

BEFORE THE
GOVERNING BOARD OF THE
YOSEMITE COMMUNITY COLLEGE DISTRICT
COUNTY OF STANISLAUS
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

ACADEMIC EMPLOYEES OF THE
YOSEMITE COMMUNITY COLLEGE
DISTRICT,

OAH No. 2011030465

Respondents.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on April 12 and 13, 2011, in Modesto, California.

Marilyn Kaplan, Attorney at Law, represented the Yosemite Community College District (District).

Robert J. Bezemek and Zeinab Makoui, Attorneys at Law, appeared on behalf of respondents.

Evidence was received, and the record remained open pending submission of written closing argument. Respondents' Post-Hearing Brief, Request for Official Notice and Late – Filed Exhibit (Seniority List Errors) were received on May 10, 2011, and marked as Exhibits DD, EE and FF for identification.¹ The District's Post-Hearing was received on May 10, 2011, and marked as Exhibit 38 for identification. Respondents' and District's Reply Briefs

¹ A separate Application to File Amicus Curiae Letter was submitted by Jane Patton, Ed.D., President, Academic Senate for California Community Colleges. The Application to File was denied. Apart from improper matters in the Letter objected to by the District, the opinions contained in the Letter are not binding, add little to the understanding of the issues and would not assist in the determination of this matter. The District's objections to Exhibit EE are sustained, except as to the Governing Board minutes. Official notice will be taken of this document. The District's objections to Exhibit FF are also sustained.

were received on May 11, 2011, and marked respectively as Exhibits GG and 39 for identification. The matter was submitted for decision on May 11, 2011.²

FACTUAL FINDINGS

1. Joan E. Smith, Ed.D., is the Chancellor of the District. On March 4, 2011, Dr. Smith gave notice to the District's Governing Board (Board) of her recommendation that notice be given to 15 employees that their services will not be required for the 2011-2012 academic year.

2. On March 9, 2011, the Board adopted Resolution No. 10-11/07, entitled "In the Matter of Reduction or Discontinuance of Particular Kinds of Service" (PKS Resolution). Pursuant to the PKS Resolution, the Board determined that it was necessary and in the best interests of the District to reduce or eliminate certain identified particular kinds of services (sometimes referred to herein as PKS), and to decrease a corresponding number of District academic employees no later than the beginning of the 2011-2012 academic year. The PKS Resolution directed the Chancellor or her designee to give Notice of Recommendation Not to Reemploy to academic employees in accordance with Education Code sections 87740 and 87743.³ The PKS reductions and eliminations are based solely upon financial reasons, and are not related to the skills, abilities or work performance of the affected faculty members.

3. The PKS Resolution identified the following particular kinds of services for reduction or elimination:

<u>PKS</u>	<u>FTE</u>
Discontinue Architecture Services	1.0
Discontinue Communications Graphics Services	1.0
Discontinue Dental Assisting Services	1.0
Discontinue Engineering Services	1.0
Discontinue French Services	1.0
Discontinue Industrial Technology Services	1.0
Discontinue Journalism Services	1.0
Discontinue Learning Disability Specialist Services	1.0
Discontinue Telecommunications/Radio & TV Services	1.0
Discontinue Dean, Arts, Humanities & Communication	1.0
Discontinue Culinary Arts Course Offerings	1.0

² Under Education Code sections 87740 and 87743, copies of the proposed decision are to be submitted to the governing board on or before May 7, and notices of termination of services to employees shall be given before May 15. The parties stipulated that the deadline for the proposed decision in this matter will be extended to May 18, 2011, and the deadline for the May 15 notices to respondents will be extended to May 29, 2011.

³ All statutory references are to the Education Code unless otherwise indicated.

Reduce Art Course Offerings	1.0
Reduce Library Science Services	1.0
TOTAL	13.0 FTE

4. On March 10, 2011, the Chancellor notified a corresponding number of the academic staff of her recommendation regarding reduction/discontinuance of services and that their services would no longer be required. The preliminary layoff notices informed the academic employees of their right to request a hearing, and enclosed copies of the PKS Resolution, sections 87740 and 87743, and a blank request for hearing form. In response to the preliminary layoff notices, the District received requests for hearing from 13 respondents: Ines Bucknam, Bob Glatt, Brian Greene, Wendy Griffiths-Bender, Jon Kropp, Carol Lancaster-Mingus, Alan Layne, Haleh Niazmand, Bronda Nidey, Laura Paull, Belen Robinson, Dennis Thorpe and Jeremy Wilson. On March 22, 2010, the District served the Accusation, copies of relevant sections of the Education and Government Codes, and form Notice of Defense on these respondents. The District also served these documents on Matthew Fox.

Mr. Fox did not request a hearing and subsequently resigned his position in counseling with the District. The District determined to reassign respondent Belen F. Robinson to the vacant counseling position, and withdrew the accusation against her.

The District also determined to reassign respondent Ines Bucknam to a vacant position in English as a Second Language and withdrew the accusation against her.

As a result of these changes, 11 respondents remain.

5. Respondents raise general issues common to all respondents which they contend demonstrate the District lacks authority to layoff any respondents. They also raise distinct individual arguments which they contend demonstrate that the District lacks cause to layoff respondents Brian Greene, Wendy Griffiths-Bender, Jon Kropp, Alan Layne, Carol Lancaster Mingus, Haleh Niazmand, Laura Paull, Dennis Thorpe and Jeremy Wilson. The individual cases turn largely around whether these respondents are qualified to render services in disciplines other than those in which they are currently employed. They contend that they should be reassigned and that they are entitled to bump into positions held by junior faculty.

Community college layoffs are distinct from K-12 layoffs in that they are not governed by the more rigid certification and credentialing rules that govern K-12 layoffs, and that had constrained community colleges for decades. This changed after June 30, 1990. The Legislature enacted a community college reform bill, which among other matters created a new mechanism for developing and determining faculty qualifications. (§ 87350.) As will be discussed in detail below, whether an instructor is qualified and competent to provide community college instruction in a particular academic discipline may now be established by any one of several different pathways. This is by design. It also makes reassignment and bumping determinations more complicated.

Overview of Seniority and Qualifications

6. Section 87743 affords tenured community college employees subject to layoff certain protections, including the ability to bump into positions held by probationary or junior employees and in which the more senior employees are qualified and competent to provide instruction. Thus section 87743 provides:

However, the services of no tenured employee may be terminated under this section while any probationary employee, or any other employee with less seniority, is retained to render a service in a faculty service area in which the records of the district maintained pursuant to Section 87743.3 reflect that the tenured employee possesses the minimum qualifications prescribed by the board of governors and is competent to serve under district competency criteria.

The section 87743 reference to “service in a faculty service area” is not at all helpful in this case. Section 87743.1 defines faculty service area (FSA) as “a service or instructional subject area or group of related services or instructional subject areas performed by faculty and established by a community college district.” However, under the collective bargaining agreement negotiated between the faculty union and the District, there is *one* FSA for the entire Yosemite Community College District. The FSA for the District is defined simply as “[e]mployment as a contract (probationary) or tenured (regular) member of the faculty bargaining unit.” Thus, all faculty members within the District have the requisite FSA to serve in any academic position within the District.

