

LAYOFF SUMMARIES 2007

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SUMMARY OF 2007 TEACHER LAYOFF DECISIONS

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I. PROCEDURAL ISSUES

A. Failure To Request Hearing Or File Notice Of Defense

1. District incorrectly calculated time period for filing Notice of Defense. Accusations were served on respondents on April 9, 2007, with deadline for filing Notice of Defense set at April 13, 2007. District incorrectly included weekend as part of 5 days in disallowing filing of Notices of Defense on following Monday. Defaults should only have been entered against those parties filing after Monday, April 16, 2007. Santa Barbara (Montoya).
2. Equity required that a laid off employee be granted a hearing despite failing to file a Notice of Defense. Although no explanation was provided for the employee's failure, the District clearly had notice that she wanted a hearing, she was represented by counsel at hearing, and the District was not prejudiced by her failure to file. St. Helena (Tompkin).

B. Motivation For Reducing Services / Governing Board's Discretion

1. ALJ dismissed accusation in its entirety where district's original resolution stated that no layoffs were intended but two weeks later recommended a reduction of 77 F.T.E. ALJ determined that layoff was actually an attempt to ensure all teachers remaining in the district were ELL Authorized. A layoff proceeding is an inappropriate vehicle for achieving this goal. Rialto (Hewitt).
2. Cause exists within the meaning of Education Code sections 44949 and 44955 for not reemploying respondents due to the fact that the Governing Board has decided to reduce or eliminate particular kinds of services of the District for the 2007-2008 school year as set forth in Governing Board Resolution No. 2365. The District is experiencing financial difficulties and the reductions in service are purely economic in nature. None of the reductions prevented the District from providing mandated services and are in the interests of the schools and their students. (Legal Conclusion No. 4.) Vallejo City (Cohn).
3. Cause exists within the meaning of Education Code sections 44949 and 44955 for not reemploying respondents due to the fact that the Governing Board has decided to reduce or discontinue particular kinds of services of the District for the 2007-2008 school year as set forth in Governing Board Resolution No. 06/07-13 and attached to the accusations. (Stipulation No. 8.) Paradise (Brandt).
4. Procedures for PKS reduction applicable notwithstanding declining enrollment as contributing cause to lack of funds. Resolution reducing services and March 15th notices cited only elimination of

PKS as cause for layoff. (Finding of Fact No. 10.) “A notice that specifies both grounds, that is PKS reduction/elimination and declining average daily attendance, is suspect. (See, *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648.)” (Legal Conclusion No. 5.) District did, in fact, identify PKS for reduction. (Finding of Fact No. 4.) According to the ALJ, “[a] governing board’s decision to reduce or eliminate particular kinds of services need not be tied to any statistical computation, such as a projected decline in the number of students in the affected district,” and “[i]t is wholly within the Board’s discretion to determine the numbers by which the District will reduce a particular service. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.)” (Legal Conclusion No. 5.) Klamath-Trinity (Johnson).

5. County Superintendent determined it was necessary to reduce or eliminate particular kinds of services and that as a result of those reductions or eliminations it was necessary to decrease the number of certificated employees of the County Office of Education. Sonoma County Office of Education (Astle).
6. Services reduced due to program transfers from the County Office of Education to individual school districts. Sonoma County Office of Education (Astle).
7. PKS reduction upheld; motivation included prospective shortfall in money for district’s budget and declining pupil census for the ensuing school year, plus change in educational structure/periods of the school day. Resolution and notices were based upon PKS, without reference to declining enrollment. Recommendation to board which may have been based on some measure on a projected decline of pupils for the ensuing school year did not invalidate the layoff. Scotia Union (P. Johnson).
8. A notice which cites both grounds (PKS and declining enrollment) is suspect, citing *Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648. [Editorial comment - incorrect; see *Moreland* at 653, stating use of more than one ground is not prohibited, so long as included in the notice.] Scotia Union (P. Johnson).
9. The governing board’s decision to reduce a particular number of particular kinds of services need not be tied to any statistical computation such as a prospective decline in the number of students. “It is wholly within the Board’s discretion to determine the numbers by which the District will reduce a particular service.” Scotia Union (P. Johnson).

