

BEFORE THE  
GOVERNING BOARD OF TRUSTEES OF THE  
KING CITY UNION ELEMENTARY SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JULIE ADAMS, VERONICA ALVAREZ,  
BRIDGETTE BEATTY, LAURA BORIACK,  
LORI BRITTAN, JIL BURNES,  
SUZANNE CONTRERAS, NICHOLAS CUELLAR,  
JENNIFER HALE, NICOLE HANES,  
BRET HARRISON, LINDSAY HOUGHTALING,  
LAUREN JANGAARD, JAMIE JONES,  
TIFFANY LEWIS, HEATHER LOWRY,  
TWYLA MAH, DANIELLE McCARTHY,  
MICHAEL MONTGOMERY,  
JENNIFER MOORE, MAGGIE NOLTE,  
ALISON O'HAGAN, JENNIFER OLSON,  
JENNIFER ORME BURNS, JEAN OVERLAND,  
MICAELA PEPPE, REBECCA PHILLIPS,  
AMY PICKARD, KATIE PONTIS,  
NICOLE PUMPHREY, JASON ROSS,  
CINDY SALCIDO, SAMANTHA SCOTT,  
KARRIE SERPA, CHERYL SILVA,  
JEFFREY SNOWBARGER, DIANNA TAYLOR,  
APRIL TERPILOWSKI, JOSEPH TICE,  
ALICIA VAJAR, JENNIFER WEGIS,  
IVAN WEISS, and ANNETTE ZAMBRANO,

Respondents.

OAH No. 2009030835

**PROPOSED DECISION**

On April 14, 2009, at the District Office Board Room at 800 Broadway in King City, Monterey County, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter.

Louis T. Lozano, Attorney at Law, and Micah K. Nilsson, Attorney at Law, of Lozano Smith, 4 Lower Ragsdale Drive, Suite 200, Monterey, California 93940, represented Thomas Michaelson, Superintendent, King City Union Elementary School District.

Michelle A. Welsh, Attorney at Law, of Stoner, Welsh and Schmidt, 413 Forest Avenue, Pacific Grove, California 93950-4201, represented most of the Respondents in this matter.

Respondent Jeffrey Snowbarger represented himself, but he only attended a portion of the hearing.

Respondents Sharon Donovan, Jessica Ferreira, Martina Rendon, Danielle McCarthy, and April Terpilowski, who were not represented by a lawyer, did not attend the hearing in this matter.

The record was held open so as to afford an opportunity to the Respondents, represented by Ms. Welsh, to supplement the record with written memoranda regarding various issues that arose during the proceeding and also to file, if necessary, written closing arguments in this matter. And the record was held open to enable the Superintendent, through his counsel, to file reply memoranda, if necessary, regarding the arguments made by Respondents, and to address in writing certain issues raised at the hearing, and also, if necessary, to file written closing arguments. On April 20, 2009, OAH received from the Respondents' counsel, "Supplemental Administrative Law Brief RE: Violations of The Brown Act [Gov. Code, §§ 54954.2 and 54957.5]," which was marked as exhibit "G-2," and was designated as argument. And on April 20, 2009, OAH received from Respondents' counsel a document titled "Supplemental Administrative Law Brief RE: English Language Learners: Proposition 227," which was marked as exhibit "L," and received as argument. Also on April 20, 2009, OAH received a memorandum titled "King City Union School District's Brief in Opposition to Respondents' Claim that Non-Reelection of Three Probationary Employees Before the Layoff was Improper," which was marked as exhibit "17," and was received as argument. On April 23, 2009, OAH received "Respondents' Reply to King City Union School District's Brief RE: Non-Reelection of Three Probationary Teachers," which was marked as exhibit "M" and received as argument. On April 24, 2009, OAH received a memorandum titled "King City Union School District's Administrative Law Brief Regarding Competency Criteria," which was marked as exhibit "18" and was designated as argument. Also on April 24, 2009, OAH received a document titled "King City Union School District's Reply Brief Regarding English Language Learners," which was marked as exhibit "19" and was designated as argument. In addition, on April 24, 2009, OAH received a document titled "King City Union School District's Brief in Opposition to Respondents' Brown Act Violation Claims," which was marked as exhibit "20" and was designated as argument. And, on April 24, 2009, OAH received from the Superintendent, through his counsel, a memorandum titled "Closing Brief," which was marked as exhibit "21" and was designated as argument.

On April 24, 2009, the parties were deemed to have submitted the matter and the record closed.

## FACTUAL FINDINGS

1. On March 27, 2009, in his official capacity, Thomas Michaelson, Superintendent for the King City Union Elementary School District (the Superintendent), made and filed the respective accusations regarding Respondents Julie Adams, Veronica Alvarez, Bridgette Beatty, Laura Boriack, Lori Brittan, Jil Burnes, Suzanne Contreras, Nicholas Cuellar, Jennifer Hale, Nicole Hanes, Bret Harrison, Lindsay Houghtaling, Lauren Jangaard, Jamie Jones, Tiffany Lewis, Heather Lowry, Twyla Mah, Michael Montgomery, Jennifer Moore, Maggie Nolte, Alison O’Hagan, Jennifer Olson, Jennifer Orme Burns, Jean Overland, Micaela Pepple, Rebecca Phillips, Amy Pickard, Katie Pontis, Nicole Pumphrey, Jason Ross, Cindy Salcido, Samantha Scott, Karrie Serpa, Cheryl Silva, Jeffrey Snowbarger, Dianna Taylor, Joseph Tice, April Terpilowski, Alicia Vajar, Jennifer Wegis, Ivan Weiss, and Annette Zambrano.

2. Respondents are certificated employees of the King City Union Elementary School District, who contest the proposed teacher layoff action.