7. Other governing laws and regulations do provide minimum qualifications that relate to community college teaching disciplines and these, not FSAs, will guide the analyses in this case. Under section 87356, subdivision (a), the State Board of Governors is required to adopt regulations to “establish and maintain the minimum qualifications for service as a faculty member teaching credit instruction.” Section 87357 further requires the Board of Governors to prepare and maintain a list of disciplines to which the minimum qualifications must apply. Thus, section 87357, subdivision (b) provides:

The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prescribe by regulation a working definition of the term “discipline” and shall prepare and maintain a list of disciplines that are “reasonably related” to one another, as that phrase is used in the minimum qualifications. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for hire.

8. The Board of Governors adopted regulations to establish minimum qualifications for each discipline. (Cal. Code Regs., tit. 5, § 53407.) The regulations adopted and incorporated by reference include two lists published by the Chancellor’s

Office, entitled “Disciplines Requiring the Master’s Degree” and “Disciplines in which the Master’s Degree is not Generally Expected or Available.” The lists of disciplines and the minimum qualifications required for each discipline are amended by the Chancellor’s Office, and the amended lists are adopted by the Board of Governors from time to time. The State Academic Senate for California Community Colleges is responsible for reviewing the disciplines and the minimum requirements for each discipline, and recommending changes to the Chancellor’s Office. The Chancellor’s Office determines which recommendations from the Academic Senate to accept and periodically prepares an updated list of disciplines and minimum qualifications required to present to the Board of Governors. (§ 87357.)

The Board of Governors decides whether to adopt any revisions to the minimum qualifications. If adopted, the revised Chancellor’s Office lists become the required minimum qualifications and disciplines currently in effect, superceding all previous lists of disciplines and minimum qualifications. The March 2010 “Minimum Qualifications for Faculty and Administrators in California Community Colleges” (Minimum Qualifications) is the most current list of disciplines and minimum qualifications currently in effect.

Minimum Qualifications

9. The Minimum Qualifications set forth two general discipline types: academic disciplines and more vocational, career technical education disciplines. (Cal. Code Regs., tit. 5, § 53410.) Academic disciplines are those areas where colleges and universities have graduate level and upper division course work leading to an advanced degree in those subject areas. For disciplines where a master’s degree is required, either a master’s degree “in the discipline of the faculty member’s assignment” or a master’s degree in a “discipline reasonably related” to the assignment and a bachelor’s degree “in the discipline of the faculty member’s assignment” is required. (Cal. Code Regs., tit. 5, § 53410, subds. (a) & (b).) For disciplines where the master’s degree is not generally expected or available, but where a specific bachelor’s or associate degree is available, possession of a bachelor’s degree plus two years of professional experience directly related to the faculty member’s assignment, or possession of an associate degree plus six years of related professional experience will satisfy minimum qualifications. (Cal. Code Regs., tit. 5, § 53410, subd. (c).) Similarly, for faculty assigned to teach courses in a discipline where the master’s degree is not generally expected or available and which are disciplines in specialized technical trade or industrial fields, possession of a bachelor’s degree plus two years of related professional experience, or possession of an associate degree plus six years of related experience will suffice. (Cal. Code Regs., tit. 5, § 53410, subd. (d).)

10. Section 87400 provides that governing boards of community college districts shall employ for academic positions “only persons who possess the qualifications therefor prescribed by regulation of the board of governors.” (See also Ed. Code, § 87743.) There are two exceptions to this rule. One is a “grandfathering” clause under section 87355 which provides that persons who were authorized to serve under a credential prior to 1990 retain the right to serve under that credential and are deemed to possess the minimum qualifications specified by the credential for the discipline or service covered by that credential.

The second exception relates to how revisions and subsequent amendments made by the Board of Governors to the minimum qualifications and discipline lists are to be considered by the District. It is at issue here because the parties offer differing interpretations of how this regulation applies to situations where assignment of respondents to different academic disciplines was contemplated. California Code of Regulations, title 5, section 53403 specifies:

Notwithstanding changes that may be made to the minimum qualifications established in this division, or to the implementing discipline lists adopted by the Board of Governors, the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications, if he or she, at the time of initial hire by the district, was qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect.

11. The District contends that section 53403 affords the district governing board discretion to allow an employee who met the minimum qualifications under the lists in effect when the employee was hired, to continue to be employed in that discipline, but that the governing board was not required to do so. The District relies on the language that specifies that a community college district “may continue to employ” a person. Respondents strongly disagree, noting that such interpretation is illogical when viewing the minimum qualifications and equivalency process as a whole. The equivalency process is an alternative means by which faculty obtain minimum qualifications, and is discussed below. Respondents argue that under the District’s interpretation tenured teachers would be laid off whenever there are changes in minimum qualifications that they do not meet. Respondents believe section 53403 simply confirms that a district is authorized to continue to recognize one as qualified even though the faculty member would not satisfy more recently adopted minimum qualifications or implementing discipline criteria. Respondents note that every faculty member in the District met the minimum qualifications when hired, and that the District cannot unilaterally remove this status whenever minimum qualifications or disciplines lists are revised. Respondents also note that the collective bargaining agreement contains no provision for loss of competency after one has been hired. Respondents argue that stripping one of a previously acquired competency, particularly without notice and an opportunity to reacquire competency, would violate due process.

12. Respondents’ interpretation is reasonable. It also avoids a situation where a faculty member who attained minimum qualification via equivalency would retain that status for life, but a faculty member who directly met the minimum qualification would not have the same rights. As explained below, this is because by definition, a faculty member who satisfied equivalency criteria would not meet minimum qualifications. Regardless, an interpretation of this particular provision may not be necessary to resolve the individual issues presented in this matter because none are related to continued employment in the same assignment.

13. In one important respect respondents' interpretation of section 53403 is incorrect. Respondents contend that when evaluating a faculty member's minimum qualifications to teach in a discipline other than their current assignment, that minimum qualifications are still based on the standards in effect at the time when that faculty member was hired. Such interpretation would permit an instructor who never taught in a discipline to argue that outdated minimum qualifications should apply to him or her rather than the minimum qualifications currently in effect at the time the instructor first applies to teach in that discipline. This is unreasonable and inconsistent with section 53403 language referencing a district's ability to "continue to employ a person to teach in a discipline or render a service subject to minimum qualifications." Section 53403 contemplates continued instruction by a teacher within the same discipline. This makes sense because one would expect that a teacher so engaged would be current in his or her knowledge and understanding of that discipline. The same cannot be said, however, of teachers who have never taught in a discipline, or who have not done so for some time, and who are now seeking to be reassigned to that discipline based upon outdated minimum qualifications in place when they first commenced employment with the District.

