

BEFORE THE  
GOVERNING BOARD OF THE  
LASSEN UNION HIGH SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against :

BRETT MITCHELL,

Respondent.

OAH No. 2013040337

**PROPOSED DECISION**

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on April 23, 2013.

Thomas E. Gauthier, Attorney at Law, Lozano Smith, represented the Lassen Union High School District.

Respondent Brett Mitchell appeared and represented himself.

At the outset of the administrative hearing, District moved that the matter proceed by default. A ruling was deferred pending the receipt of evidence relating to service of the accusation and whether respondent filed a Notice of Defense. Upon determination that respondent was properly served with the Accusation and required attachments and failed to file a Notice of Defense, District's motion was granted and the matter proceeded by default in accordance with Government Code section 11520. <sup>1</sup> The matter was submitted on April 23, 2013.

**FACTUAL FINDINGS**

1. Roy Casey, Superintendent, Lassen Union High School District (District), State of California, filed the Accusation in his official capacity.

2. On February 19, 2013, the Governing Board (Board) of the District adopted Resolution No. 2012/2013-11, that reduced and/or discontinued particular kinds of

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<sup>1</sup> Respondent did request a hearing in response to the preliminary notice, and District elected to present witnesses and offer evidence in support of the Accustaion. Respondent presented evidence as well.

certificated services (PKS) no later than the beginning of the 2013-2014 school year, in the amount of 6.94 full-time equivalent (FTE) certificated employees. The specific reductions were as follows:

Charter School Teaching Services	1.0 FTE
Intervention Specialist Services	1.0 FTE
Intervention Teaching Services	.51 FTE
Charter School/Alternative Education Services	1.0 FTE
Charter School Teaching Services	.43 FTE
Agricultural Teaching Services	1.0 FTE
Music Teaching Services	1.0 FTE
Vocational Educational Services	1.0 FTE

3. The Board further determined that it shall be necessary by reason of the reduction and/or discontinuance of services to decrease the number of permanent and/or probationary certificated employees at the beginning of the 2013-2014 school year, and directed the Superintendent to proceed accordingly by notifying the appropriate employees to implement the Board's determination.

4. On or before March 15, 2013, the District served the affected certificated employees including respondent, with written notice, pursuant to Education Code sections 44949 and 44955<sup>2</sup>, that their services would not be required for the next school year (Notice). Each Notice set forth the reasons for the recommendation. The Notice attached and incorporated by reference Resolution 2012/2013-11 that listed the services to be reduced or discontinued, resulting in a proposed reduction in the certificated staff by 6.54 FTE positions.

5. A Request for Hearing was timely filed by respondent to determine if there is cause for not reemploying him for the next school year.

6. The Superintendent made and filed the Accusation against respondent after respondent requested a hearing. The Accusation package included the required accompanying documents and a blank Notice of Defense (Accusation packet) and was timely served on the respondent. As noted above, respondent did not file a Notice of Defense.

7. Respondent is a certificated permanent employee of the District. His first date of paid service was August 25, 1998. He holds two credentials. The first is a Designated Subjects Vocational Education Teaching Credential: Full Time. The credential authorizes the holder "to teach in the subject or subjects listed in grades twelve and below and in classes organized primarily for adults, in technical, trade, or vocational courses that shall be part of a program of technical trade, or vocational education." The listed subject is "Drafting Occupations." Respondent's second credential is an Administrative Services Credential, authorizing him to provide specified administrative services in grades twelve and below including preschool.

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<sup>2</sup> All future statutory references are to the Education Code unless otherwise indicated.

8. Respondent has been employed by the District for approximately 16 years. For a number of years<sup>3</sup>, respondent has been serving in an administrative capacity for the District as its Director of Operations and Student Services. District determined to eliminate the position and “released” respondent this school year.<sup>4</sup>

9. Prior to his assumption of the administrative positions, respondent taught drafting as part of the District’s vocational education program. The course was not offered this school year and District does not intend to offer it next school year.

10. While the Governing Board’s resolution described above does not specifically list respondent’s course as the particular kind of vocational educational service to be reduced, the District’s Human Resources Coordinator testified and established that it is respondent’s drafting course that is being eliminated.<sup>5</sup> No other vocational educational instructors were noticed for layoff, and respondent did not challenge the manner in which the particular kind of service relating to vocational education was identified in the resolution.

#### Respondent’s Ability to Bump Into Other Assignments Held By Junior Teachers

11. Respondent asserted that he is qualified to bump into other positions. He identified those classes as the LEAP class in the business/computer operations department, the two periods of Associated Student Body (ASB) Leadership within the Social Sciences department, the wood shop class and a construction techniques class in the vocational education department, and any assignment in the alternative education program. For reasons explained below, respondent is not certificated (properly credentialed) or competent to bump into any of these classes.

12. LEAP<sup>6</sup> is a computer course that includes Adobe, web page design, Computer Assisted Design (CAD), and other computer instruction. Students can earn computer skills certifications in the course and it qualifies as a “fine art” for entrance requirements to California universities. The credentials required to teach the course are either a business credential or a vocational credential in the designated area of business.

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<sup>3</sup> The evidence did not establish the exact number of years.

<sup>4</sup> It is presumed that respondent was provided with the required notice of release by March 15, 2013, in accordance with Education Code section 44951. (Evid. Code, § 664.)

<sup>5</sup> The designation of a category of services, without specifying the specific position to be eliminated, satisfies the requirements for a preliminary notice. (*San Jose Teachers Ass’n v. Allen* (1983) 144 Cal. App.3d 627, 632.)

<sup>6</sup> The full name for the acronym was not established by the evidence.

13. The ASB class has historically been part (.34) of the assignment of a social science teacher. The class requires some kind of academic credential and is not part of a designated vocational program.

14. Respondent does not have the proper vocational credential designation to teach the subject of wood shop, even though it is part of the District's vocational education department. The District does not provide a construction techniques class and does not intend to provide one next year.

15. No particular academic credential is required by District to teach in the alternative education programs offered at the District's alternative education sites. However, the core subjects taught are academic. None of the courses is designated as vocational education. Respondent taught mathematics and English in his early years with the District, but he is not "highly qualified" in either subject in accordance with the federal No Child Left Behind Act. Thus, although District focused on respondent's lack of the proper credentials for positions he identified as appropriate for bumping, he is not qualified to teach in an alternative setting requiring core academic competency.

#### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

##### *Respondent's Bumping Rights*

2. Section 44256, subdivision (d), reads in pertinent part:

Authorization for teaching credentials shall be of four basic kinds, as defined below:

(a) "Single subject instruction" ...

(b) "Multiple subject instruction" ...

(c) "Specialist instruction" ...

(d) "Designated subjects" means the practice of assignment of teachers and students to designated technical, trade, or career technical courses which courses may be part of a program of trade, technical, or career technical education.

3. California Code of Regulations, title 5, section 80035, subdivision (e), reads:

(e) Authorization. The preliminary or clear full-time vocational education or career technical education teaching credential authorizes the holder to teach in the subject(s) or industry sector(s) named on the credential in grades 12 and below, and in classes organized primarily for adults, in career technical, trade or vocational courses which shall be part of a program of career technical, trade or vocational education.

4. Respondent is only certificated (properly credentialed) to teach classes in his designated subject area (drafting) in grades 12 and below. None of the courses identified by respondent fall within his designated area. He is therefore not certificated to teach in such courses and may not bump junior teachers assigned to them in the ensuing school year.

5. Section 44865 reads:

A valid teaching credential issued by the State Board or the Commission on Teacher Credentialing, based on a bachelor's degree, student teaching, and special fitness to perform, shall be deemed qualifying for assignment as a teacher in the following assignments, provided that the assignment of a teacher to a position for which qualifications are prescribed by this section shall be made only with the consent of the teacher:

- (a) Home teacher.
- (b) Classes organized primarily for adults.
- (c) Hospital classes.
- (d) Necessary small high schools.
- (e) Continuation schools.
- (f) Alternative schools.
- (g) Opportunity schools.
- (h) Juvenile court schools.
- (i) County community schools.
- (j) District community day schools.
- (k) Independent study.

6. The plain language of section 44865 suggests that a vocational credential may suffice to teach in an alternative setting. However, this provision was adopted by the Legislature to expand the pool of teachers with academic credentials who were restricted from teaching in such alternative settings because of the limitations imposed by some academic (e.g., single subject) credentials. *California Teachers Ass'n v. Governing Bd. of Cent. Union High School Dist.* (1983) 141 Cal.App.3d 606, 611. The more specific language relating to respondent's "designated" credential suggests that section 44865 does not include such credential holders, even if they otherwise meet the requirements of the section. Moreover, section 44955 requires that the bumping teacher be both certificated and competent to replace a junior teacher. As noted in the factual findings, respondent has not taught academic core subjects for many years and is not highly qualified in any academic core area. Thus, he does not satisfy the second criterion of section 44955 for competency and may not bump into the alternative education program.

### *Conclusion*

7. Respondent's situation is unique. His release from his administrative position left him in a proverbial "no man's land." He retained his status as a permanent teacher for the District, but the class that he used to teach is no longer offered and the Board has resolved to "eliminate" it in the ensuing school year. The Board served respondent with notice of its intent not to reemploy him in the ensuing school year as if he were currently teaching the drafting course. However, respondent was in no way disadvantaged by these circumstances as he had the opportunity to challenge the Board's actions and assert his defenses based on his bumping rights under the Education Code. District established legal cause for a final layoff notice.

### ORDER

1. The Accusation against respondent is sustained and District may issue a final termination notice to respondent for the particular kind of services identified and the one FTE.

2. Respondent Brett Mitchell shall receive final notice that he will be laid off 1.0 FTE (Vocational Education: Drafting).

Dated: April 29, 2013

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KARL S. ENGEMAN  
Administrative Law Judge  
Office of Administrative Hearings