3. On March 9, 2009, the District’s Governing Board adopted Resolution No. 18:08/09 (No. 18). The resolution recites that, pursuant to Education Code sections 44949 and 44955, it has become necessary for the District to reduce and/or to eliminate, as of the end of the 2008-2009 school year, particular kinds of services in the form of 43.0 full-time equivalent (FTE) certificated positions as follows:

Full-Time Equivalent	Particular Kinds of Services Position(s)
<b>Elementary School</b>	
19.0 FTE	K-3 Class Size Reduction
1.0 FTE	4-8 Class Size below state Maximum
2.0 FTE	Elementary Physical Education Teacher
1.0 FTE	Elementary Music
2.0 FTE	Categorical Resource Teacher
4.0 FTE	Early Intervention Teacher
2.0 FTE	Reading Coach
1.0 FTE	Math Coach
<u>1.0 FTE</u>	<u>Newcomer Specialist</u>
33.0 FTE	Subtotal Elementary Program/Services Reductions
<b>Middle School</b>	
1.0 FTE	Music Teacher (Band/Strings)
4.0 FTE	English Language Arts Teacher
5.0 FTE	Math Teacher
2.0 FTE	Social Science/History Teacher
1.0 FTE	Art Teacher
1.0 FTE	AVID Teacher
2.0 FTE	Physical Education Teacher

2.0 FTE	<u>6-8 Class Size below State Maximum</u>
18.0	Subtotal Middle School Program/Service Reductions
-8.0 FTE	<u>6th Grade Self Contained Classroom</u>
10. FTE	Net Subtotal Middle School Program/Services
Reductions	
43.0 FTE	Grand Total Program/Services Reductions

4. On March 12, 2009, the Superintendent's designee, Mr. Kim Williams serving as Interim Director-Human Resources, presented the District's Board of Trustees with a recommendation that the District give notice that particular kinds of services (PKS), then offered through the District, be reduced or eliminated by the District for the ensuing school year (2009-2010). The recommendation, which included an attachment, set out the names of certificated employees, including Respondents, as the holders of positions that corresponded with the services that would be reduced or eliminated for the ensuing school year, and informed the District's Board that notice had been given to each employee who was to be affected by the proposed reduction or elimination of services.

5. The Superintendent's written preliminary notice, dated March 10, 2009, to each Respondent stated legally sufficient reasons of the District's Board's intent to eliminate the services provided by Respondents. (The District's Director-Human Resources caused the initial layoff notice to be either personally served upon, or served by certified mail to the last known address of, each Respondent on March 11, 2009, and March 12, 2009.)

6 Respondents each timely requested in writing a hearing to determine whether or not cause exists for not reemploying each Respondent for the ensuing school year.

7. District's Superintendent timely served upon each Respondent the Accusation, dated March 27, 2009, and related documents. Each Respondent filed a timely notice of defense.

8. All pre-hearing jurisdictional requirements were met.

*Respondents' Contentions*

9. Respondents contend that the pertinent resolutions<sup>1</sup> of the Board were adopted on March 9, 2009, in violation of two provisions of the Ralph M. Brown Act (Gov. Code, §§ 54954.2 and 54957.5). Respondents advance that the District violated the Brown Act as well as Education Code section 35145 when it enacted Resolution No. 18 that prescribed the reduction or elimination of particular kinds of services and that contemplates the layoff of Respondents in this matter. Hence Respondents contend all the resolutions that pertain to the

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<sup>1</sup> The subject resolutions pertained to: reduction or elimination of particular kinds of services; tiebreaking criteria or procedure; and criteria for the determination of competence.

layoff action, including the tiebreaking criteria, the criteria to determine competence and the scheme to determine deviation from the seniority order (skipping), must be declared void with the resultant effect that the accusations against Respondents be dismissed.

Also, Respondents aver that the proposed layoff action is contrary to law with regard to the federal and state law requirement that the school district provide services for English language learners (20 U.S.C. § 1703, subd. (f); 32 U.S.C. § 2000, subd. (d); and California Ed. Code, § 44253.1 *et seq.*) In particular, Respondents contend that the District may not retain a teacher with less seniority while dismissing a senior certificated employee simply because the junior employee possesses a BCLAD certificate or an ELA authorization where the junior employee is not assigned to a position that requires bilingual skills or possession of a BCLAD certificate.

Further, Respondents contend that the District failed to comply with Education Code section 44955 that requires certificated employees to be laid off “in the inverse of the order in which they were employed.” Respondents assert that the District’s definition of competence is not valid.

Also because Education Code section 44955, subdivision (d), authorizes deviation from the inverse-order scheme for seniority only when the District meets the burden established by the law, Respondents argue that the District did not address three critical elements in assessing competency in order to skip junior teachers in a correct layoff process as to: (i) having a specific need for personnel to teach a specific course or course of study; (ii) showing the junior employee, who is selected to be retained for the ensuing year, has special training and experience necessary to teach the specified course or course of study; and, (iii) indicating the more senior teacher, who is subject to layoff, does not possess the necessary special training and experience.

And Respondents contend, in addition to the defect with competency definition, that the District’s “skipping” criteria, and execution of the same, violate Education Code section 44955 when the District, being without specific proof of a specific need and need for specific training and experience, retains a junior teacher over a more senior certificated employee

But Respondents’ jointly advanced contentions are without merit, and are rejected based on the factual findings and legal conclusions set out below.

#### *Individual Respondents or Percipient Witnesses Called By Respondents*

10. Sixteen individual Respondents offered particularized contentions and testimony at the hearing of this matter. Each Respondent advanced that his or her particular service or teaching assignment to the District should not be reduced so as to result in the layoff of the particular individuals.

*i. Jeffrey Snowbarger*

11. Respondent Jeffrey Snowbarger, who represented his own interest, argued that the District failed to correctly record on the seniority list his actual first date of paid service to the District. He noted that he attended the Scott Foresman Grade Two training under the SB 472 Mathematics Professional Development training as authorized by the California County Superintendents Educational Services Association. As a result of the training program, which ran from August 6, 2007, through August 10, 2007, Respondent Snowbarger earned a certificate of completion for his enrollment in the initial 40-hour institute as provided the Sacramento County Office of Education, which is a Scott Foresman SBE Approved Lead Provider. Respondent Snowbarger offered a Letter of Verification, dated “Aug./2007,” on the stationery of the University of the Pacific Professional Development for Educators for completion of the course titled “SB 742 Mathematics Training.” But Respondent acknowledged that the training was not required by the District. And he was paid a stipend to attend the training, which was not part of the salary payable to him under the contract with the District.