Equivalency

14. As noted above, an individual's qualification to provide community college instruction may be demonstrated by satisfying minimum qualifications established by the Board of Governors, by being grandfathered via credentials obtained prior to 1990, or by meeting minimum qualifications under the lists in effect when the employee was hired to provide instruction within a particular discipline. Equivalency is yet a fourth pathway by which districts may employ faculty members. Section 87359 requires the Board of Governors to adopt regulations setting forth a process to allow local districts to employ faculty members who do not meet applicable minimum qualifications, but who possess "qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board of governors adopted pursuant to Section 87356." The implementing regulation establishes the standards for hiring faculty based on equivalencies. (Cal. Code Regs., tit. 5, § 53430.) Section 53430 provides as follows:

- (a) No one may be hired to serve as a community college faculty or educational administrator unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in this Article or elsewhere in this Division. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.
- (b) The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate

to determine that each individual faculty employed under the authority granted by this Section possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in this Division.

15. In accordance with Education Code section 87359 and implementing regulations, the District and the Academic Senate of the District's two colleges developed and agreed upon a policy of equivalency and procedures for determining if an individual meets equivalency criteria. Yosemite Community College District Equivalency Policy & Procedures (EPP) were approved by the Academic Senate on December 17, 2007. The EPP applies to both new applicants for employment and to faculty seeking to serve in an additional discipline. The EPP explains that the equivalency process "provides a specific and comprehensive way to determine if a candidate meets the requirements to be granted equivalency." The EEP notes on page one:

Candidates who have completed all the appropriate course work for a particular degree but do not possess the specific degree named on the Disciplines List may possess equivalent qualification. In some instances, a candidate who is obviously well qualified will be able to demonstrate through publications or other substantial achievements that he or she has qualifications equivalent to those specified in the Disciplines List. An applicant who claims equivalent qualifications will have to provide conclusive evidence, as clear and reliable as the college transcripts being submitted by the other candidates, that he or she has qualifications that are at least equivalent to what is required by the minimum qualifications.

(Underlining in original.)

16. An individual making a claim of equivalency for disciplines requiring a master's degree must provide conclusive evidence of the following: (1) possession of a bachelor's degree from an accredited institution, or an equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment; and (2) for establishing the equivalent of a required master's degree, possession of at least the equivalent in level of achievement and breadth, depth of understanding, and rigor as evidenced by each of the following as a separate and distinct criterion: (a) the General Education required for that degree and (b) course work required for the master's degree major. The individual must provide conclusive evidence in regard to both criteria in order to be considered to possess the equivalent of the master's degree in question.

An individual making a claim of equivalency for disciplines not requiring a master's degree must provide conclusive evidence of the following: (1) possession of a bachelor's degree from an accredited institution, or an equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment; and (2) two years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available. Alternatively, the individual may provide conclusive evidence of the possession of

an associate degree plus six years of professional experience. Conclusive evidence consists of a transcript showing the successful completion of courses; publication or other work products showing the applicant's command of the major in question; and work experience verification. (EPP, pp. 2-3.)

17. Columbia College and Modesto Junior College (MJC) have different procedures. At MJC, the Academic Senate has chosen to have a discipline-based equivalency pre-screening committees which sends its recommendations for equivalency to a permanent Academic Senate Equivalency Committee. The discipline-based equivalency pre-screening committee consists of three full-time faculty members within the discipline where equivalency is being sought. If the pre-screening committee agrees that an individual should be considered for equivalency, it sends a "Determination of Faculty Equivalency" form along with accompanying documentation to the Academic Senate President, who in turn convenes the Academic Senate Equivalency Committee. The Academic Senate Equivalency Committee may agree or disagree with the pre-screening committee's recommendation. If it approves the application for equivalency, the members of the Senate committee and the Academic Senate President sign a form and forward it to the District Human Resources Department for further processing.

Individuals whose requests for equivalency have been denied are permitted to re-apply "provided that areas of concern have been addressed."

Other Matters Relating to Qualifications

18. The District is required to "maintain a permanent record for each faculty member employed by the District of each faculty service area for which the faculty member possesses the minimum qualifications for service and in which he has or she has established competency pursuant to district competency standards. The record shall be contained in the faculty member's personnel file." (§ 87743.4.)

19. In past years community colleges employed individuals to teach a single course where the individual did not have the minimum qualifications to teach a discipline. They did so through a practice called "single-course equivalency." In 2003, the Chancellor's Office issued a legal opinion that concluded that a district is not authorized to establish a single-course equivalency as a substitute for meeting minimum qualifications in a discipline. At least since 2007, the District practice regarding single-course equivalencies granted to faculty has changed based upon this legal opinion. When a faculty member does not possess the minimum qualifications for a discipline and applies for and is granted equivalency, the instructor must satisfy equivalency for the entire discipline and be able to teach all the courses in the discipline. In applying the legal requirement that an instructor must meet the current minimum qualifications, the District does not differentiate between full-time or part-time faculty members, or between newly hired faculty and currently employed faculty members. With respect to instructors already teaching at the college, issues regarding minimum qualifications are addressed as they arise.

20. Districts are allowed to establish local qualifications that are more rigorous than set forth in the State minimum qualifications, but this requires approval by the District Senate. This process has not occurred in the District. The District believes that it may establish local standards that go beyond that defined in the disciplines list and to organize courses within disciplines.

Courses may be cross-listed under two disciplines. A faculty member who possesses minimum qualifications in either discipline would be qualified to teach such courses. However, the ability of a faculty member to teach the course does not necessarily mean that the instructor meets minimum qualifications for both disciplines.

21. Under section 87743.3, after initial employment, a faculty member may apply to the college district to add a faculty service area for which the faculty member qualifies. The faculty member must demonstrate that he or she meets the minimum qualifications for the additional FSA, as well as any college district competency standards. (§ 87356.) The application to add an FSA must be received by the college district before February 15 in order to be considered in any layoff proceeding pursuant to section 87743. Any dispute arising from an allegation that a faculty member has been improperly denied a FSA shall be procedurally addressed as a grievance. (*Ibid.*) As noted in Finding 6, pursuant to the collective bargaining agreement between the District and the union, there is a single FSA at the District. The District also applies the February 15 deadline for applications for equivalency in an additional discipline.

Individual Respondents

Brian Greene

22. Respondent Brian Greene is a Librarian at Columbia College. He is less senior than the Librarian whose position was eliminated at Modesto Junior College. Mr. Greene would like to be assigned to the Academic Achievement Coordinator position at Columbia College. In the past, he has provided tutoring services in use of library resources, and some of his students have benefited from services provided through the Academic Achievement Center. The incumbent is Craig Johnston. The District has reassigned Mr. Johnston to a vacant position in English for which he meets minimum qualifications by virtue of having a master's degree in English. Academic Coordinator Services were recently discontinued by its Board of Trustee, but not as part of the PKS Resolution.