10. **The Superintendent's decision to discontinue or reduce services was made solely for the welfare of the students where average daily attendance in the District had decreased by 3300 students and a legislative bill, which provided funding, had expired. Plumas COE (Sarli).**
11. **A Superintendent's decision to reduce six regional occupation programs (ROP) and lay off three ROP teachers in an effort to become compliant with new legislation to reduce programs in compliance with federal law (2007 AB Assembly Bill 2448) was a proper exercise of the District's discretion under Education Code section 44955. Sacramento COE (Sarli).**
12. **A School District's decision to eliminate all educational services was not arbitrary or capricious and was a proper exercise of discretion where the District faced a loss of state and federal funding, loss of the College's accreditation and impending closure. Compton CCD (Flores).**
13. **School District was entitled to issue notices of non-reelection to probationary employees for non-economic reasons where that decision was made at or before the time the District chose to reduce or eliminate particular kinds of services that the non-reelected employees were providing. Despite their receipt of "precautionary" layoff notices, their non-reelections were not motivated by economic considerations and therefore they were not entitled to a layoff proceeding. Washington (Frink).**

C. Service

1. **Respondent unsuccessfully argued that hearing notices were not served in a timely manner. Respondent could not show prejudice by untimely service of hearing notices. Biggs (Skarda).**

D. Existence And/Or Sufficiency Of Resolution And/Or Notices

1. **On or about March 13, 2007, Assistant Superintendent gave County Superintendent notice of recommendation that notice of layoff be given to employees. Sonoma County Office of Education (Astle).**
2. **Board's decision to eliminate particular kinds of services was not a fraudulent, arbitrary or capricious action. Board properly exercised its discretion based on factors such as declining pupil attendance or enrollment, among other reasons. Arcata (Johnson).**
3. **On or about March 8, 2007, Superintendent gave Board notice of recommendation that notice of layoff be given to employee. Black Oak (Brandt).**

4. On March 8, 2007, Board adopted Resolution directing Superintendent to give notice of layoff to employee for 2007-2008 school year. Black Oak (Brandt).
5. On March 9, 2007, Superintendent gave written notice of layoff to employee pursuant to Education Code sections 44949 and 44955. Black Oak (Brandt).
6. Board's decision to reduce and discontinue services was neither arbitrary nor capricious. Board properly exercised its discretion based on factors such as enrollment, change in class size, financial need, etc. The record established that District management attempted to estimate future staffing needs in the same manner as it had done in recent years and in a reasonable manner. Santa Barbara (Montoya).

E. Notice

1. A layoff notice which specifies both grounds for layoff, that is PKS reduction/elimination and declining average daily attendance, is suspect (*citing* Moreland Teachers Assn. v. Kurze (1980) 109 Cal.App.3d 648). Arcata (Johnson).
2. Where a notice specifies one of the two statutory reasons for a teacher layoff, a governing board may not later attempt to justify dismissal on the other ground. (*citing* Karbach v. Bd. Of Education (1974) 39 Cal.App.3d 355). Arcata (Johnson).
3. A School District's notice to a certificated employee was insufficient where it failed to state the reason for non-reemployment or advise her of her right to a hearing. The District argued that it believed the employee was a temporary employee when it sent the letter and upon finding out that she was actually a probationary employee, it sent her proper notice. The ALJ determined that proper notice was not received until March 29th, well after the March 15th jurisdictional deadline, and therefore the employee could not be laid off. St. Helena (Tompkin).
4. Respondent unsuccessfully argued that notice was defective because it failed to specify what services were going to be eliminated. The ALJ held that specificity is not necessary, it is enough that the notice states there will be a reduction in services. Compton CCD (Flores).
5. School District was entitled to issue notices of non-re-election to probationary employees for non-economic reasons where that decision was made at or before the time the District chose to reduce or eliminate particular kinds of services that the non-re-elected employees were providing. Despite their receipt of "precautionary" layoff notices, their non-re-elections were not motivated by economic

considerations and therefore they were not entitled to a layoff proceeding. Washington (Frink).

F. Evidence

1. District's decision to reduce or eliminate particular kinds of services need not be tied to any statistical computation, such as a reduction in the number of students. It is wholly within the Board's discretion to determine the numbers by which the District will reduce a particular service (*citing* San Jose Teachers Assn. v. Allen (1983) 144 Cal.App.3d 627). Arcata (Johnson).
2. Cause for not reemploying respondents related solely to the welfare of the County Office and the pupils thereof within the meaning of Education Code sections 44949 and 44955. Sonoma County Office of Education (Astle).