Because of the training, Respondent Snowbarger erroneously believes that his first date of paid service to the District should be recorded as August 6, 2007. He offered neither documentary evidence nor testimony from an expert witness to establish that he has a first date of paid service to the District other than the date that is shown on the District’s seniority list.

Respondent Snowbarger has a first date of paid service to the District as August 13, 2007. He is a second-year probationary (Prob 2) teacher to the District. Respondent Snowbarger occupies place number 119 on the District’s Seniority List.

Respondent Snowbarger does not possess a BCLAD.

Respondent Snowbarger provided no competent evidence that the District has retained any teacher junior to him to perform services for which Mr. Snowbarger possesses a credential and is currently competent to teach. Nor did Respondent Snowbarger establish that the Superintendent committed a procedural error in the execution of the layoff action that adversely affects his teaching position with the District.

*ii. Bret Harrison*

12. Respondent Bret Harrison is a middle school science teacher. He has a first date of paid service to the District as August 13, 2007. He is a probationary second-year (Prob 2) teacher to the District. Respondent Harrison occupies place number 120 on the District’s Seniority List. He holds a clear multiple-subject credential, a single-subject (Science) credential and a CLAD certificate.

Respondent Harrison contends that because Science is not a service that is to be reduced, the layoff action is improper as against him.

Respondent Harrison does not possess a BCLAD.

Respondent Harrison provided no competent evidence that the District has retained any teacher junior to him to perform services for which Mr. Harrison possesses a credential and is currently competent to teach. Nor did Respondent Harrison establish that the Superintendent committed a procedural error in the execution of the layoff action that adversely affects his teaching position with the District.

*iii. Lauren Jangaard*

13. Respondent Lauren Jangaard is an Early Intervention Specialist (reading) teacher at a District elementary school. She has a first date of paid service to the District of July 3, 2006, and she is a permanent (tenured) teacher.

Respondent Jangaard holds a multiple subject credential and a supplemental authorization in science. Respondent Jangaard has special training in reading for students who are afflicted with dyslexia.

Although she has taught at the second grade level for another District in English language development, Respondent Jangaard has not taught science at the middle school level.

Respondent Jangaard does not possess a BCLAD.

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

*iv. Julie Adams*

14. Respondent Julie Adams occupies the District's position as "new comer teacher" at a middle school. She has a first date of paid service to the District as August 19, 2003. She is a permanent (tenured) teacher with the District. Respondent Adams occupies place number 94 on the District's Seniority List. She holds a clear multiple-subject credential and a CLAD certificate. She has a supplemental credential in Science.

Respondent Adams argues that the District should retain her for the ensuing school year under either the multiple subject credential or the supplemental credential in Science.

Respondent Adams teaches in a self-contained sixth, seventh and eighth grade class of students. She teaches language arts, math, science and social studies. But she has not taught science in a single subject classroom at the middle school level.

Respondent Adams does not possess a BCLAD.

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

v. *Bridgette Beatty*

15. Respondent Bridgette Beatty is employed by the District as the “math coach.” She has a first date of paid service to the District as August 14, 2008. She is a probationary first-year (Prob 1) teacher to the District. Respondent Adams occupies place number 140 on the District’s Seniority List. She holds a clear multiple subject credential and a CLAD certificate.

Recently, Respondent Beatty completed a course that will prospectively vest her with a supplemental authorization in mathematics. But the Commission on Teacher Credentialing has not yet issued the authorization to her. Hence, at the time the District initiated the layoff action Ms. Beatty did not hold a credential that would have allowed her to teach mathematics in a self-contained classroom for the provision of that service.

Respondent Beatty does not possess a BCLAD.

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

vi. *Laura Boriack*

16. Respondent Laura Boriack is employed as a first-grade teacher at a District elementary school. She has a first date of paid service to the District as August 9, 2006. She is a permanent (tenured) teacher to the District. Respondent Boriack occupies place 109 on the District’s Seniority List. She holds a clear multiple subject credential and supplemental authorizations in English and Mathematics. She is able to teach English and Mathematics in single-subject classrooms.

Respondent Boriack erroneously believes that the District has passed a resolution to retain, at least, two junior teachers to teach mathematics when those individuals do not possess credentials. She cited Board Minutes, dated January 21, 2009, that read, in part: “[c]onsider [resolutions] to teach Ed. Code 44256(b) for Roger Hill. . . [and] . . . Glen

Vonderheide. . . The individual teachers have the required units to teach in the specific areas, [but] they do not hold a credential for the subject, only their multiple subject credential.”

But, Respondent Boriack acknowledged that the District’s Seniority List shows Mr. Vonderheide to have a first date of paid service of August 12, 2000, and that he occupies position number 64 on the Seniority List. Also, the Seniority List shows Mr. Roger Hill to have a first date of paid service to the District of August 31, 1989. Mr. Hill and Mr. Vonderheide each hold multiple subject credentials. And Respondent Boriack observed that she does not have knowledge regarding the positions that those individuals will be assigned for the ensuing school year, although for the current school year they hold positions as mathematics teachers under “Ed Code waivers.”

Respondent Boriack teaches math to first-grade students. She has taught a fifth-grade after-school program in another county. And she has taught single-subject math as a substitute teacher in a high school. All that teaching experience occurred within the past ten years.

Respondent Boriack does not possess a BCLAD.