Mr. Greene believes that Mr. Johnston may still be given some assignments in the Academic Achievement Center. Respondents further contend that because there was no PKS reduction of the Academic Achievement Coordinator position, Mr. Greene and other respondents should be allowed to bump into that position.

23. The minimum qualification for the Academic Achievement Coordinator at Columbia College is either (a) Minimum Qualifications to teach any master's level discipline in which learning assistance or tutoring is provided at the college where the coordinator is employed; or (b) a master's degree in education, educational psychology, or instructional

psychology, or other master's degree with emphasis in adult learning theory. (Cal. Code Regs., tit. 5, § 53415.) The Academic Achievement Center at Columbia provides tutoring in subjects including: Art History, Computer Science, English, Library, Mathematics, Physics and Spanish. Mr. Greene has a master's degree in Library Science and can teach Library. In addition, respondents Wendy Griffiths-Bender (M.A. Education and M.A. Library Science), Jeremy Wilson (M.S. Engineering), Haleh Niazamand (M.A. Fine Arts) and Laura Paull (M.A. Latin American Literature) contend that they meet minimum qualifications to bump into the Academic Achievement Coordinator position.

24. The District suggests that there is no impediment to it exercising its right to reassign Mr. Johnston to teach English and this is true. However, the District cannot rely upon the Board of Trustees' recent decision to discontinue Academic Achievement Coordinator services as a basis to avoid the bumping-reassignment rights of respondents. The District's PKS reductions are driven by economic considerations and the need to address an anticipated \$8 million budget reduction. If the Board of Trustees is in fact discontinuing Academic Achievement Coordinator services by 1.0 FTE, then there may no longer be a need to reduce other PKS services by 1.0 FTE to meet the targeted budget reduction contemplated in the PKS resolution. The net reduction will still be 1.0 FTE. Under section 87743, the District may reduce the "necessary" number of tenured employees occasioned by the PKS reductions. In the same way that college districts consider positively assured attrition, or make assignments and reassignments to allow displaced employees opportunity to render continued service in a district, the District should now consider the net effect of discontinuing the Academic Achievement Coordinator in determining the necessary number of respondents to be reduced.

25. If the Academic Achievement Coordinator services are not discontinued, the Board shall make assignment of a qualified respondent to render service in that position. (§ 87743.) If the Academic Achievement Coordinator services are discontinued, the Board should still give consideration to whether it is necessary to layoff 1.0 FTE, and determine whether it would be appropriate to rescind one notice to the next most senior respondent to account for the 1.0 FTE that has now been vacated.

Jon Kropp

26. Respondent Jon Kropp is an instructor in Industrial Technology (INTEC). Due to the elimination of the INTEC program Mr. Kropp was noticed for layoff. He contends that he meets minimum qualifications to be an instructor in Electronics Technology (ELTEC). The discipline of ELTEC requires experience in electronics technology, which includes electro-mechanical components and systems, computer configuration and repair, microprocessors, digital electronics and other electronics fields. INTEC and ELTEC are both disciplines in which the master's degree is not generally expected or available. The minimum qualifications for both are the same: "(1) Possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment, and (2) two years of professional experience"

Mr. Kropp applied for the INTEC instructor position at Modesto Junior College in March 2000. He had received a B.S. in Industrial Technology in 1986. The job announcement specified that the position was “Instructor of Industrial Technology.” The responsibilities for the INTEC position were to: conduct a program of instruction in Industrial Technology; develop and maintain an integrated Industrial Technology lab; coordinate the Industrial Technology programs of instruction; and work with college committees and industrial groups to create and maintain regular and short-term training in Industrial Technology.

27. Mr. Kropp applied for equivalency in ELTEC. As noted in Finding 15, the District EPP required that he demonstrate “conclusive evidence” that he has qualifications at least equivalent to those possessed by others working in the discipline. The discipline-based faculty committee charged with evaluating his application unanimously concluded that he did not have sufficient experience directly related to teaching the subject matter covered by the range of courses in ELTEC. The District correctly noted that an administrative law judge in these proceedings cannot substitute his or her judgment for the determination of the properly constituted body authorized to make equivalency determinations. Respondents do not disagree. They suggest rather that Mr. Kropp had already qualified under ELTEC minimum qualifications at the time he was hired by the District in March 2000. And that the District therefore erred in insisting that he apply for equivalency in 2011.

28. Mr. Kropp contends that his experience teaching District courses cross-listed between INTEC and ELTEC demonstrates that he has the experience necessary to teach the range of courses offered in ELTEC. He avers that 60 percent of his assignments over the last 11 years have been to classes which are part of the ELTEC program, either required or recommended as electives.

29. Three members of the original hiring committee opined that Mr. Kropp met the minimum qualifications to teach ELTEC when he was hired. Two members, Leroy Holmes and Brian Lomax, testified at hearing. They noted that they were interested in hiring an instructor who could teach in both INTEC and ELTEC and determined at that time that Mr. Kropp was their best candidate. Mr. Kropp was immediately assigned to teach ELTEC 212 – Digital Principles and Circuits, in Fall 2000. He also taught ELTEC 223 – Industrial Electrical Components and Control Devices. Mr. Holmes noted that the “charge of the committee was to select a candidate that could teach both Electronics Technology and Industrial Technology courses.”

Brian Lomax was a full time ELTEC instructor at Modesto Junior College until his retirement in 2004. He noted that the hiring committee’s objective “was to select a candidate with expertise in industrial and electronics technologies.” He noted that the committee considered Mr. Kropp’s experience in the electronics industry as a field service technician for ESM of Modesto and FMC Electronics Products Operations in San Jose for several summers which were equated to two years full time.

Respondents contend that Mr. Lomax met the minimum qualifications for ELTEC when he was hired in 2000, and for the 11 years which followed. They believe it improper for the District to now “second-guess” the judgment of its hiring committee, and to now rely upon the opinion of members of the more recently convened equivalency committee.

30. The District has carefully considered documentation submitted by Mr. Kropp at the time of his August 2000 hire, including employment verification forms. It has concerns around his reported professional experience in electronics. For example, Mr. Kropp gave his dates of employment at Satake USA, Inc., formerly ESM International, Inc., as being between June and September for the years 1981 and 1982; and between June 20, 1983 and October 1, 1983. He claimed that he worked 75 hours per week and that his job duties were to provide customer service to grower owned tomato sorters. The job announcement that Mr. Kropp supplied for that particular position had an April 21, 2000 submission date. The District questions whether this more recent announcement contains a fair description of the job duties he performed in the early 1980s with ESM. Satake purchased ESM in 1992. Mr. Kropp essentially claimed experience with ESM in the 1980s, but based his description of such experience on a 2000 Satake job announcement. There was no evidence to show what Mr. Kropp actually did for ESM, how much of the time was actually related to electronics work, or how deep or varied the experience may have been. The faculty-based committee evaluating Mr. Kropp’s application for equivalency noted: “the committee felt strongly that the amount of actual electronics experience was potentially limited, very specialized, more than likely outdated, and not nearly broad enough to be considered in this area.”