G. Miscellaneous

1. Respondent successfully argued that the district's failure to have a completed and legally sufficient seniority list prejudiced his ability to assess his ability to bump other employees. District presented a "Draft" seniority list and the credentials held by junior employees could not be ascertained. The lack of a final and complete seniority list made it very difficult for Respondent to fully ascertain how he might exercise seniority to bump either an employee with the same first date of paid service or an employee junior to him. Sutter Union (Smith).
2. Each employee notified requested in writing a hearing to determine if there was cause for layoff prior to the 2007-2008 school year. Sonoma County Office of Education (Astle).
3. On March 15, 2007, employee timely requested in writing a hearing to determine if there was cause for layoff prior to the 2007-2008 school year. Black Oak (Brandt).
4. At the hearing on April 16, 2007, the parties entered into a settlement agreement rescinding the notice of layoff and guaranteeing employee a position for the 2007-2008 school year. Black Oak (Brandt).
5. At hearing, the District rescinded the layoff notices and withdrew the accusations against five employees. (Stipulation No. 6). Paradise (Brandt).
6. The District also amended a reduction in an employee's assignment by reducing it by only .2 FTE instead of .8 FTE as originally planned. (Stipulation No. 7.) Paradise (Brandt).

7. The parties agreed that a document entitled “May 2007 Layoff Agreement” embodies the agreement between the District and Respondents who sign and deliver it to the District by May 17, 2007. (Stipulation No. 13.) Paradise (Brandt).
8. Respondents offered no evidence to rebut the presumption of Evidence Code section 664 that the district has properly performed actions related to procedures that seek the non-reemployment of respondents. Scotia Union (P. Johnson).

II. REDUCTION OR DISCONTINUANCES IN SERVICES NOT ALLOWED

A. Services Found Not To Have Existed Or Not To Have Been Reduced.

1. District failed to properly identify 17 of 22 services as a Particular Kind of Service of PKS, in that the services were identified with a “Non-EL Authorized” label. For example, “Secondary Spanish Teachers, Non-EL Authorized.” ALJ determined that the PKS is “Secondary Spanish Teachers.” The Non-EL Authorized” refers to a factor based on the needs of the district and students. It is improper to combine a factor such as “Non-EL Authorized” and a PKS to create a hybrid PKS. The district improperly identified the positions being taught by Non-EL Authorized teachers and then created a new PKS that would result in the layoff of all teachers in the district without EL Authorization. This resulted in the improper use of the layoff procedure. Rialto (Hewitt).

III. REDUCTIONS OR DISCONTINUANCES IN SERVICES ALLOWED

A. Services Described With Sufficient Specificity -- Particular Kinds of Services (PKS)

1. Services District reduced constituted particular kinds of service subject to reduction under section 44955. Arcata (Johnson).
2. Services District reduced, which included elementary teaching, CORE and ELD, constituted particular kinds of service subject to reduction under section 44955. Santa Barbara (Montoya).

B. Services Reduced Or Performed In A Different Manner

1. Respondent failed to establish that district would reduce its course offerings below mandated levels by reducing applied arts and visual performing arts where the district’s only music teacher and home economics teacher received layoff notices. Biggs (Skarda).
2. Respondent, a Title I teacher providing pull-out support and testing to ELL students, failed to demonstrate that the district’s proposed

reorganization of if ELL program for the 2007-2008 school year would violate the district's ELL Mater Plan or any State or federal mandate. District's redesigned program included two classified employees providing language assistance to ELL students to supplement an English immersion program. Maxwell (Smith).

3. Respondent unsuccessfully argued that the district's proposed reduction or elimination of services was an illusion, because the superintendent confirmed the same classes were to be offered in the upcoming school year. The district established that it planned to eliminate two classes Respondent was currently teaching and assigned the students to different classes taught by more senior teachers. Sutter Union (Smith).

C. Counseling And Psychological Services

1. The District is allowed to reduce its counseling services without showing a specific need to reduce a specific service. (Legal Conclusion No. 7.) The Respondents asserted that because the District could have applied for additional funding for counseling through AB 1802, the District could not show the "necessity" for the counseling services to be reduced. According to the ALJ, the District's failure to seek funds does not undercut the previously made finding that the service reductions being made are in the interest of the schools and their students. The ALJ further noted that it is sufficient to show a general need to reduce services and which services are reduced are within the District's discretions, provided all mandated services are still provided. (Legal Conclusion No. 7.) Vallejo City (Cohn).

D. Reductions Upheld Despite Contentions That Services Were Not Actually Being Reduced

1. Community college district proposed to reduce engineering and education services by 1.0 FTE respectively, despite the fact that these services did not amount to 1.0 FTE during the 2006-2007 school year. Community college district successfully reduced engineering services by .3 FTE and education services by .77 FTE. Redwoods CCD (Owang).

E. Special Education Services

1. County Superintendent showed cause to eliminate 10.0 F.T.E. and reduce 0.2 F.T.E. in special education services for the 2007-2008 school year. Sonoma County Office of Education (Astle).

F. Services Not Particular or Not Sufficiently Specific

1. Respondents unsuccessfully argued that prior to reducing certain classes, such as home economics, the District should have reviewed each special education student's IEP to consider how the reduction would affect those who had life skills courses in their plans. The Board has the discretion to decide which services to reduce and the respondents may not question the Board's views of which classes are necessary for student populations. Golden Plains (Sarli).
2. District failed to properly identify 17 of 22 services as a Particular Kind of Service of PKS, in that the services were identified with a "Non-EL Authorized" label. For example, "Secondary Spanish Teachers, Non-EL Authorized." ALJ determined that the PKS is "Secondary Spanish Teachers." The Non-EL Authorized" refers to a factor based on the needs of the district and students. It is improper to combine a factor such as "Non-EL Authorized" and a PKS to create a hybrid PKS. The district improperly identified the positions being taught by Non-EL Authorized teachers and then created a new PKS that would result in the layoff of all teachers in the district without EL Authorization. This resulted in the improper use of the layoff procedure. Rialto (Hewitt).

IV. SENIORITY

A. Entitled To Retroactive Seniority

1. Teacher hired in probationary status in August 2006 was entitled to tack one year of prior service based on service under limited term contract in 2005/06 school year pursuant to section 44917, third paragraph. (No explanation was given in the decision as to what type of contract ALJ was referring to by the words "limited term.") Santa Barbara (Montoya).

B. Prior Temporary Or Substitute Service

1. Teacher hired on probationary status in August 2006 was entitled to tack one year of prior service based on service under limited term contract in 2005/06 school year pursuant to section 44917, third paragraph. Santa Barbara (Montoya).

C. Specific Cases

1. Respondent successfully argued that the district's failure to have a completed and legally sufficient seniority list prejudiced his ability to assess his ability to bump other employees. District presented a "Draft" seniority list and the credentials held by junior employees could not be ascertained. The lack of a final and complete seniority

list made it very difficult for Respondent to fully ascertain how he might exercise seniority to bump either an employee with the same first date of paid service or an employee junior to him. Sutter Union (Smith).

2. School District was entitled to issue notices of non-reelection to probationary employees for non-economic reasons where that decision was made at or before the time the District chose to reduce or eliminate particular kinds of services that the non-reelected employees were providing. Despite their receipt of "precautionary" layoff notices, their non-reelections were not motivated by economic considerations and therefore they were not entitled to a layoff proceeding. Washington (Frink).

D. Miscellaneous

1. As retaining junior teachers was upheld, one of the factors was that respondents did not become highly qualified within the NCLB prior to the preliminary notice of layoff action. (Other factors involved lack of experience and credentials for the district's upcoming revision to a departmentalized structure for instruction.) Scotia Union (P. Johnson).
2. It was within the District's discretion to assign teacher, with the consent of the affected teacher, to provide instruction beyond the confines of a credential so long as the teacher meets the requisite statutory requirements (*citing* Education Code §§ 44256, 44258.2). Arcata (Johnson).
3. Senior teacher not entitled to bump junior teacher working outside of credential. Two senior teachers with single subject music and English credentials, respectively, claimed that the District was retaining less senior teachers who were working outside of their credentials. Senior teachers claimed they could also provide instructional service outside of their credentials. (Findings of Fact 14 and 15.) According to ALJ, "[e]ven though the District is retaining teachers to perform services that are 'outside' the parameters of particular credentials held by the retained teachers the District acts in compliance with Education Code section 44256." (Legal Conclusion No. 4.) (*See also* Education Code § 44258.) The ALJ also held that "[s]uch district action is wholly discretionary as the practice was designed by the Legislature to bestow flexibility upon small high schools in meeting certain needs, but, a district cannot be compelled to so act." (Legal Conclusion No. 4.) Therefore, the District was not required to allow respondents to work outside of their credentials. Klamath-Trinity (Johnson).

4. **An employee who holds a Designated Subjects/Vocational Education credential in Agricultural Production is not credentialed to teach general education classes. Leadership classes should be taught by a holder of a general teaching credential and therefore a senior employee who holds a vocational/designated subjects credential may not bump a less senior credentialed teacher from teaching leadership classes. Durham (Sarli).**

V. COMPETENCY

A. General Standards

1. **A Governing Board acted arbitrarily and not in the best interest of the students when it adopted a resolution containing a "competency requirement" for reassignment of a laid off teacher from a general high school into an alternative education high school in the District. The resolution required at least one semester of actual teaching experience in an alternative education school within the last five years. The ALJ rejected the notion that persons who are credentialed and experienced teachers are per se incompetent to teach challenging students solely because they have not completed a semester of teaching in alternative education. Oroville (Sarli).**
2. **Respondent failed to establish he possessed the special training and experience necessary to bump a junior teacher assigned to community day school. The community day school required a background in psychology or sociology and experience/training in working with students with extreme behavioral problems. Biggs (Skarda).**

B. Particular Cases/CLAD/BCLAD

1. **Respondent failed to demonstrate that she satisfied competency criteria that required teachers to hold a BCLAD. Respondent's BCLAD certificated was valid from August 2006 to September 2007. Respondent could not establish certification for the 2007-2008 school year and recertification was uncertain because it was subject to conditions. Oxnard (Reyes).**
2. **A Governing Board acted arbitrarily and not in the best interest of the students when it adopted a resolution containing a "competency requirement" for reassignment of a laid off teacher from a general high school into an alternative education high school in the District. The resolution required at least one semester of actual teaching experience in an alternative education school within the last five years. The ALJ rejected the notion that persons who are credentialed and experienced teachers are per se incompetent to teach challenging**

students solely because they have not completed a semester of teaching in alternative education. Oroville (Sarli).

C. Employee Competent - No Standard Mentioned

1. Where district's governing board had adopted requirement that all certificated employees meet ELL certification requirements by January 1, but did not establish ELL certification as a competency criterion in connection with adoption of resolution to reduce or discontinue particular kinds of services, and where junior teacher had completed application to CTC for ELL certification prior to March 15, and where senior teacher had notified school district prior to March 15 that she had passed ELL certification examination, but CTC did not register receipt of senior teacher's application until March 19, it was improper for District to issue layoff notice to senior teacher while retaining junior teacher on the basis senior teacher's failure to satisfy ELL certification requirement by March 15. District personnel file contained adequate documentary indicia of senior teacher's eligibility to acquire ELL certification, and district personnel failed to adequately instruct senior teacher of need to mail documents to CTC. *Campbell Elementary Teacher's Association v. Abbott* (1978) 76 Cal.App.3d 796, and *Degener v. Governing Board* (1977) 67 Cal.App.3d 689, distinguished. McKinleyville (Johnson).

D. Employee Not Competent - No Standard Mentioned

1. Employee not entitled to bump less senior employee. Employee possessed a preliminary multiple subject credential, with a supplemental credential in English, and CLAD certification. (Factual Finding 8.) According to the ALJ, "[s]he did not establish by competent evidence that she is credentialed or qualified to teach math." (Factual Finding 8.) No other analysis was provided. Forestville (Astle).

E. Types of Credentials

1. Senior teacher not entitled to bump junior teacher working outside of credential. Two senior teachers with single subject music and English credentials, respectively, claimed that the District was retaining less senior teachers who were working outside of their credentials. Senior teachers claimed they could also provide instructional service outside of their credentials. (Findings of Fact 14 and 15.) According to ALJ, "[e]ven though the District is retaining teachers to perform services that are 'outside' the parameters of particular credentials held by the retained teachers the District acts in compliance with Education Code section 44256." (Legal Conclusion No. 4.) (*See also* Education Code § 44258) The ALJ also held that "[s]uch district action is wholly

discretionary as the practice was designed by the Legislature to bestow flexibility upon small high schools in meeting certain needs, but, a district cannot be compelled to so act.” (Legal Conclusion No. 4.) As such, the ALJ found that “Respondent Doiron provided no competent evidence that the district has retained any teacher junior to him for which Mr. Dorion possesses a credential and is currently competent to teach.” Klamath-Trinity (Johnson).

F. Miscellaneous

1. The District did not abuse its discretion in adopting tie-breaking competency criteria which had been modified to take into account requirements imposed on the District by No Child Left Behind law. Other than NCLB prompted change, the tie-breaking criteria here had been in effect for many years. Santa Barbara (Montoya).

VI. CRITERIA FOR BREAKING SENIORITY TIES

A. Criteria Invalid And/Or Not Properly Applied.

1. District failed to apply tie-breaking criteria in an objective manner. Instead superintendent made a value judgment not found in the board-adopted tie-breaking criteria. Taft (Reyes).
2. Respondent successfully argued district’s failure to adopt the required tie-breaker criteria unfairly prejudiced him. The District attempted to argue that it was unnecessary to adopt tie-breaker criteria because the superintendent evaluated the credentials and competence of each employee with the same seniority date as Respondent. The superintendent testified that he evaluated the credentials and competence of each employee and Respondent could not teach any of the other employee’s assignments. Sutter Union (Smith).

B. Criteria Valid And Properly Applied

1. District properly applied tie-breaking criteria at hearing where there was no evidence that Respondent requested district provide him with written statement of how tie-breaker criteria has been applied to Respondent. Biggs (Skarda).
2. Respondent, a history teacher, unsuccessfully argued that he should have been retained over an English teacher with an identical seniority date. Respondent possessed a supplemental credential that qualified him to teach English. Respondent did not establish that he was “highly qualified” under NCLB. ALJ rejected Respondent’s argument that District is required to take appropriate steps to determine whether Respondent might satisfy the requirements to be designated a “highly qualified” English teacher. Respondent is

required to demonstrate that he is “highly qualified” where he seeks to show tie-breaking criteria was not properly applied. Placer Hills (Walker).

3. Respondents, teachers classified as temporary with preliminary credentials, unsuccessfully challenged the district’s layoff analysis. District properly retained two teachers, one teacher possessed a clear credential and the other possessed a masters degree whereas the Respondents with the same hire date held bachelors degrees. La Canada (Thomas).

C. Miscellaneous

1. When the District failed to provide a March 15 layoff notice to an employee who is junior to employees in receipt of layoff notices, the District must retain the junior employee for the 2007-08 school year, but it is not required to retain all the senior employees. The District is only required to retain “a corresponding number” of them. (*Alexander v. Board of Trustees of the Delano Joint Union High School District* (1983) 139 Cal. App. 3d 567, 57). Thus, the District is only required to retain the most senior employee, who is similarly credentialed and competent as determined by the tie-breaking criteria. (Finding 3); (Legal Conclusion No. 5). Vallejo City (Cohn).
2. The District in many cases was required to resort to its last criteria, a lottery, for purposes of breaking seniority ties. The use of the lottery was observed by teacher union representatives and they assisted in doing the drawing of names. The ALJ found that the use a lottery for tie-breaking was appropriate in this instance. Santa Barbara (Montoya).
3. ALJ noted that district failed to adopt or apply tie-breaking criteria to three employees with equal seniority. (Factual Finding 9.) According to ALJ, this did not impact the layoff, however, “[t]his may become important for reemployment rights,” and “[i]t is suggested that the District adopt and apply tie-breaking criteria as soon as possible.” (Factual Finding 9.) Forestville (Astle).

VII. SKIPPING

A. General

1. No permanent or probationary certificated employee was retained to render a service which respondent employees were certified, competent, and legally entitled to render. Sonoma County Office of Education (Astle).

B. Skipping Allowed

1. Respondents, teachers classified as temporary, unsuccessfully challenged the district's skipping analysis. District properly skipped two teachers with temporary status but that possessed single-subject credentials in their respective teaching assignments. La Canada (Thomas).
2. It was within District's discretion to skip over a junior employee with a specialized degree when such decision related to the welfare and the District and its overall student population. Arcata (Johnson).
3. The District is allowed to "skip" a senior physical education teacher and layoff a junior teacher although the District did not apply tie-breaking criteria. (Legal Conclusion No. 6.) According to the ALJ, although District did not apply the tie breaking criteria to the employees, it determined that the junior employee would have received a March 15 notice and the senior teacher would not because the junior teacher only holds a provisional intern permit while the senior teacher holds a preliminary single subject physical education credential with an "embedded" CLAD certificate. (Legal Conclusion No. 6.) Vallejo City (Cohn).
4. The junior teacher, while only holding a provisional intern permit, is entitled to the same layoff rights as the fully-credentialed senior teacher. (*California Teachers Association v. Vallejo City Unified School District* (2007) 2007 DJDAR 4251.) Thus, according to the ALJ, it was improper to "skip" the senior teacher while laying off the junior teacher. However, no prejudice resulted because if the tie-breaking criteria had been applied, the senior teacher would have scored "more points" and thus considered the "more senior" teacher. (Legal Conclusion No. 6). Finally, since the layoff called for a reduction of 2.8 FTE positions in physical education and one teacher resigned with another junior teacher being laid off, the remaining junior teacher could only be laid off for .08 FTE and must be retained for the remaining 0.2 FTE. Vallejo City (Cohn).
5. District was to change to a more departmentalized structure the following school year. Respondents had the least experience in teaching under a departmental model and although would soon be highly qualified within NCLB as elementary teachers in a self-contained classroom setting, neither respondent was Board approved to teach in the departmental settings. Retaining two junior teachers who had experience and qualifications and credentials for the district's new model (departmental setting) was upheld. Scotia Union (P. Johnson).

6. School District acted within its discretion where it identified highly qualified teachers as a basis for deviating from the strict seniority requirement to allow for skipping of less senior teachers. Washington (Frink).

C. Skipping Not Allowed

1. District improperly skipped two junior teachers assigned to instruct "athletic tutorial classes." One of the junior teachers was the football coach and the other held a physical education credential. The district unsuccessfully argued that it preferred to assign the athletic coaches to teach the tutorial classes as they have the athletes' attention and are able to relate to the instructional material to athletic pursuits. The ALJ determined that the preference had not been formally adopted or published by the governing board and therefore the district did not establish the need or competence criteria to preclude Respondent from teaching the academic tutorial classes. Taft (Reyes).
2. Where district's governing board had adopted requirement that all certificated employees meet ELL certification requirements by January 1, but did not establish ELL certification as a competency criterion in connection with adoption of resolution to reduce or discontinue particular kinds of services, and where junior teacher had completed application to CTC for ELL certification prior to March 15, and where senior teacher had notified school district prior to March 15 that she had passed ELL certification examination, but CTC did not register receipt of senior teacher's application until March 19, it was improper for District to issue layoff notice to senior teacher while retaining junior teacher on the basis senior teacher's failure to satisfy ELL certification requirement by March 15. District personnel file contained adequate documentary indicia of senior teacher's eligibility to acquire ELL certification, and district personnel failed to adequately instruct senior teacher of need to mail documents to CTC. *Campbell Elementary Teacher's Association v. Abbott* (1978) 76 Cal.App.3d 796, and *Degener v. Governing Board* (1977) 67 Cal.App.3d 689, distinguished. McKinleyville (Johnson).

D. No Obligation To Skip

1. Respondents unsuccessfully argued that the District should be estopped from asserting the No Child Left Behind "highly qualified" requirement as a basis for skipping, where it is not skipping less senior teachers to meet the English Language Learner requirement. The ALJ held that the decision to skip teachers is within the discretion of the District. Washington (Frink).

E. Miscellaneous

1. As retaining junior teachers was upheld, one of the factors was that respondents did not become highly qualified within the NCLB Act prior to the preliminary notice of layoff action. (Other factors involved lack of experience and credentials for the district's upcoming revision to a departmentalized structure for instruction.) Scotia Union (P. Johnson).

VIII. BUMPING

A. Inverse Bumping

1. Employee cannot force District to implement inverse bumping. A "right" to inverse bumping would allow a junior employee to affect the employment of senior employees. District's obligation is limited to attempting to place a qualified employee who would otherwise be terminated in a position being held by another employee with less seniority. Arcata (Johnson).
2. District not required to create a vacancy through inverse bumping. Respondent claimed that District should assign a fellow teacher with same credential (single subject English) to a different position for which that teacher was credentialed (physical education), thereby creating a vacancy for Respondent. (Legal Conclusion No. 4.) *Citing Duax v. Kern Comm. College Dist.* (1987) 196 Cal.App.3d 555, the ALJ ruled that the law does not "allow a junior employee to affect the employment of senior employees, 'bumping' them out of their classroom positions and compelling their transfers to other classrooms or other types of assignments." (Legal Conclusion No. 4.) Moreover, the District's "obligation to make assignments and reassignments as provided in [the controlling statutory provision] is limited to attempting to place an employee who would otherwise be terminated in a position being held by another employee with less seniority." (Legal Conclusion No. 4.) Klamath-Trinity (Johnson).

B. Bumping Correctly Allowed

1. The parties stipulated that bumping was correctly allowed because respondents fit one of the following classifications: (a) Respondents' provide particular kind of service which the Governing Board has determined is necessary to reduce or discontinue; (b) Respondents' positions will be taken over by employees whose regular positions will be eliminated pursuant to the foregoing reduction or discontinuance of particular kinds of service and who are (1) certificated and competent to perform respondents' duties and (2) have greater

**District seniority than respondents. (Stipulations No. 10 & 11.)
Paradise (Brandt).**

C. Bumping Correctly Disallowed

1. **Respondent failed to establish he possessed the special training and experience necessary to bump a junior teacher assigned to community day school. The community day school required a background in psychology or sociology and experience/training in working with students with extreme behavioral problems. Biggs (Skarda).**
2. **Respondent, a history teacher, unsuccessfully argued that he should have been retained over an English teacher with an identical seniority date. Respondent possessed a supplemental credential that qualified him to teach English. Respondent did not establish that he was “highly qualified” under NCLB. ALJ rejected Respondent’s argument that District is required to take appropriate steps to determine whether Respondent might satisfy the requirements to be designated a “highly qualified” English teacher. Respondent is required to demonstrate that he is “highly qualified” where he seeks to show tie-breaking criteria was not properly applied. Placer Hills (Walker).**
3. **Respondent, a special education teacher, unsuccessfully argued that she could teach entry-level English classes. Respondent did not hold the required credential and a teacher retained to teach special education had greater seniority. Bishop (Reyes).**
4. **Respondent failed to demonstrate that she satisfied competency criteria that required teachers to hold a BCLAD. Respondent’s BCLAD certificated was valid from August 2006 to September 2007. Respondent could not establish certification for the 2007-2008 school year and recertification was uncertain because it was subject to conditions. Oxnard (Reyes).**
5. **Respondent unsuccessfully argued that she should be permitted to displace a junior teacher assigned to continuation school. Respondent did not meet the district’s competency criteria which required teacher hold a single subject certification to teach the class in question and be considered “highly qualified” under NCLB. Taft (Reyes).**
6. **Respondents, teachers classified as temporary with preliminary credentials, unsuccessfully challenged the district’s layoff analysis. District properly retained two teachers, one teacher possessed a clear credential and the other possessed a masters degree whereas the Respondents with the same hire date held bachelors degrees. La Canada (Thomas).**

7. Employee not entitled to bump less senior employee. Employee possessed a preliminary multiple subject credential, with a supplemental credential in English, and CLAD certification. (Factual Finding 8.) According to the ALJ, “[s]he did not establish by competent evidence that she is credentialed or qualified to teach math.” (Factual Finding 8.) No other analysis was provided. Forestville (Astle).
8. Employee not entitled to bump less senior employee. Employee was a 0.8 FTE teacher that claimed she was competent and qualified to teach at least a portion of a less senior employee’s assignment. (Factual Finding 8.) The ALJ held that the employee “did not identify any 0.8 F.T.E. positions for which she is credentialed and qualified to teach,” and that “[t]he district is not required to break-up Ms. Fox or Mr. Hayden’s assignment to accommodate Ms. Nelson.” (Factual Finding 8.) Forestville (Astle).
9. A certificated .5 FTE employee may not bump a full-time junior employee, out of his or her position. A .5 FTE employee is not entitled to employment rights in excess of his .5 FTE and a school district is not required to subdivide a single full time position to provide a part time position for a displaced .5 FTE employee. Sacramento COE (Sarli).
10. District correctly disallowed two part-time psychologists from bumping a less senior full-time psychologist. The ALJ relied upon *Murray v. Sonoma County Office of Education* (1989) 208 Cal.App.3d 456, to find that a full-time employee cannot be displaced by a part-time employee. The District was not required to divide the full-time position into part-time positions to accommodate their desire for part-time employment. St. Helena (Tompkin).

D. Miscellaneous.

1. District unsuccessfully argued that Respondent should only be retained to teach a part-time assignment where three of Respondent’s five periods involved bilingual instruction to students learning the English language. The board resolution stated, “The District shall retain certificated employees, regardless of their seniority (unless the employee is bumped by a more senior and competent employee), to the extent one or more of their assignments meet any of the following criteria . . . [¶] 4. Employees who possess a Bilingual Cross-Cultural Language and Development certificate, are teaching one or more bilingual classes for the District in the 2006-2007 school year, and are expected to teach one or more bilingual classes for the District in the 2007-2008 school year.” Respondent should have been permitted to

exercise his displacement rights for two periods to achieve full time status. Oxnard (Reyes).

2. Respondent successfully argued that other employees with the same seniority or less were being retained to teach classes that he was certificated and competent to teach in the upcoming school year. The district failed to present evidence regarding the credential requirements to teach various courses that were going to be taught by teachers with the same first date of paid service or a junior employee. Sutter Union (Smith).

IX. ASSIGNMENTS AND REASSIGNMENTS

1. No requirement for district to assign teachers, with their consent, to teach at a grade level for which such teacher does not specifically hold a valid credential based upon the college-level course work completed by that teacher. Education Code section 44256(b) allows district discretion. Scotia Union (P. Johnson).