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

*vii. Suzanne Contreras*

17. Respondent Suzanne Contreras teaches at a District middle school. She has a first date of paid service to the District as August 14, 2008. She occupies position number 137 on the District’s Seniority List, as amended at the hearing by the District’s Human Resources Director. Respondent Contreras is designated as a first-year probationary (Prob 1) teacher. She possesses a clear multiple subject credential, and a CLAD certificate. She is a RSP teacher. Respondent has a GATE certificate. Respondent Contreras is ELD qualified. And she has had training on three occasions for the AB 466 program. And Respondent Contreras has completed the Scott Foreman mathematics instructor training.

Respondent Contreras notes that the District initially hired her on July 24, 2001. She worked for the District as a fourth-grade teacher until August 16, 2007. In August 2007, Respondent Contreras resigned a permanent position with the District, and she moved to Salinas, where she worked at an elementary school. Respondent asserts that because she returned to the District within 39 months of having left her employment under the authority of Education Code section 44931 her permanent status should be restored.

Respondent Contreras objected to her placement on the seniority list insofar as her she was impacted by the tie-breaking criteria chart (exhibit 5) that showed her in the eighth

slot among the teachers who have the same date of paid service to the District as she has, namely, August 14, 2008. Respondent Contreras has 79 college course units above a bachelor's degree and has earned other certificates not possessed by others with the same first date of paid service. Due to the evidence offered by Respondent Contreras, the Human Resources Director amended the seniority list so as to indicate that Respondent Contreras holds the second (2nd) position in the tie-breaking scheme with teachers having a first date of paid service as August 14, 2008. However, none of the teachers with that August 2008 are being retained under the current layoff action.

Respondent Contreras can read and write in the Spanish language. Although she is not a native Spanish speaker, she has spoken that language for about 20 years. From time to time District administrators have asked her to act as an interpreter at conferences with Spanish-speaking parents.

But Respondent Contreras does not possess a BCLAD.

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

*viii. Jamie Jones*

18. Respondent Jamie Jones is a third-grade teacher. She has a first date of paid service to the District as October 3, 2005. Respondent Jones is a permanent (tenured) teacher to the District. Respondent Jones occupies place number 105 on the District's Seniority List. She holds a clear multiple-subject credential. And Respondent Jones has an EL authorization.

Respondent Jones teaches at the charter school. She is a member of the Parents' Advisory Council. Respondent Jones objects to the District's Board failure to consult with Charter School advisors.

Respondent Jones does not possess a BCLAD.

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

*ix. Samantha Scott*

19. Respondent Samantha Scott is a middle school teacher. She teaches sixth, seventh and eighth grade students in a self-contained classroom, which is designated the “second-year ELD newcomers” class. The District’s Seniority List shows her to have a first date of paid service of November 1, 2006. Respondent Scott holds position number 116 on the Seniority List. She is a second-year probationary (Prob 2) teacher.

Respondent Scott has earned sufficient college credit to apply for a mathematics supplemental credential. But she is only “in the process” of filing the application for that credential as the CTC has not issued her that credential.

Respondent Scott notes that she began as a long-term substitute teacher with the District on August 20, 2006. When the District hired her she was an intern, and she worked under a temporary teacher contract. She completed the “credential program” in recent years. There was no break between the end of her tenure as a long-term substitute and the date she began as a probationary teacher. But Respondent Scott is not persuasive that her long-term substitute status justifies a first date of paid service to the District other than November 1, 2006.

Respondent Scott holds a multiple subject credential and an EL authorization. But she does not possess a BCLAD.

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

*x. Dianna Taylor*

20. Respondent Dianna Taylor is a first-grade teacher. She has a first date of paid service to the District of August 13, 2007. Respondent Taylor holds a preliminary multiple subject credential. She was once an intern with the District. She is a “Prob Zero” teacher with the District. And she occupies position number 133 on the District’s Seniority List. Respondent Taylor obtained her credential in December 2008.

Respondent Taylor does not possess a BCLAD.

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

*xi. Karrie Serpa*

21. Respondent Karrie Serpa is a first-grade teacher. She has a first date of paid service to the District as August 13, 2007. She has a position number 130 on the Seniority List. Respondent Serpa is a second-year probationary (Prob 2) teacher with the District.

The District's records show that she has a preliminary multiple subject credential. She is "in the process" of applying for a supplemental credential in Spanish. Although she is "little below [being] fluent" in Spanish, Respondent Serpa does not hold a BCLAD.

Respondent Serpa does not possess a BCLAD.

Respondent Serpa contends that she has skills that enable her to meet the needs of the District for teachers who can communicate in the Spanish language. She objects to the layoff that affects her because she can speak Spanish, even though she does not hold a BCLAD.

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

*xii. Joseph Tice*

22. Respondent Joseph Tice is a middle school physical education teacher. He has a first date of paid service to the District of August 26, 1998. Respondent Tice occupies place number 53 on the District's Seniority List. He holds a Standard Secondary level credential in physical education. Also Respondent Tice holds a CLAD certificate.

Respondent has a college major degree in physical education and a minor degree in social sciences with an emphasis in psychology.

Respondent Tice erroneously opined that he should have a seniority date that is one-week further in the past because he attended a training program, which he was paid to attend. But, he offered no documentary evidence to show that the District paid him under a school year oriented contract as opposed to the compensation being a daily stipend. Further, the Superintendent, through counsel, showed that on February 23, 2009, Respondent Tice signed a form, titled "Credentials and Seniority," that shows he marked as "correct" that his first date of paid service is "8/26/1998." Also he noted as being correct that he holds a life-time "Standard Secondary" credential with physical education authorization. The notations he made on the form ("MCDE Math Conference 2 weeks 80 hours/ Cal Poly P.E. and coaches workshop 2 weeks 80 hours/ All district in-service training") do not support his assertion that he has a seniority date before August 26, 1998.

Respondent Tice notes that a teacher in a physical education assignment, namely Dave Sarbeck who has a seniority date of June 28, 1999, and occupies position number 57, is being retained by the District. In addition to physical education, Mr. Sarbeck, who holds a multiple subject credential, teaches social science. But, Respondent Tice does not know the position that Mr. Sarbeck is to be assigned next year.

Respondent Tice, who has been a physical education teacher for 28 years, unpersuasively contends that the District's proposed layoff action will not allow the state mandated time for physical education to be met. He notes that middle school students are to have 400 minutes of P.E. for every ten days of school, which he does not believe can be met. However, Respondent Tice does not have knowledge regarding the District's assignment schedule for teachers who will attend to physical education classes for the coming year.

Respondent Tice acknowledges that he can teach neither social science nor any science class.

Respondent Tice does not possess a BCLAD.

Respondent Tice provided no competent evidence that the District has retained any teacher junior to him to perform services for which Mr. Tice possesses a credential and is currently competent to teach. Nor did Respondent Tice establish that the Superintendent committed a procedural error in the execution of the layoff action that adversely affects his teaching position with the District.

*xiii. Alicia Vajar*

23. Respondent Alicia Vajar is a second-grade teacher. She has a first date of paid service to the District of August 21, 2001. Respondent Vajar occupies place number 86 on the District's Seniority List. She is a permanent (tenured) teacher with the District. Respondent Vajar holds a multiple subject credential and a CLAD certificate.

Respondent Vajar objects to the application of the District's tie-breaking criteria. She believes that her placement in the third spot among teachers having the same date of paid service to the District is erroneous. She claims that she had more credits than Jennifer Wegis; however Ms. Wegis is also subject to the layoff action.

Respondent Vajar has "some" Spanish language ability. But Respondent Vajar does not possess a BCLAD.

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

*xiv. Annette Zambrano*

24. Respondent Annette Zambrano is a reading specialist teacher at the kindergarten and first-grade levels. Her certificated employee position is designated as “Intervention Specialist.” She has a first date of paid service to the District of July 29, 2003. Respondent Zambrano occupies place number 93 on the District’s Seniority List, and she is a permanent (tenured) teacher to the District. She holds a multiple subject credential and a CLAD certificate.

Respondent Zambrano has received special training in teaching reading over a period of six years. She has taught reading at the fourth and fifth grade, as well as an after-school reading program for second-grade students. About four years ago, Respondent Zambrano began a master’s degree program in reading, but after four classes (12 units) in the program, she ended that course of study. She has not made an application for a supplemental credential in reading despite the courses she has completed in the master’s program.

But Respondent Zambrano does not possess a BCLAD.

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

*Respondents together*

*a. Claim of Brown Act Violations*

25. Respondents assert that the resolutions, which were adopted on March 9, 2009, with regard to the layoff action, were neither attached to the Board’s meeting agenda in advance of the proceeding nor distributed to the public in attendance at the meeting. Such oversight or neglect, as argued by Respondents, violated the Brown Act as to two sections (Gov. Code, §§ 54954.2 and 54957.5). Respondents contend that no member or the public, parent or teacher reviewing the agenda before the March 9, 2009, meeting could have discerned the scope or range of the reductions or elimination of particular kinds of services that would be contemplated by the Board for recordation in an adopted resolution. Nor could interested individuals, Respondents argue, discover the names of the actual teachers who would be affected by the reduction or elimination of services by the supposed Brown Act violations. And by the claimed Brown Act violation, the public, parents and affected teachers could not ascertain the criteria that would be devised to determine competency or to break ties among teachers with the same first day of paid services to the District as set out on the District’s seniority list.

Also Respondents argue that the exceptions provided by Government Code section 54975 of the Brown Act allow for deviation from the open meeting rules to “consider the

appointment, employment, evaluation of performance, discipline or dismissal of a public employee or to hear complaints or charges brought against the employee.” But the exception does not create “a blank check to hold closed sessions on any subject deemed a personnel matter. . . .” Respondents contend that because no exception exists to the Brown Act requirement in the instance of the March 9, 2009, meeting, the Board’s action must be determined to be void.

26. Respondents called two witnesses to offer evidence in support of the contentions that pertain to the District’s supposed violation of the Brown Act.

*i. Mildred Dodd*

27. Ms. Mildred Dodd has been employed by the District for 19 years. She is not a Respondent in this matter; rather, Ms. Dodd is a former officer in the teachers’ union.

Ms. Dodd attended the March 9, 2009, meeting of the District’s Board. Before the meeting she received an “incomplete” meeting packet of documents being considered for the meeting. Ms. Dodd supports Respondents’ contention that the Board violated the Brown Act. However, her testimony was not persuasive that the acts of the Board’s personnel violated the Brown Act.

Ms. Dodd was not present for all portions of the Board’s meeting on March 9, 2009. She has no personal knowledge of the topics discussed at the meeting regarding the Board’s adoption of all the resolutions that pertained to the proposed layoff action.

Ms. Dodd did not establish that the Superintendent or the Board committed any procedural error in the initiation of, or execution of, the layoff action that adversely affects the Respondents’ teaching positions with the District in a manner that violated the law or the due process rights of the Respondents involved in this matter.

*ii. Rose Howard*

28. Ms. Rose Howard is the local president of the labor union for teachers with the District. She is a RSP teacher at the middle school level.

In her capacity as president of the local union, Ms. Howard attended the March 2009 meeting of the District Board that resulted in the resolutions that pertain to the reduction or elimination of services and other aspects of the layoff proceeding. Before the meeting, Ms. Howard did not receive all the pages that later were shown to be involved in promulgating the resolutions. However, her testimony was not persuasive that the acts of the Board’s personnel violated the Brown Act.

Ms. Howard did not establish that the Superintendent or the Board committed any procedural error in the initiation of, or execution of, the layoff action that adversely affects

the Respondents' teaching positions with the District in a manner that violated the law or the due process rights of the Respondents involved in this matter.

29. Respondents' arguments and presentation of evidence on the claimed Brown Act violations are not persuasive. Respondents' contentions regarding the necessity for dismissal of the accusations due to such violations are rejected.

*b. English Language Learners*

30. Respondents advance that in 1998 Proposition 227 passed, and, thus, led to provisions to be codified as Education Code sections 300 through 340. Subject to limited exceptions, the law requires "all children in California public schools shall be taught English by being taught in English." An exception exists where a parent executes a written waiver that follows a personal visit to the school site and where the waiver visit consists of a disclosure or a full description of the educational materials, program choices and opportunities available to the child, before the child may be taught in a classroom where all or nearly all classroom instruction is not in the English language. Respondents advance that the District has no "Prop 227 parent waivers" on file, and that the District does not offer bilingual education in any degree. Respondents object to the District's skipping arrangement that enables the District to retain junior teachers who possess BCLAD while dismissing senior certificated employees who lack that certification; especially, as Respondents argue the District has no positions that actually require a teacher to possess such certificate or authorization. Respondents argue that the District has not met its burden of proof that BCLAD certificate holders can render a specific service needed by the District, so that senior teachers, including Respondents Suzanne Contreras and Karrie Serpa, who do not possess such credentials, must be retained by the District.

Respondents' contentions regarding the District's approach to mandates enacted by Proposition 227 and the current used of BCLAD possession by teachers were not compelling. The evidence in support of the contentions does not alter the reasonableness of the District's resolutions that pertain to the reduction or elimination of services and the Board's decision to create an objective process for retaining teachers whose experience and skills meet the needs of the District and its students.

*c. Competency Criteria and "Skipping" Criteria*

31. Respondents argue that the District erred by failing to meet the requirement under Education Code section 44955, subdivision (d), that authorizes deviation from layoff according to seniority only when the District can meet the elements of "necessity" for the retention of junior teacher who possess special training and experience for the provision of certain identified services. But Respondents offered insubstantial evidence to show that the District failed to craft and to implement resolutions for competency and skipping determinations so as to render the layoff procedure void.

*d. Non-reelection of Three Teachers and the District's Attrition*

32. Respondents argue that three probationary employees, who were given notice of being "non-reelected" before the Board's layoff action began with the March 9, 2009, resolutions, held positions that were not properly accounted for by the Superintendent's designees in recommending the reduction or elimination of particular kinds of services, and then began executing the layoff process. Another teacher retired before the March 9, 2009, Board meeting. Accordingly, Respondents contend that the District's layoff exceeds the restrictions of Education Code section 44955 by attempting to increase the reduction in services beyond the number of positions as authorized by the Board's PKS resolution by failing to include in the resolution those services rendered by four teacher who resigned or retired. Respondents find a flaw with the perception that the District is leaving those four individuals' positions vacant while reducing identical service defined in the PKS resolution and executing the layoff action against Respondents. The argument of Respondents is that contrary to appellate court authority<sup>2</sup> the District must consider "positively assured attrition" when determining the number of certificated employees who are subject to be laid off.

Respondents are incorrect with their view of the District's supposed failure to account for the four teachers who either resigned or retired before the Board's adoption of the resolutions associated with the reduction or elimination of particular kinds of service.

*Respondents generally*

33. Other than the Respondents who are identified above in Factual Findings 11 through 24, no other Respondent offered evidence, under oath, at the hearing of this matter. Nor did Respondents call any expert witness to offer evidence in support of the contentions advanced by the individual Respondents or the arguments propounded by their counsel on behalf of Respondents that would affect the layoff action.

Respondents neither offered persuasive argument nor presented sufficient evidence that suggests the District's action is improper insofar as the prospective elimination or reduction of 43.0 FTE positions. Respondents did not present evidence that the corresponding layoff of credentialed employees, relative to the elimination of the subject FTE positions of the District, is contrary to law and unnecessary.

*Superintendent's Designees' Evidence Regarding The Reasonable Basis to Proceed*

34. Mr. Kim Williams, the District's Interim Director-Human Resources (the HR Director), came to the hearing of this matter and provided credible and persuasive evidence.

The HR Director established that the Superintendent, with the HR Director's advice and assistance, determined that the prospective elimination of particular kinds of services for the 2009-2010 school years will best serve the objectives and mission of the District, as well

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<sup>2</sup> *Moreland Teachers' Association v. Kurze* (1980) 109 Cal.App.3d 548.

as the welfare of the students served by the District. The layoff action arose out of the District's diminished financial conditions. On March 9, 2009, the HR Director, as approved by the Superintendent, set out in a memorandum that the execution of the resolutions, which pertained to the proposed reduction in certificated staff personnel, would result in a savings to the District of about \$2,856,000 in salaries and benefits.

The HR Director, as the Superintendent's designee, was reasonable in the exercise of discretion in executing the procedures associated with layoffs required by the subject resolution. The HR Director, at the direction of the Superintendent, was neither arbitrary, capricious nor fraudulent in carrying out the directive of the Board's Resolution No. 18.

The only mandated service, which is being reduced, is Physical Education; however, the District has sufficient teaching resources to meet the state requirements for the ensuing year. The District's contemplated use of a combination of the multiple subject elementary credentials teachers and the remaining single subject physical education secondary teachers will enable the District to provide the mandated number of minutes of physical education instruction for benefit of the District's students.

35. On March 9, 2009, the Board adopted Resolution No. 20 that prescribed criteria for determining a deviation from terminating a certificated employee in order of seniority, otherwise known as "skipping" criteria. The criteria was grounded on the District's demonstration of specific need for certain personnel to teach a specific course or course of study, and that certain certificated employees possessed special training and experience necessary to teach the retained course or course of study, which other certificated employees with more seniority do not possess.

The resolution noted that the skipping criteria embraced the needs of the District and its students as follows:

- i. Individuals fully-credentialed to serve in Special Education assignments;
- ii. Individuals who hold a reading specialist credential;
- iii. Individuals who hold a single subject mathematics credential;
- iv. Individuals who hold a single subject science credential;
- v. Individuals who hold a BCLAD authorization; and
- vi. Individuals who hold a clear English Learner authorization or who have met the requirements for renewal of an Emergency CLAD.

The Superintendent, and his designee, reasonably carried out the execution of the criteria for competency as well as the criteria for skipping that are involved with this layoff action.

36. The HR Director was credible when he noted at the hearing that the recommendation and draft Board resolutions, which were eventually adopted at the March 9, 2009, District Board meeting were not finalized in writing until a very few minutes before the commencement of the meeting. No member of the District's Board had knowledge of the contents of the HR Director's recommendations until a few minutes before the Board's members met on that evening in March 2009.

37. The HR Director was credible in describing that Respondent Scott began her employment with the District under an emergency, 30-day substitute teacher credential. Initially, she had a very short-term temporary teacher contract with the District. At the onset, Respondent Scott filled a vacancy at the middle school. On November 1, 2006, the District hired her under a provisional credential that had been issued on October 1, 2006. Respondent Scott is properly classified as a probationary teacher to the District.

38. Before the Board adopted Resolution No. 18, the District was aware of the attrition of four certificated employees. Three probationary employees were non-reelected under Education Code section 44929.21 (notice to not reelect a probationary certificated employee for poor performance), and another teacher retired before early March 2009.

Respondents are mistaken that those four positions should have reduced the FTEs that the Board authorized for reduction from 43.0 FTEs to 39.0 FTEs.

The HR Director was credible when he showed that the Board considered attrition before authorizing the reduction in service that affected the Respondents. And the District did account for the known attrition before executing the authorized reduction in service action. The HR Director established that the District would have reduced 47.0 FTE positions had the Board not taken into account the four teachers who either resigned or retired before March 9, 2009.

Respondents' vigorous argument that the three non-reelected teachers should be named on a rehire list lacks merit. First, those three individuals were not Respondents in this matter. Also the three non-reelected employees, for whom Respondent argue, did not appear at the hearing to offer evidence regarding having a right to act as a respondent so as to contest the appropriateness of the layoff action as initiated in accordance with resolution No. 18.

### *Ultimate Findings*

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

40. The decision of the District's Board to eliminate or discontinue a total of 43.0 FTE positions as specified in Resolution No. 18, including the positions held by each Respondent, was neither arbitrary nor capricious. Rather, the Board's determination was within the proper exercise of the discretion bestowed by law upon the District.

41. The District's proposed elimination or discontinuation of the subject full time equivalent positions, including the positions respectively held by Respondents, for the ensuing school year, is related to the welfare of the District and its overall student population.

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

### LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

2. The District provided all notices and other requirements of Education Code sections 44949 and 44955. This conclusion of law is made by reason of the matters set forth in Factual Findings 1 and 8.

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

*i. Brown Act*

4. Respondents argue that the March 9, 2009, meeting where the District's Board adopted resolutions that pertain to the layoff action violated the Ralph M. Brown Act, which is set out in Government Code sections 54950 et seq. In particular Respondents focus upon section 54954.2 (Agenda, Posting, and Related Matters) and section 54957.5 (Agendas and Other Writings Distributed for Discussion or Consideration at Public Meetings; Public Records; Inspection, and Closed Sessions.)

The Superintendent's arguments (King City Union School District's Brief In Opposition to Respondent's Brown Act Violation Claims, dated April 24, 2009, by Micah K. Nilsson) are adopted in their entirety and are incorporated herein by reference.

Respondents' contentions regarding the Brown Act violations are without merit. The motion for dismissal of the accusation on grounds of supposed Brown Act violations is dismissed, by reason of the Superintendent's argument as contained in the referenced brief and Factual Findings 26 through 29, and 36.

ii. *English Language Learners*

5. The Board's resolution that authorized the District to deviate from seniority in specified circumstances and to "skip" employees who possess certain credential was challenged by Respondents. The subject resolution identifies the possession of a Bilingual Crosscultural, Language and Academic Development (BCLAD) certificate, or bilingual authorization equivalency as a special skill that justified retention of an employee regardless of seniority. In the layoff process, the Superintendent's designees "skipped" employees who hold a preliminary or clear BCLAD or a bilingual authorization equivalent.

Respondents focus upon Proposition 227 that requires public schools to conduct classroom instruction in English. (Ed. Code, § 305). Respondent unpersuasively contend that the District is unlawful in devising criteria for skipping of junior employees who hold a BCLAD when there are senior teachers, who lack that certificate, yet can speak Spanish so as to communication with parents who only speak Spanish.

The Superintendent provide compelling evidence that it deviated from the seniority order in the layoff action and skipped certain employees who possessed the BCLAD because the skipped employees possess special training and experience necessary to meet the needs of the District. (*Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127.) The District has the discretion, right and obligation under both California and federal laws to determine the qualifications for teachers who provide instruction in its bilingual and immersion programs. The District may retain teachers who possess a BCLAD certificate or bilingual authorization equivalent to provide quality education to the English Language Learner students of the District. The resolution is reasonable, and is sustained, as adopted by the Board that allows teachers with a BCLAD, or equivalent, to be retained while Respondents who do not possess such certificate may be subject to layoff.

The Superintendent's arguments (King City Union School District's Reply Brief Regarding English Language Learners, dated April 24, 2009, by Micah K. Nilsson) are adopted in their entirety and incorporated herein by reference.

Respondents' contentions regarding the supposed incongruity between the Prop 227 mandate and the District's criteria to retain teachers holding a BCLAD are without merit. The motion for dismissal of the accusation on grounds of supposed violation is dismissed, by reason of the Superintendent's argument as contained in the referenced brief and Factual Findings 30 and 35.

iii. *Claim that Non-reelection of Three Probationary Employees Before the Layoff Procedure Improperly Weighed In Determining Attribution*

6. Respondents' arguments are in error regarding the supposed failed obligation of the District to consider the non-reelection of probationary employees when the Board crafted Resolution No. 18.

The Board properly acted in not reelecting probationary employees under Education Code section 44929.1. And the Board properly considered all known attrition before it passed its layoff Resolution that prescribed the reduction or elimination of 43 FTE position. The District's position is supported by *Cousins v. Weaverville Elementary School District* (1994) 24 Cal.App.4th 1846, and *California Teachers Assn. v. Mendocino Unified School District* (2001) 92 Cal.App.4th 522.

*Cousins* stands for the proposition, among other things, that it is within a school district's discretion not to retain probationary employees under circumstances applicable to the District.

And *Mendocino* held that a school district that has informed a probationary teacher that he or she will be laid off for economic reasons under Education Code section 44955 may thereafter validly determine not to reelect the teacher under Education Code section 44929.21. The decision demonstrates the broad discretion that the courts have given school districts in the process of ensuring the adequacy of its certificated employees.

The Superintendent's arguments (King City Union School District's Brief In Opposition to Respondents' Claim that Non-reelection of Three Probationary Employees Before the Layoff Was Improper, dated April 20, 2009, by Micah K. Nilsson) are adopted in their entirety and incorporated herein by reference.

Respondents' contentions regarding the District's failure to account for four teachers, who had either resigned or retired before March 9, 2009, are without merit. The motion for dismissal of the accusation on grounds of supposed violations is dismissed, by reason of the Superintendents' argument as contained in the referenced brief and Factual Findings 32 and 39 through 42.

iv. *Competency*

7. Respondents argued that the District is obligated to prove the elements laid out in Education Code section 44955, subdivision (d), in order to justify the District's retention of certain teachers over those claiming to be more senior. Respondent's argument is without merit because Education Code section 55955, subdivision (d), governs the process whereby a school district may deviate from terminating by order of seniority. In this matter, the District is not attempting to deviate from terminating competent teachers in the order of seniority. The most senior teachers meeting the criteria as prescribed by the Board's Resolution No.

19:08/09 (Determination of Competence) are being retained. In this matter, the District met its obligation of defining competence under the Education Code.

Respondents do not correctly recognize the distinction that Education Code section 44955, subdivision (d), provides as guidance for skipping when skipping criteria has not been clearly formulated by a school district. The subdivision does not actually apply to the determination of competence. The statute's use of wording, "[n]otwithstanding subdivision (b)" indicates that the Legislature acknowledged the process prescribed under Education Code section 44955, subdivision (b), so that in an instance of weakness in the application of seniority for qualified and competent certificated employees existed, there would be a process that authorized skipping of less senior teachers.

Respondents also err in the interpretation of *Alexander v. Board of Trustees of Delano Joint Union High School District* (1993) 139 Cal.App.3d 567. Rather than competency, the *Delano* decision dealt with skipping. More importantly, the *Delano* decision pertained to improper action by a board that had not established skipping criteria by board resolution before skipping junior teachers. The case showed that the board had relied on tie-breaking set forth by resolution that had not authorized skipping of junior teachers. Hence, in the *Delano* case no authority existed for the board's action under the facts of that case. In this matter, the Board clearly prescribed skipping criteria by a distinct resolution. And in this matter the skipping resolution expressed a specific need for teachers who possessed discreetly defined credentials, experience and skills, which reflected a process wholly distinct from the errors of the board in the *Delano* case.

The District's competency criteria are reasonable and calculated to ensure that teachers are assigned to positions for which they are competent. The decision in *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, provides guidance in the interpretation of the competency criteria for bumping of employees as outlined under Education Code section 44955. *Duax* determined to be valid the discretionary decisions necessarily exercised by school districts on matters pertaining to competence. The court noted that district may reasonably take into account consideration of skills and qualifications of teachers to be skipped and bumped because the school district personnel have special insight, experience and competence to make such decisions.

Respondents' arguments that merge the concepts of determining competency and applying skipping criteria were not persuasive. The Superintendent's arguments must prevail. Hence the Board's resolutions regarding competency and skipping criteria, and the execution by the Superintendent of the layoff, that pertain to certificated employees affected by those resolutions, are upheld.

The Superintendent's arguments (King City Union School District's Administrative Brief Regarding Competency Criteria, dated April 24, 2009, by Micah K. Nilsson) are adopted in their entirety and incorporated herein by reference.

Respondents' contentions regarding the District's supposed failure to adhere to the law that governs competency in the context of retaining teachers in a layoff proceeding are without merit. The motion for dismissal of the accusation on grounds of supposed violations is dismissed, by reason of the Superintendents' argument as contained in the referenced brief and Factual Findings 11 through 24, 34, 35 and 37.

*Dispositive Determinations*

8. Pursuant to Education Code sections 44949 and 44955 cause exists to give Respondents notice of the discontinuation of full-time equivalent positions in the particular kinds of services rendered by Respondents, by reason of the matters set out in Factual Findings 34 through 40, and 42.

9. The discontinuation of the subject particular kinds of service provided by each Respondent relates solely to the welfare of the District and its students within the meaning of Education Code sections 44949 and 44955, by reason of the matters in Factual Finding 41.

RECOMMENDED ORDER

1. The Accusations served on Respondents Julie Adams, Veronica Alvarez, Bridgette Beatty, Laura Boriack, Lori Brittan, Jil Burnes, Suzanne Contreras, Nicholas Cuellar, Jennifer Hale, Nicole Hanes, Bret Harrison, Lindsay Houghtaling, Lauren Jangaard, Jamie Jones, Tiffany Lewis, Heather Lowry, Twyla Mah, Danielle McCarthy, Michael Montgomery, Jennifer Moore, Maggie Nolte, Alison O'Hagan, Jennifer Olson, Jennifer Orme Burns, Jean Overland, Micaela Pepple, Rebecca Phillips, Amy Pickard, Katie Pontis, Nicole Pumphrey, Jason Ross, Cindy Salcido, Samantha Scott, Karrie Serpa, Cheryl Silva, Jeffrey Snowbarger, Dianna Taylor, Joseph Tice, April Terpilowski, Alicia Vajar, Jennifer Wegis, Ivan Weiss, and Annette Zambrano are sustained.

2. Final notice may be given to Respondents, named above, that their services will not be required for the 2009-2010 school year because of the reduction or discontinuance of the particular kinds of services by the King City Union Elementary School District.

DATED: May 7, 2009

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PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings  
State of California