Mr. Kropp also submitted documentation relating to his work with Foster Farms as a Packaging Supervisor. He represented that he worked for a year in this position, yet the application deadline for that position was November 24, 1989, and he left that position in March 1990. There is no information regarding whether this Packaging Supervisor position had any duties related to Electronics or Electronics Technology.

31. Mr. Kropp’s case illustrates the difficulty of determining minimum qualifications without resort to certification documents for purposes of establishing reassignment and bumping rights. Although Mr. Kropp has taught a number of ELTEC courses, this was mostly a result of cross-listing, and therefore not evidence that he meets the minimum qualifications for the ELTEC discipline. He did teach courses that were listed only as ELTEC courses. However, this was very early in his employment when the Chancellor’s Office had yet to issue its opinion that a district is not authorized to establish a single-course equivalency as a substitute for meeting minimum qualifications in a discipline. At least since 2007, the District practice regarding single-course equivalencies granted to faculty has changed based upon this legal opinion. (See Finding 19.)

32. The recently convened faculty-based equivalency committee engaged in detailed scrutiny of Mr. Kropp’s relevant experience. They reached a unanimous decision that he did not meet minimum qualifications via equivalency. The committee felt strongly that his professional experience was not nearly broad enough to be considered in this area. This has equal application to any determination here relating to whether he met minimum

qualifications at the time of his hire. Respondent's suggestion of committee bias and conflict of interest was not supported by the evidence. Mr. Kropp would not displace two members of that committee, Mr. Howen and Mr. Vaughn. Although Mr. Kropp presented opinion testimony from the original hiring committee that he met minimum qualifications for ELTEC, the fact remains that he was hired into an INTEC position. He has not demonstrated at this time that he meets minimum qualifications to be assigned as an instructor across the full range of courses encompassed by the ELTEC discipline.

Alan Layne

33. Respondent Alan Layne is an instructor in Graphic Arts and Printing. He was hired as a probationary Graphic Technology Instructor at Modesto Junior College in August 1992. Mr. Layne has a B.S. in Graphic Communications which he received in 1974. He also received a community college instructor credential in Communication Services and Related Technologies, including Printing in 1978. The Guide to Subject Matter Areas for California Community College Teaching Credentials provides that this credential includes "radio-T.V., broadcasting, journalism, printing (graphic art), films, public relations, instructional technology, motion pictures."

34. Mr. Layne has taught Graphic Design and Graphic Technology continuously at Modesto Junior College since 1992. The Graphic Design Program is structured to develop the capability of the student to creatively design problems related to the printed product. Among the PKS reductions was the Communications Graphics/Print Shop. This program was recommended for elimination due to lower enrollments and degrees awarded.

Mr. Layne would like to be assigned to teach courses in the District's Computer Graphics program. The Graphic Design and Computer Graphics programs are in separate divisions of the college. The course content in Computer Graphics ranges from web design and development to two-dimensional animation, three-dimensional modeling and animation, interactive media and image processing. The emphasis in the Computer Graphics department has been on strong art skills and original created content. In contrast, the emphasis in the Graphic Design program is on prepress, bindery, plate making and physical printing. The District noted that the greatest difference between the Computer Graphics program and the Graphic Design program is the scope and number of the software applications used and the kinds of course that are taught. There are 20 software applications regularly used in computer graphics course to accomplish assignments. Of these 20 software applications only four (Illustrator, Photoshop, In Design and Powerpoint) are used in any Graphic Communications Courses.

35. Mr. Layne unsuccessfully applied for equivalency in the Computer Graphics program. The District avers that this required minimum qualifications in the discipline of Multimedia. The discipline-based faculty committee charged with evaluating Mr. Layne's application unanimously concluded that he did not have sufficient experience directly related to teaching the full range of courses in Computer Graphics, and did not have a body of related work demonstrating his qualifications as reflected in a portfolio. The committee determined that there was no demonstration of art skills and only a claim of teaching very

few of the applications out of the many that are regularly used in Computer Graphics courses. The District contends that Mr. Layne did not present conclusive evidence of equivalency showing he possesses the minimum qualifications for Computer Graphics, and that the decision of the faculty committee should not be disturbed.

36. Mr. Layne contends that the District improperly insisted that he needed to get an equivalency in the division of computer graphics. He believes that his broad credential remains valid today, pursuant to the section 87355 grandfather clause that authorizes him to work in every discipline or service covered by the credential, and that this credential authorizes him to teach in the Computer Graphics program. (See Finding 10.) In the alternative, he contends that the District improperly considered Computer Graphics within the discipline of Multimedia, instead of the discipline of Graphic Arts. And that because the Graphic Arts discipline encompasses both the Computer Graphics and Graphic Design Programs, he should be reassigned to the Computer Graphics Program.

37. Minimum qualifications relate to disciplines. Computer Graphics and Graphic Design are programs, not disciplines. The District may organize academic programs within established disciplines. It cannot create its own disciplines. The District erred when it demanded that Mr. Layne obtain an equivalency for “computer graphics” because there is no such discipline. The District’s position at the time of hearing was that it was free to create its own disciplines and that it had created the discipline of Computer Graphics. The District apparently recognized its error and now contends that the discipline of teaching in the Computer Graphics program is “Multimedia.” The District suggested in its Post-Hearing Brief that the discipline of Multimedia “was designated the ‘Computer Graphics Application’ program at its inception in 1992-1993, and the designation of the courses in that discipline has remained the same to the present.” In fact, Multimedia did not become a discipline until after 1999. It became a recommended discipline after Spring 1999, when the Academic Senate recommended its adoption to the Board of Governors of the California Community Colleges. Respondents aver that it first appeared as a discipline in the Minimum Qualifications publication by the State Chancellors’ Office in 2003.

38. Respondents note that the only other possible disciplines covering the Computer Graphics and Graphic Design programs from the programs’ inception are Art and Graphic Arts. The discipline of Art requires a master’s degree. Neither the District nor respondents have suggested that the two programs fall under this discipline. This leaves the discipline of Graphic Arts which respondents contend applies here. For the following reasons, respondents are correct in their assertion that the two programs are best placed under the Graphic Arts discipline for purposes of identifying and assessing minimum qualifications.

First, the Multimedia discipline was not available when the Computer Graphics program was started in 1992. As above noted, it appeared as a discipline over ten years later in the Minimum Qualifications publication. Past District hiring practices into the program have no connection to the Multimedia discipline. For example, incumbent instructor Joel Hagen was hired into the Computer Graphics program in 1997. He testified at hearing. Mr. Hagen has a B.A. in anthropology, and experience that was mostly unrelated to computer

graphics. He did have experience as a partner in a software company. He also has a Community College Credential in “Fine Arts, Applied Arts and Related Technologies.” There is no discipline of Fine Arts and Related Technologies. The only possible minimum qualification Mr. Hagen would have met was for the discipline of Graphic Arts. The discipline of Multimedia did not exist in 1997 when he was hired as a tenure-track instructor.

Second, the discipline of Graphic Arts appropriately includes programs and courses in Graphic Communications and Computer Graphics. It includes desktop publishing. Mr. Layne has taught in the Graphic Communications program at Modesto Junior College for 19 years. The program was originally called “Graphic Technology.” It was later changed to “Communication Graphics,” and then later to “Graphic Communications,” its present title. The program has continuously fit over time within the discipline of Graphic Arts. It is the only discipline which mentions “graphic.” Graphic Arts specifically include desktop publishing, and are focused on visual communication. Respondents note that this discipline allows for a progression through typography, printmaking, desktop publishing and graphic art software such as that taught in Graphic Communication and Computer Graphics. The two programs do differ substantially in their focus, with the Computer Graphics program having a much stronger emphasis on creativity and artistic content. However, when the two programs were created by the District, they were clearly not guided or informed by the Multimedia or Art disciplines. This leaves only Graphic Arts as the appropriate discipline.

Third, the District’s case is largely built on differentiating between the two programs, and reliance upon Mr. Layne’s failure to satisfy equivalency standards to teach Computer Graphics. These are not relevant considerations. Equivalency determinations must necessarily focus upon disciplines, not programs. The District’s discipline-based equivalency committee was therefore too narrow when it engaged in a program-specific focus. While districts may also adopt and apply their own competency criteria under section 87743, there was no evidence that such criteria were adopted here. The District has only set up the processes and procedures reflected in the EPP discussed in Findings 15 and 16. It has not adopted substantive competency criteria that would apply here. Accordingly, if Mr. Layne satisfies the minimum qualifications for the discipline of Graphic Arts, and is competent to serve under district competency criteria, he must be reassigned to positions held by junior District employees. (§ 87743.)

39. Mr. Layne qualifies to be an instructor in the Computer Graphics program because this program is under the same discipline as the Graphic Communication program in which he currently teaches. The District has not challenged Mr. Layne’s minimum qualifications to be a Graphic Communication (Graphic Design) program instructor. The two programs are under the same discipline – Graphic Arts. He possessed the minimum qualifications within this discipline when he was hired in 1992. The District is not now authorized to subject him to an equivalency determination to teach in a different program within the same discipline in the absence of having adopted separate competency criteria. The District has adopted no such criteria.

40. In the alternative, Mr. Layne contended that his lifetime credential authorizing the teaching of Communication Services and Related Technologies, including Printing “radio-T.V., broadcasting, journalism, printing (graphic art), films, public relations, instructional technology, motion pictures” entitles him to teach in the Computer Graphics program. Graphic art would appear to include the Computer Graphics program offered by the District. This credential is broad in scope, particularly as a result of the terms “related technologies.” Respondents urge that under this umbrella, programs such as Computer Graphics fall within its scope and surely encompass computer-generated visual communications, or graphics. Determinations related to credentialing turn less on facts than upon law. The record is not so clear that a definitive finding can be made regarding the scope of Mr. Layne’s credential. It is enough, however, that he meets the minimum qualifications for the applicable discipline – Graphic Arts. (Finding 39.)

Haleh Niazmand

41. Respondent Haleh Niazmand is an Art Instructor. She has a B.A. and M.A. in Fine Arts. She would like to be assigned to the Computer Graphics program. Ms. Niazmand has never taught in the Computer Graphics program. She has not applied for equivalency to be an instructor in the Computer Graphics program.

The minimum qualifications to teach in the Computer Graphics program are a Bachelor’s degree in any subject plus two years of relevant experience. While the District may have been relying upon the minimum qualifications for the Multimedia discipline, the two-year experience requirement also applies to the discipline of Graphic Arts.

42. Ms. Niazmand does not contend that she has computer media graphics experience and conceded that she has no experience teaching relevant software courses. She observed, “I cannot teach animation and the rest of them.” She contends instead that when the District hired her in 2005, she had two years of experience in graphic design at that time that should now be credited to her to satisfy the minimum qualifications to teach in the Computer Graphics program. Ms. Niazmand relies specifically upon an employment verification letter dated May 9, 2005, contained in her personnel file. It is written by Dan Ellis, principal with True Identity Studio. He included within her job responsibilities a reference to her work on “computer generated images for various clients.” A similar reference was also made on her resume. Ms. Niazmand believes this served to place the District on notice that she has the requisite years of experience to qualify for the minimum qualifications to teach Computer Graphics.

This documentation in her personnel file, without more, is insufficient to satisfy the two-year experience requirement to teach in the Computer Graphics program. Her testimony at hearing added no additional detail. She conceded that she had limited knowledge of relevant software applications. The employment reference letter from Mr. Ellis was not one that would reasonably place the District on notice of her relevant experience or interest in teaching in the Computer Graphics program. She was applying for an Art Instructor position. She apparently expressed no interest to the District in teaching in the Computer Graphics program until just before hearing. She did not apply for equivalency to teach in the

Computer Graphics program. To the extent respondents raised past District practices regarding other employees with similar qualifications to Ms. Niazmand, such matters are irrelevant. Ms. Niazmand does not meet minimum qualifications to teach in the Computer Graphics program.

Laura Paull

43. Respondent Laura Paull is a journalism instructor. The journalism program is recommended for discontinuance due to the high cost of the program offerings relative to the enrollments, and to the limited job prospects of journalism due to the shift toward multimedia, with the internet as the delivery mechanism. Ms. Paull was first employed by the District in 1996 as an adjunct Spanish instructor at Modesto Junior College. She was subsequently employed as a Journalism instructor, and has taught journalism for 15 years. Ms. Paull contends that she is entitled to bump junior retained Spanish or English instructors because she meets minimum qualifications to teach in either one of the two disciplines. She holds a B.A. in English and an M.A. in Latin American Literature. In 1998, the District granted her equivalency to an M.A. in Journalism. She contends that her B.A. in English plus her M.A. equivalency in Journalism satisfy the minimum requirements for English, and that she is entitled to be reassigned to provide English instruction. The District believes that it erred in granting her equivalency in Journalism. It also contends that even if she met minimum qualifications for Journalism via equivalency, it would not follow that Ms. Paull could parlay that equivalency into meeting minimum qualifications for English.

44. *Spanish.* Ms. Paull applied this year for equivalency in Spanish. A discipline-based faculty committee charged with evaluating her application unanimously concluded that Ms. Paull did not have the required degrees or the equivalent academic preparation to provide instruction in Spanish. The Foreign Languages discipline requires a master's degree in the language being taught, or a bachelor's degree in the language being taught and a master's degree in another language or linguistics or the equivalent. The discipline-based faculty committee determined that Ms. Paull did not have the required degrees or the equivalent academic preparation. Ms. Paull's equivalency claim is based on her master's degree in Latin American Literature, a social sciences degree. She taught in the District as an adjunct Spanish instructor in 1996, and believes that this also satisfied minimum qualifications to teach Spanish via equivalency.

Equivalency determinations are not contemplated by these proceedings, and administrative law judges should not substitute their judgment for the determinations of properly constituted academic bodies authorized to make such determinations. To the extent that Ms. Paull is relying upon Spanish equivalency previously granted by the District, it is the District's position that such must be considered in context of her employment as an adjunct instructor. She was hired to teach Spanish 1-SPAN 101, the fundamental level of spoken and written Spanish. She also taught Spanish 1 & 2 – Spanish Life and Culture in a 1999 Study Abroad Program. All her Spanish instruction for the District was between Spring 1996 and Summer 1999.

As noted in Finding 19, the Chancellor's Office issued a legal opinion in 2003 that concluded that districts were not authorized to establish a single-course equivalency as a substitute for meeting minimum qualifications in a discipline. At least since 2007, the District practice regarding single-course equivalencies granted to faculty has changed based upon this legal opinion. The fact that Ms. Paull taught more than one Spanish course does not necessarily mean that the District had determined that she satisfied the minimum qualifications for Spanish through equivalency. The evidence is unclear. For example, Daniel Onorato was on the committee that hired Ms. Paull as an adjunct instructor in Spanish in 1996. He did not recall whether Ms. Paull had the equivalent to the minimum qualifications required. The District believes that she does not possess the minimum qualifications for the Foreign Language (Spanish) discipline. It was entirely appropriate for it to convene an equivalency committee this year to determine whether she satisfied equivalency for the entire discipline and was able to teach all the courses in the discipline. The District committee's determination will not be reconsidered here.

45. *English.* The discipline of English requires a master's degree in English, literature, comparative literature or composition; or a bachelor's degree in any of the above and a master's degree in linguistics, TESL, speech, education with a specialization in reading, creative writing or journalism or the equivalent.

The District determined that Ms. Paull does not possess the minimum qualifications for English because she does not have the required Master's degree or equivalent graduate level academic preparation. Her Bachelor's degree is in English, but her Master's degree is in Latin American Literature, which is not one of the Master's degrees which constitute minimum qualifications for English.

46. A Master's degree in Journalism is an acceptable degree to combine with Ms. Paull's Bachelor's degree in English to meet the minimum qualifications for English. While Ms. Paull does not possess a Master's degree in Journalism, she has met qualifications for Journalism based upon equivalency. She contends that because equivalency means equal to the state-adopted minimum qualifications for a particular discipline, her having satisfied equivalency in Journalism is equal to a Master's degree in Journalism. She believes the District is not now entitled, in context of this hearing, to reevaluate in 2011 the equivalency granted to her in Journalism when she was hired.

47. The Journalism equivalency granted to Ms. Paull was within the competence and judgment of the requisite committee when she was hired. It is undisputed that she was granted equivalency by the District in Journalism. It remains within the jurisdiction of the District's Academic Senate to reconsider any earlier grant of equivalency where the District raises concerns about its legitimacy. The District has not invoked Academic Senate jurisdiction on this issue relating to Ms. Paull. It may still do so. The District noted that Ms. Paull took no graduate level journalism course and that she misrepresented on her application to the District that she had a Master's degree with a minor in journalism. There was no documentation or other evidence remotely suggesting that her graduate studies at Stanford University resulted in her receiving a minor in journalism. The District further contended that its equivalency processes were not conducted correctly prior to when the EPP was

adopted by the Academic Senate in 2007. And that when Ms. Paull reapplied for an equivalency for Journalism in 2011, the pre-screening equivalency committee merely assumed that she had the minimum qualifications to teach journalism since she had been doing so over the past 15 years. The committee concluded that there was no legal basis for her to reestablish the equivalency a second time in 2011. The District's concerns may all be legitimate, but must be addressed elsewhere. Only the District's Academic Senate may reconsider its grant of equivalency.

48. The equivalency process contemplates candidates with qualifications that are at least equal to applicable minimum qualifications. Thus, Education Code section 87359 requires the Board of Governors to adopt regulations setting forth a process to allow local districts to employ faculty members who do not meet applicable minimum qualifications, but who possess "qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board of governors adopted pursuant to Section 87356." (See Finding 14.) Under the District's EPP, an applicant who claims equivalent qualifications will have to provide conclusive evidence, as clear and reliable as the college transcripts being submitted by the other candidates, that he or she has qualifications that are *at least equivalent* to what is required by the minimum qualifications. (See Finding 15.) Understanding that the EPP was adopted by the District after Ms. Paull was granted equivalency, it must still be presumed that that the District acted properly in granting her equivalency. Under Evidence Code section 664, there is a presumption that an official duty is properly performed. It carries a high burden of proof to overcome this presumption, and must clearly show that an irregularity happened. (*In re Hare* (2010) 189 Cal.App.4th 1278, 1292; *Degener v. Governing Board* (1977) 67 Cal.App.3d 679, 696, n. 5.) As noted earlier, the District's Academic Senate retains jurisdiction to reconsider equivalency decisions. It is for the Academic Senate to determine whether challenges may be made to earlier equivalency decisions over defenses raised by respondents such as equitable estoppel. It is also for the Academic Senate to determine whether grants of equivalency are "for life" as suggested by respondents.

49. Finally, the District contends that even if Ms. Paull meets minimum qualifications for Journalism based upon equivalency, it does not follow that she can parlay that equivalency into meeting minimum qualifications for English. As earlier noted, the discipline of English requires a Master's degree in English, literature, comparative literature or composition; or a Bachelor's degree in any of the above and a Master's degree in linguistics, TESL, speech, education with a specialization in reading, creative writing or *journalism* or the equivalent.⁴

Because the equivalency process contemplates candidates with qualifications that are at least equal to applicable minimum qualifications, Ms. Paull's equivalency in Journalism means that her qualifications "are at least equivalent" to a Master's degree in Journalism. There is a strong appeal to the logic advanced by respondents that if one acquires

⁴ The term "the equivalent" is interpreted as being equivalency in the discipline of English. It is not a term that modified the immediately preceding word "journalism."

equivalency to a Master's degree, that such should satisfy a Master's degree requirement for all purposes. Respondents therefore contend that Ms. Paull's equivalence to a Master's degree in Journalism satisfies the Master's degree requirement, which specifically includes a Master's degree in "journalism or the equivalent."

Respondents, however, are incorrect. What Ms. Paull is really seeking is a fifth pathway to become qualified as an instructor within a discipline, but one that gains entry via a back door. It is clear that Ms. Paull does not meet minimum qualifications for English on the strength of her academic credentials alone. She does not have a Master's degree in English. She does have a Bachelor's degree in English, but her Master's degree is in Latin American Literature. She does not meet minimum qualifications based upon her academic degrees alone. To become an instructor in the English discipline, the proper avenue for her is to seek equivalency in English and to have her academic credentials and experience considered by a discipline-based faculty committee charged with evaluating her application.

To find otherwise would create a situation in which faculty might totally avoid meeting academic master's degree requirements and equivalency determinations in secondary disciplines to which they seek assignment. In this case, Ms. Paull gained equivalency in the discipline of Journalism largely on the strength of her 20 years of journalism work experience. A determination was made that she possessed qualifications that were at least equivalent to the minimum qualifications to be a Journalism instructor. Ms. Paull's effort to parlay this equivalency to satisfying a Master's Degree requirement for becoming an instructor in a different discipline creates the anomalous situation where she meets neither strict Master's degree nor equivalency requirements for English, but by virtue of a decision made by a discipline-based faculty committee in Journalism, she becomes qualified to become an English instructor. This cannot be. If she met minimum requirements to become a Journalism instructor based upon equivalency, she should also be subject to a similar equivalency evaluation for English. There is a process for attaining equivalency in the discipline of English. It should not be short-circuited. Ms. Paull should not meet minimum qualifications for English solely on the strength of her being granted equivalency for a Master's degree in journalism.

Jeremy Wilson

50. Respondent Jeremy Wilson is an Engineering Instructor at Modesto Junior College. He applied for equivalency in Mathematics and his application was denied by the discipline-based equivalency pre-screening committee. He also applied for equivalency in Physics. He was approved by the Physics pre-screening committee. He applied for equivalency in Physics after the February 15 deadline. Mr. Wilson would not have been aware of his need to apply for equivalency until after he received a layoff notice in March 2011. Fairness dictates that the District should give positive consideration to waiving the February 15 deadline for Mr. Wilson.

Mr. Wilson contends that he has minimum qualifications to teach Computer Science and that he should be allowed to displace a junior employee, Kathryn Christensen. In fact, Ms. Christensen's discipline is Computer Applications Systems, a separate discipline.

Mr. Wilson does not possess the minimum qualifications because he holds a B.S. in Mechanical Engineering and an M.S. in Mechanical/Aeronautical Engineering. In 2006, the minimum qualifications changed so that a specific field of engineering such as computer engineering was required, instead of a general degree in engineering. He contended that changes to the minimum qualifications criteria would not apply to him since he was hired in 2005. As noted in Finding 13, Mr. Wilson is bound by the more recent criteria as an instructor seeking reassignment. He is not entitled to have the minimum qualifications at the time he was hired grandfathered for these purposes.

Wendy Griffiths-Bender

51. Respondent Wendy Griffiths-Bender was hired on August 1, 2005, in the discipline of Library Science. She has a Master's degree in Library Science and a Master's degree in Education. She would like to be reassigned to the discipline of Reading. The minimum qualifications for the Reading discipline include a Master's in Education with a specialization in reading or teaching reading. Ms. Griffiths-Bender has a Master's degree in Education, and represents that she had coursework in reading. It is not clear whether this is tantamount to a specialization in reading or teaching reading. The District should confirm whether she has either of these specializations. If she does, Ms. Griffiths-Bender would have the stated minimum qualifications to teach Reading. She would be entitled to bump junior employees in that discipline. Respondent identified one junior faculty member, Christopher Briggs, who is assigned to the discipline of Reading.

Other Matters

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

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

54. Except as otherwise noted above, no junior employees are being retained to render services that more senior respondents are qualified and competent to perform.

55. The District's reductions and discontinuances of particular kinds of services relate solely to the welfare of the District's colleges and students.

LEGAL CONCLUSIONS

1. The District complied with all notice and jurisdictional requirements set forth in sections 87740 and 87743.

2. The services identified in the PKS Resolution are particular kinds of services that may be reduced or discontinued under section 87743. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's colleges and its students within the meaning of section 87740.

3. As set forth in Findings 22 through 25, if the Academic Achievement Coordinator services are not discontinued, the Board shall make assignment of a qualified and next most senior respondent to render service in that position. (Ed. Code, § 87743.) If the Academic Achievement Coordinator services are discontinued, the Board should still consider whether it should rescind one notice to respondents to account for the 1.0 FTE that has now been vacated.

4. As set forth in Findings 26 through 32, respondent Jon Kropp has not demonstrated that he meets minimum qualifications to be assigned as an instructor across the full range of courses encompassed by the ELTEC discipline.

5. As set forth in Findings 33 through 40, respondent Alan E. Layne qualifies to be an instructor in the Computer Graphics program because this program is under the same discipline as the Graphic Design program in which he currently teaches. The District has not challenged Mr. Layne's minimum qualifications in his current program assignment. The two programs are under the same discipline – Graphic Arts. He possessed the minimum qualifications within this discipline when he was hired in 1992.

6. As set forth in Findings 41 and 42, respondent Haleh Niazmand does not meet minimum qualifications to teach in the Computer Graphics program.

7. As set forth in Findings 43 through 49, respondent Laura S. Paull does not meet the minimum qualifications for the discipline of English. Her equivalence to a Master's degree in Journalism does not satisfy the Master's degree requirement for minimum qualifications for English. Her recourse is to seek equivalency in the English discipline. Other concerns raised by the District regarding equivalency in Journalism are within the jurisdiction of, and may properly be considered by its Academic Senate.

8. As set forth in Finding 50, respondent Jeremy Wilson does not possess minimum qualifications to teach Computer Science. The District should waive the February 15 deadline for his applying for equivalency in Physics.

9. As set forth in Finding 51, the District should confirm whether respondent Wendy Griffiths-Bender's Master's Degree in Education includes specializations in reading or teaching reading. If she possesses either one of these specializations, Ms. Griffiths-Bender would have the minimum qualifications to teach Reading and would be entitled to bump junior employees in that discipline.

10. Cause exists to reduce academic faculty of the District due to the reduction or discontinuance of particular kinds of services. Except as otherwise noted above, the District properly identified the academic faculty to be laid off as directed by the Board.

11. Except as otherwise noted above, no junior academic faculty is being retained to perform services that a more senior respondent is qualified and competent to render.

12. Other than for the respondents identified in Legal Conclusions 3, 5 and 7, cause exists to give notice to respondents that their services will be reduced or will not be required for the 2011-2012 academic year because of the reduction or discontinuance of particular kinds of services.

RECOMMENDATION

1. Pursuant to Legal Conclusion 3, if the Academic Achievement Coordinator Position services are not discontinued, the District shall rescind the preliminary layoff notice served upon the next most senior respondent qualified to render service as an Academic Achievement Coordinator.

2. Pursuant to Legal Conclusion 5, the District shall rescind the preliminary layoff notices served on respondent Alan E. Layne.

3. Pursuant to Legal Conclusion 9, the District should confirm whether respondent Wendy Griffiths-Bender's Master's Degree in Education includes specializations in reading or teaching reading. If she possesses either of these specializations, Ms. Griffiths-Bender is entitled to bump junior employees in the Reading discipline.

4. Except as provided above, notice may be given to respondents that their services will be reduced or will not be required for the 2011-2012 academic year. Notice shall be given in inverse order of seniority.

DATED: May 18, 2011

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings