2006, Mr. Candelaria's seniority date should be changed to August, 22, 2006.

65. Denise Lester. The District classifies Ms. Lester as a temporary employee. At the hearing, Ms. Lester contended that she did not sign a temporary contract before she began working as a pre-school teacher in the 2003-2004 school year, and that she should therefore have been considered to be a probationary employee as of her first workday, in accordance with the rationale of *Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911 (*Kavanaugh*). Ms. Lester's contention was addressed in last year's layoff decision and denied. This year, Ms. Lester submitted additional documents to support her contention that she began working before she signed her temporary contract.

Ms. Lester's temporary contract for the 2003-2004 school year includes an August 19, 2003 start date. Although her temporary contract is not dated, Ms. Lester testified that she signed it on August 20, 2003, her birthday, but that she began working on August 14, 2003. Ms. Lester submitted an agenda of the pre-service training provided on August 14, 15, and 18, 2003, and a printout of a "warrant detail screen." The warrant detail screen indicates that Ms. Lester was paid on September 10, 2003, for services that she rendered during the period ending August 31, 2003. There is no information on the warrant detail screen to indicate on which days in August 2003 Ms. Lester worked. The warrant detail screen does not establish that Ms. Lester either worked or was paid for work prior to August 19, 2003, the start date of her temporary contract. Consequently, Ms. Lester did not establish that she should have been classified as a probationary employee on August 14, 2003. Her request for a change in her seniority date and employment status must therefore be denied.

¹⁵ Section 44918, subdivision (d), provides:

Those employees classified as substitutes, and who are employed to serve in an on-call status to replace absent regular employees on a day-to-day basis shall not be entitled to the benefits of this section.

66. Tina Donate. The seniority list reflects that Ms. Donate has a seniority date of July 20, 2005. She holds a multiple subject credential and is a first-grade teacher. Ms. Donate raised two contentions. First she contended that her seniority date should be adjusted to July 16, 2005, because she attended three days of pre-service training on July 16, 17, and 18, 2005. Ms. Donate did not submit any documentation to substantiate whether or how she was paid for having attended this pre-service training. Due to this lack of documentation, and for the same reasons set forth above with regard to Mr. Seto, her request must be denied.

67. Ms. Donate also contended that her seniority date should be changed from July 20, 2005, to July 16, 2004, as a result of her long-term substitution work in the 2004-2005 school year. Ms. Donate testified that she attended pre-service training on July 16, 2004, and then began working as a long-term substitute on July 21, 2004. She submitted documentation that substantiates that she worked as a long-term substitute for more than 75 percent of the 2004-2005 school year. That documentation shows that: (1) from July 21 through November 30, 2004, she had a 1.0 FTE as a long-term substitute for a first-grade teacher who was on maternity leave; and (2) from December 1, 2004, through June 30, 2005, she had a .40 FTE as a long-term substitute for the first-grade teacher, and a .40 FTE as a long-term substitute for a kindergarten teacher. Ms. Donate asserted that, under section 44918, this time should be tacked onto her seniority.

The District argued that long-term substitute work cannot be tacked onto a certificated employee's seniority if the employee did not consistently serve in a single long-term substitute assignment for more than 75 percent of the school year.

The District's argument is not persuasive.¹⁶ Section 44918 (Finding 64) applies to Ms. Donate. That section does not require that a long-term substitute must consistently serve in a single long-term substitute assignment during the year to obtain the section's tacking benefits. Ms. Donate served as a long-term substitute for more than 75 percent of the 2004-2005 school year. She was then hired as a probationary employee for the 2005-2006 school year. Accordingly, she is entitled to the tacking required under section 44918.

Because Ms. Donate did not establish that she was regularly paid for her pre-service training, and for the same reasons as set forth above with regard to Mr. Seto (Finding 61), Ms. Donate cannot be given seniority credit for her pre-service days in July 2004. But, pursuant to section 44918, Ms. Donate's seniority date must be changed to July 21, 2004.

68. Paul Cannelora. The District's seniority list reflects that Mr. Cannelora has a seniority date of July 1, 2001. He has a pupil personnel services credential in school

¹⁶ In *Centinela Valley Secondary Teachers Association v. Centinela Valley Union High School District* (1974) 37 Cal.App.3d 35, the court disallowed combining long-term substitute service for more than one teacher under section 13336.5, the predecessor to section 44918. Section 44918 does not prohibit combining more than one long-term position to reach the 75 percent requirement.

counseling. He currently works as a counselor at two middle schools. Mr. Cannelora contended that his seniority date should be changed to July 1, 1999.

Mr. Cannelora testified that: (1) for three months beginning in September 1999, he worked for the District as a day-to-day substitute teacher; (2) from December 1999 until the end of the 1999-2000 school year, he worked in a long-term assignment as a middle school counselor; and (3) he worked 100 percent of the 2000-2001 school year as a long-term substitute.

In support of these contentions, Mr. Cannelora submitted his W-2's for 1999, 2000 and 2001. He also submitted printouts from the District dated December 10, 1999, November 10, 1999, and October 8, 1999. Mr. Cannelora argued that he could not have received the amount of pay reflected on these documents unless he was employed full time by the District.

The District argued that Mr. Cannelora could not tack any time onto his seniority because he did not serve consistently in a single temporary or long-term assignment for more than 75 percent of the school year. As set forth in Finding 67, this argument is not persuasive.

But Mr. Cannelora did not submit documentation to substantiate: (1) in what assignments or positions he was employed during the 1999-2000 and 2000-2001 school years; (2) whether these assignments were as a temporary employee or long-term substitute; or (3) what percentage of the school year he spent working in these assignments. Mr. Cannelora's pay documents, standing alone, are not sufficient to demonstrate that he is entitled to the tacking set forth in section 44918. Because Mr. Cannelora did not submit sufficient substantiation to support his request for a seniority date change, his request must be denied.

69. Kathy Wilson. The District's seniority list reflects that Ms. Wilson has a July 15, 2009 seniority date. At the hearing, Ms. Wilson contended that her seniority date should be changed to August 3, 2006, when she attended training before starting in a temporary position as a preschool/headstart teacher.

Ms. Wilson submitted copies of her agreements with the District: (1) a 2006/07 Temporary Employment Agreement to work as a preschool/headstart teacher beginning on August 22, 2006, which Ms. Wilson signed on June 14, 2006; (2) a 2007/08 Temporary Employment Agreement to work as a preschool/headstart teacher beginning on August 21, 2007, which Ms. Wilson signed on June 6, 2007; (3) a 2008/09 Temporary Employment Agreement to work as a fourth-grade teacher beginning on July 16, 2008, which Ms. Wilson signed on July 10, 2008; (4) a 2009/10 Temporary Employment Agreement to work as a first-grade teacher beginning on July 15, 2009, which Ms. Wilson signed on July 14, 2009; and (5) a 2010/11 Probationary Employment Agreement to work as a K-12 Program Improvement Instructional Coach beginning on August 16, 2010, which Ms. Wilson signed on September 8, 2010. All of Ms. Wilson's temporary agreements provide that she was "being hired pursuant to Education Code section 44909 either to fill a categorically funded

position [herself] or to replace another certificated employee who has been assigned to a categorically funded position.”

Given the dates when Ms. Wilson signed her temporary agreements and when she started working under these agreements, Ms. Wilson did not establish that, under *Kavanaugh*, she should be deemed to be a probationary employee as of August 3, 2006, or any date earlier than July 15, 2009. Given her July 15, 2009 seniority date, it appears that the District has already tacked her last year of temporary service onto her seniority in accordance with section 44918. Consequently, Ms. Wilson did not establish that her seniority date should be changed.¹⁷

Individual Tie-Breaking Issues

70. The Tie-Breaking Resolution sets forth the following tie-breaking criteria for the District to implement when it was necessary to determine the order of termination of certificated employees who first rendered paid service to the District on the same day:

The following rating system shall be applied in determining the order of termination of certificated employees:

- A. Multiple and Single Subject and specified services
Credentials: **Ratings: + 1 per credential**
- B. Supplemental and Subject Matter Authorizations that authorize the employee to teach a subject matter different from that authorized on the underlying credential: **Rating + 1 per authorization**
- C. Earned degrees beyond the BA/BS level: **Rating: + 1 per degree beyond the BA/BS level**
- D. Earned English Language Authorization: **Rating: + 1 per authorization.**

[¶] ... [¶]

In the event that common day hires have equal qualifications based on the application of the above criteria, the District will then break ties by utilizing a lottery. (Bolding in original.)

71. The District applied the tie-breaking criteria set forth in the Tie-Breaking Resolution to certificated employees who had the same seniority dates, and created a tie-

¹⁷ Ms. Wilson also requested changes to her credentials noted on the seniority list, bumping chart, and tie-breaking matrix. These issues are addressed below.

breaking matrix of the results. During the hearing, certain respondents disputed the number of points they were given as reflected on the tie-breaking matrix.

72. Doncella Logan. Doncella Logan has a seniority date of July 20, 2005. Because a number of certificated employees subject to this reduction in force have this same seniority date, the District applied the tie-breaking criteria set forth in the Tie-Breaking Resolution to Ms. Logan and these other employees.

Ms. Logan holds a multiple subject credential, a CLAD, and a reading certificate. She is currently teaching third grade at Union House Elementary School.

During the tie-breaking process, Ms. Logan was awarded two points – one for her multiple subject credential and one for her CLAD. Ms. Logan was not awarded any points for her reading certificate. At the hearing, Ms. Logan asserted that she should have been awarded one point during the tie-breaking process for her reading certificate. The California Commission on Teacher Credentialing (CTC) states that the reading certificate was “created to develop deeper preparation in the teaching of reading and to provide essential help in reading to students in California’s public school.”

Ms. Logan’s reading certificate is evidence that she has attained knowledge, skills and abilities to provide valuable reading services to the students in her class. But paragraph B of the Tie-Breaking Resolution provides that points will be awarded for “Supplemental and Subject Matter Authorizations that authorize the employee to teach a subject matter different from that authorized on the underlying credential.” Ms. Logan’s reading certificate does not authorize her to teach a subject matter different from that authorized on her multiple subject credential. Dr. Krueger testified that the tie-breaking criteria were discussed with the teachers’ union before they were adopted by the Governing Board, and were consistently applied to all certificated employees. Ms. Logan did not establish that the Governing Board’s tie-breaking criteria were arbitrary or capricious. Consequently, Ms. Logan did not establish that she should be awarded an additional tie-breaking point for her reading certificate.

73. Matthew Gipson. Matthew Gipson has a seniority date of August 19, 2003. He is a resource teacher at Franklin Elementary School. On March 14, 2011, Mr. Gipson emailed to the District information that he had received from the CTC, which indicated that, on February 28, 2011, the CTC awarded him a multiple subject credential, with supplementary authorizations in introductory English and science, and an ELA.

On the tie-breaking matrix, Mr. Gipson received four points for credentials. Given this many points, it appears that Mr. Gipson’s updated information was utilized when the tie-breaking criteria were applied to employees with his seniority date. But his updated information is not reflected on either the seniority list or the bumping chart: The seniority list reflects only a multiple subject credential and a CLAD, and the bumping chart reflects only a multiple subject credential.

Because Mr. Gipson notified the District of his supplementary authorizations before March 15, 2011, these authorizations should be added to the seniority list and bumping chart. Before issuing final layoff notices, the District should determine whether, as a result of his supplementary authorizations, Mr. Gipson has any right to bump a more junior employee, and, if so, rescind his Preliminary Notice.

74. Laura (Lolly) Jones. At the hearing, Ms. Jones submitted a printout from the CTC, which shows that, on February 12, 2011, the CTC issued her single subject credentials in English and social science. On the seniority list, Ms. Jones is listed as having a multiple subject credential and a CLAD. The bumping chart reflects that she has a multiple subject credential. The tie-breaking matrix indicates that she was awarded three points for credentials, but it is not clear from the matrix for which credentials these three points were awarded.¹⁸

Ms. Jones testified that she began working with the CTC in January 2011 to obtain her single subject credentials. According to Ms. Jones, the CTC initially recognized her social science credential in February 2011, but not her English credential. On March 24, 2011, the CTC finally acknowledged both of her credentials. On the printout that the CTC issued, both single subject credentials are noted as having been issued on February 12, 2011.

Ms. Jones testified that she talked to a District personnel analyst while her request for the two single subject credentials was pending before the CTC, but was informed that the District would not recognize her credentials until all the final CTC paperwork was submitted. On March 24, 2011, Ms. Jones received the final paperwork from the CTC by email. On March 25, 2011, Ms. Jones emailed this final paperwork to the District personnel analyst, who acknowledged receipt of the paperwork that same day. At the hearing, Ms. Jones asserted that the only reason that she did not submit the paperwork about her credentials to the District before March 15, 2011, was due to the CTC's errors and delays. She argued that both her single subject credentials should be recognized during this reduction in force.

Ms. Jones's argument was not persuasive. From the information that Ms. Jones submitted, it appears that she requested that the CTC issue single subject credentials to her based upon the education, experience and training that she received in Texas before she

¹⁸ If the information used for tie-breaking purposes was only that included on the seniority list, it appears that Ms. Jones should have received two points (one for her multiple subject credential and one for her CLAD). If the information used for tie-breaking purposes included her single subject credentials, it appears that Ms. Jones should have received four points (one for her multiple subject credential, one for her CLAD, and two for her single subject credentials). It was not clear from the evidence why Ms. Jones received three points. Because Ms. Jones is the only person on the tie-breaking matrix with an August 18, 2005 seniority date, it appears that the addition of her single subject credentials would not be relevant for the purposes of tie-breaking, since there are no other certificated employees with whom she is tied.

started with the District in 2005. There was no testimony to explain why she waited until January 2011 to seek single subject credentials from the CTC.

The evidence relating to Ms. Jones is similar to that presented to the court in *Campbell Elementary School Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796 (*Campbell*). The teacher in *Campbell* had two credentials, a counseling credential and a teaching credential. In 1972, she brought both credentials to the county board of education for recording. Due to a clerical error, the county board of education only recorded the counseling credential, but not the teaching credential. The teacher learned of this error on May 12, 1975, the day her district's governing board issued its final notice of termination to her. The teacher recorded her teaching credential on May 13, 1975, and brought it to her district's governing board. The court ruled that the governing board did not have to consider the teacher's late-filed credential. As the court explained, the "governing board is not to be held responsible for the fact that [the teacher] recorded her credential after all notices had been sent, a hearing held, and a decision rendered." (*Id.* at p. 815.)

While it is unfortunate that the CTC may have made mistakes and delayed in issuing the single subject credentials to Ms. Jones, the CTC's errors and delays cannot be imposed on the District. Ms. Jones did not establish that the District should be ordered to take her single subject credentials into consideration for purposes of this layoff. The District should, however, update its seniority list, tie-breaking matrix, and bumping chart to ensure that Ms. Jones's single subject credentials will be considered for purposes of her reemployment rights.

75. Cheryl Villavicencio. Ms. Villavicencio has a July 20, 2005 seniority date. The seniority list reflects that she has a multiple subject credential with a CLAD, and is a fourth-grade teacher. Only her multiple subject credential is reflected on the bumping chart. The tie-breaking matrix reflects that she was awarded two points for her credentials.

On July 20, 2008, Ms. Villavicencio received a master's degree in teaching with a specialization in best practices. She notified the District of her master's degree when she received it. For the past three years, she has been receiving additional salary as a result of her master's degree. She did not notify the District that her master's degree was not included as one of her degrees either this year or during last year's reduction in force. She testified that she believed that the District has had the information about her master's degree for so long, that she did not ask the District to include it during this layoff process.

The November 15, 2010, December 15, 2010, and January 21, 2011 emails asked certificated employees to verify the information that the District maintained regarding their "# of Degrees: (BA – Bachelor's; MA – Master's; DOC – Doctorate)." (Finding 56.) There was no evidence that, in response to any of these emails, Ms. Villavicencio checked whether the District's Human Resources Department had her master's degree on file for purposes of this layoff. Ms. Villavicencio did not demonstrate that she exercised sufficient diligence to ensure that the District would consider her master's degree when making its layoff determinations this year. As a result, she did not establish that the District should be ordered to take her master's degree into consideration for purposes of this layoff. The District

should, however, update its seniority list, tie-breaking matrix, and bumping chart to ensure that Ms. Villavicencio's master's degree will be considered for purposes of her reemployment rights.

76. Melissa Bryant. Ms. Bryant has a seniority date of August 19, 2003. The seniority list reflects that she has a multiple subject credential with a CLAD, and that she is a first-grade teacher. Only her multiple subject credential is reflected on the bumping chart. The tie-breaking matrix reflects that she was awarded two points for her credentials.

Like Ms. Villavicencio, Ms. Bryant has a master's degree in teaching with a specialization in best practices. She received her master's degree on July 20, 2008, and notified the District around that time. Due to her master's degree, the District began paying her additional salary beginning in the 2008-2009 school year.

Ms. Bryant testified that she was not aware until March 14, 2011, when she received her Preliminary Notice, that the District's Human Resources Department did not have her master's degree on record. At the time, she was on maternity leave. That day, she obtained her academic transcript, which reflected the receipt of her master's degree. She gave her transcript to the District a few days later.

While Ms. Bryant may have been on maternity leave when she received her Preliminary Notice on March 14, 2011, there was no evidence to explain why she did not respond to the emails the District sent on November 15, 2010, December 15, 2010, and January 21, 2011. (Finding 56.) Ms. Bryant did not demonstrate that she exercised sufficient diligence to ensure that the District would consider her master's degree when making its layoff determinations this year. Consequently, she did not establish that the District should be ordered to take her master's degree into consideration for purposes of this layoff. The District should, however, update its seniority list, tie-breaking matrix, and bumping chart to ensure that Ms. Bryant's master's degree will be considered for purposes of her reemployment rights.

77. Kathy Wilson. Ms. Wilson holds a child development program director permit, a certificate of eligibility for an administrative services credential, a multiple subject credential with a supplementary authorization in English, and a CLAD. At the hearing, Ms. Wilson asserted that the District did not take into consideration her supplementary authorization in English during this layoff. She asserted that the CTC made a mistake and did not issue her supplementary authorization until March 16, 2011. She asked that her supplementary authorization be considered for purposes of this layoff.

The seniority list does not include Ms. Wilson's supplementary authorization in English. On the tie-breaking matrix, she was awarded four points for credentials. If her supplementary authorization had been taken into consideration, it appears that she would have received five points. The bumping chart includes her child development program director permit and her multiple subject credential, but not her supplementary authorization.

Ms. Wilson did not submit evidence to show if and when she may have notified the District about her supplementary English authorization. Consequently, she failed to establish that the District should be ordered to take her supplementary authorization into consideration for purposes of this layoff. The District should, however, update its seniority list, tie-breaking matrix, and bumping chart to ensure that Ms. Wilson's supplementary authorization will be considered for purposes of her reemployment rights.

78. Up to and during the hearing, the District continued to receive, review, and verify information relating to certificated employees' seniority dates, credentials, and status, and to update the certificated seniority list as appropriate. At the hearing, the District confirmed that it would continue to receive and review any additional information relating to seniority dates, credentials, and status that certificated employees or their counsel may submit.

Individual PKS Issues

79. Christopher Coates. Mr. Coates has a seniority date of August 21, 2007. He holds a single subject credential in art. He teaches art and digital photography in middle school. At the hearing, Mr. Coates contended that the District acted improperly by identifying in the PKS resolution a single visual and performing arts category for reduction by 4.5 FTE. According to Mr. Coates, by including within one category all the District's reductions in music, visual arts, and performing arts, and then skipping marching band directors under paragraph E of the Skipping Resolution, the District has placed certificated employees with visual and performing arts credentials at an unfair disadvantage.

Mr. Coates's argument was not persuasive. Courts have allowed school districts significant leeway in describing the particular kinds of services identified for reduction. (See, e.g., *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 638 [finding that "classroom teaching" at the elementary level is a particular kind of service].) The term "visual and performing arts" as used in the PKS Resolution adequately apprised respondents of the particular kinds of services being reduced. Although it includes within its scope more than one credential area, it is not overly broad or unreasonable. The evidence did not establish that the Governing Board abused its discretion by listing visual and performing arts as a single particular kind of service for reduction.

80. Erica Wellington and Loretta Burdeaux. Ms. Wellington has a seniority date of August 6, 2001. Ms. Burdeaux has a seniority date of August 22, 2006. Both Ms. Wellington and Ms. Burdeaux are counselors. Ms. Wellington eloquently described the broad scope of services that counselors provide to students and families in distress and need. Both Ms. Wellington and Ms. Burdeaux decried the deep cuts that the District is making in counseling services, and questioned whether the number of counselors who will be left after the reductions will be sufficient to meet the significant demands placed upon counselors in the District.

Ms. Wellington and Ms. Burdeaux raised important concerns and questions. But the District has been forced by severe budget cuts to make difficult choices about what it will cut

and what it can save. There was no showing that the District will not be able to meet any state or federal requirements for counseling services after making the proposed reductions. Consequently, Ms. Wellington and Ms. Burdeaux did not show that the District has abused its discretion by reducing counseling services.

81. Frances Mosley. Ms. Mosley has a seniority date of August 23, 2005. She holds a single subject credential in physical education, and teaches physical education in middle school. Ms. Mosley contended that the District served more Preliminary Notices than were warranted given the number of FTE's set forth in the PKS Resolution for reduction.

While Ms. Mosley's concern is understandable, the evidence did not establish that the District acted improperly by serving too many Preliminary Notices. There were complex and controversial issues raised in this proceeding. It was reasonable for the District to issue the number of Preliminary Notices that it did to ensure that, after all the issues were decided, it would be able to achieve the budget cuts that have been mandated by the state. The District has already issued a significant number of rescissions. During the hearing, it promised to continue issuing appropriate rescissions as soon as it was prudent to do so.

82. Adult Education. Eric Goude has a seniority date of July 21, 1997. He holds a clear designated subjects vocational education teaching credential in the authorized subjects of ornamental nursery operation, floriculture and floristry, crop production, agriculture mechanics, agriculture business management and marketing, and landscaping. He provides adult education services at the Rio Cosumnes Correctional Center. Pursuant to the PKS Resolution, adult education is being reduced by 19.4 FTE.

Mr. Goude asserted that he and other senior adult education teachers are credentialed and competent to teach subjects taught by more junior teachers in grades kindergarten through 12, and should therefore be allowed to bump these more junior teachers.

Mr. Goude's assertion was not persuasive. The Education Code creates two distinct teacher categories: day school (K-12) and evening school (adult education), and provides that service in one category may not be counted toward service in the other. (§§ 44929.25 and 44929.26.) As such, service in adult education does not count towards seniority in K-12. (See *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167; *Kamin v. Governing Board* (1977) 72 Cal.App.3d 1014.) Mr. Goude's contention that he and other senior adult education teachers should be allowed to bump more junior K-12 teachers must therefore be rejected.

83. Precautionary Layoff Notices. Before March 15, 2011, the District sent Precautionary Notices of Layoff (Precautionary Notices) to certain certificated employees who, pursuant to Education Code section 44909, are currently either serving in categorically funded positions or filling in behind other certificated employees who have been assigned to categorically funded positions. In the Precautionary Notices, the District asserted that these certificated employees were temporary teachers, but were being provided with notice in the event that they were deemed to have layoff rights. On April 14, 2011, the District rescinded

all the Precautionary Notices that it had served upon these teachers.¹⁹ Attachment C lists the certificated employees whose Precautionary Notices have been rescinded. As a result of the rescissions, these employees are no longer respondents in this matter. Consequently, there is no reason to address in this proposed decision any issues relating to the status of these certificated employees.

84. Positively Assured Attrition. The District maintains lists of certificated personnel who have informed the District that they will be resigning or retiring, and their effective dates of resignation or retirement. In determining which certificated employees should received layoff notices, the District took into consideration resignations, retirements and any other positively assured attrition about which it had received notice before March 15, 2011. At the hearing, the District provided assurances that it will continue to consider all additional positively assured attrition about which it receives information up to the beginning of the 2011-2012 school year. There was no evidence presented at the hearing to indicate that the District has failed to properly take into consideration any positively assured attrition in this matter.

85. There was no evidence that the District proposes to eliminate any services that are mandated by state or federal laws or regulations.

86. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

87. No junior employees are being retained to render services that more senior respondents are certificated and competent to perform, except where the District demonstrated compliance with section 44955, subdivision (d)(1).

88. The District's reductions of particular kinds of services and certificated staff relate solely to the welfare of the District's schools and pupils.

LEGAL CONCLUSIONS

1. The District complied with all notice and jurisdictional requirements set forth in sections 44949 and 44955.

2. The services identified in the PKS Resolution are particular kinds of services that may be reduced or discontinued under section 44955. The Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

¹⁹ The District's rescission of the Precautionary Notices has no effect upon any temporary release letters that the District may have served upon these certificated employees.

3. As set forth in Findings 28, 29, and 30, because the District did not establish compliance with section 44955, subdivision (d)(1), when it skipped certain junior certificated employees with single subject math and physical sciences credentials, the District should rescind the Preliminary Notices served on the following respondents: Gabrielle Bajar, Elaine Lee, Nhung Le, Loren Runsten, Daniel Seto, Cary Smallwood, Mary Chung, April Dorman, Valarie Heng, Jeannette Deml, Randall Rubiales, Emily Blum-Amick, Bryce Davies, Courtney Chow-Pun, Kelli Quan, Kayla Martin, Diana Brooks, and Sarah Reed.

4. As set forth in Finding 38, because the District did not establish compliance with section 44955, subdivision (d)(1), when it skipped Aaron Smith and John Natelli under paragraph E (marching band director skip) of the Skipping Resolution, the Preliminary Notices served on respondents Florin Baros and Coleen Hogge should be rescinded.

5. As set forth in Finding 54, because the District established compliance with section 44955, subdivision (d)(1), the District may apply the skipping criteria set forth in paragraph H (career academy skip) of the Skipping Resolution to skip respondents Susan Hubbard, Carlos Garcia, Rebecca Hunter, Cristin Smith, Jennifer Moore, Bryan Jilka, Jon Russell, Kasha Maslowski, and Margaret Souliere. The skips of these certificated employees should be only for the number of FTE's during which they are actually assigned to teach career academy courses or otherwise perform work for career academies during the 2011-2012 school year. The District may therefore rescind the Preliminary Notices given to these respondents by the percentage of FTE's they are assigned to teach courses in or otherwise perform work for career academies in the 2011-2012 school year.

6. As set forth in Finding 64, pursuant to section 44918, the seniority date of respondent Joseph Candelaria should be changed to August, 22, 2006.

7. As set forth in Finding 67, pursuant to section 44918, the seniority date of respondent Tina Donate should be changed to July 21, 2004.

8. As set forth in Finding 73, because respondent Matthew Gipson notified the District of his supplementary authorizations in introductory English and science before March 15, 2011, these authorizations should be added to the seniority list and bumping chart. Before issuing final layoff notices, the District should determine whether, as a result of his supplementary authorizations, Mr. Gipson has any right to bump a more junior employee, and, if so, rescind his Preliminary Notice.

9. Respondents Daniel Seto, Laura (Lolly) Jones, and Melinda Morris did not establish that their seniority dates should be changed under section 44845. (Findings 61, 61, and 63.)

10. Respondent Denise Lester did not establish that she should be deemed to be a probationary employee under the rationale set forth in *Kavanaugh*. (Finding 65.)

11. Respondent Kathy Wilson did not establish that she should be given an earlier seniority date under the rationale of *Kavanaugh*. (Finding 69.)

12. Respondent Paul Cannelora did not establish that his seniority date should be changed under section 44918. (Finding 68.)

13. Respondent Doncella Logan did not establish that she should be given an additional tie-breaking point for her reading certificate. (Finding 72.)

14. Respondents Laura (Lolly) Jones, Cheryl Villavicencio, Melissa Bryant, and Kathy Wilson did not establish that, for purposes of this layoff, the District should be required to take into consideration any credentials, supplementary authorizations, or master's degrees about which they did not notify the District prior to March 15, 2011. (Findings 74, 75, 76 and 77.)

15. Respondents Christopher Coates, Erica Wellington, Loretta Burdeaux, and Frances Mosley did not establish that the Governing Board or the District acted arbitrarily or capriciously, or abused its discretion when identifying particular kinds of services for reduction or serving Preliminary Notices. (Findings 79 through 81.)

16. Respondent Eric Goude did not establish that respondents who were teaching in adult education should be allowed to bump certificated employees teaching in grades kindergarten through 12. (Finding 82.)

17. Except as set forth in Legal Conclusions 3 through 8, the District correctly identified the certificated employees providing the particular kinds of services that the Governing Board directed be reduced or discontinued in the PKS Resolution.

18. No more junior certificated employee is scheduled to be retained to perform services that a more senior respondent is certificated and competent to render, except where the District demonstrated compliance with section 44955, subdivision (d)(1).

19. Except as set forth in Legal Conclusions 3 through 8, cause exists to give notice to respondents that their services will be reduced or will not be required for the 2011-2012 school year because of the reduction or discontinuance of particular kinds of services.

RECOMMENDATIONS

1. Cause exists for the reduction of 443.5 full-time equivalent certificated positions at the end of the 2010-2011 school year.

2. As set forth in Legal Conclusion 3, the District shall rescind the Preliminary Notices given to Gabrielle Bajar, Elaine Lee, Nhung Le, Loren Runsten, Daniel Seto, Cary Smallwood, Mary Chung, April Dorman, Valarie Heng, Jeannette Deml, Randall Rubiales, Emily Blum-Amick, Bryce Davies, Courtney Chow-Pun, Kelli Quan, Kayla Martin, Diana Brooks, and Sarah Reed.

3. As set forth in Legal Conclusion 4, the District shall rescind the Preliminary Notices given to Florin Baros and Coleen Hogge.

4. As set forth in Legal Conclusion 5, the District may apply the skipping criteria set forth in paragraph H (career academy skips) of the Skipping Resolution to skip respondents Susan Hubbard, Carlos Garcia, Rebecca Hunter, Cristin Smith, Jennifer Moore, Bryan Jilka, Jon Russell, Kasha Maslowski, and Margaret Souliere. The skips of these certificated employees shall be only for the number of FTE's during which they are actually assigned to teach career academy courses or otherwise perform work for career academies during the 2011-2012 school year. The District may rescind the Preliminary Notices given to these respondents by the percentage of FTE's they are assigned to teach courses in or otherwise perform work for career academies in the 2011-2012 school year.

5. As set forth in Legal Conclusion 6, the seniority date of respondent Joseph Candelaria shall be changed to August, 22, 2006.

6. As set forth in Legal Conclusion 7, the seniority date of respondent Tina Donate shall be changed to July 21, 2004.

7. As set forth in Legal Conclusion 8, respondent Matthew Gipson's supplementary authorizations in introductory English and science shall be added to the seniority list and bumping chart. Before issuing final layoff notices, the District shall determine whether, as a result of his supplementary authorizations, Mr. Gipson has any right to bump a more junior employee, and, if so, shall rescind his Preliminary Notice.

8. Other than as set forth in Recommendations 2 through 7, notice may be given to respondents that their services will be reduced or will not be required for the 2011-2012 school year. Notice shall be given in inverse order of seniority.

DATED: May 2, 2011

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings