

BEFORE
THE GOVERNING BOARD OF
VALLEJO CITY UNIFIED SCHOOL DISTRICT

<p>In the Matter of the Accusation Against:</p> <p>CERTAIN NAMED CERTIFICATED EMPLOYEES OF THE VALLEJO CITY UNIFIED SCHOOL DISTRICT REPRESENTING 190.10 FULL TIME EQUIVALENT POSITIONS,</p> <p style="text-align:center">Respondents.</p>	<p>OAH No. 2009020539</p>
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PROPOSED DECISION

On April 27, and April 28, 2009, within the Board Room of the Administrative Offices of the Vallejo City Unified School District at 665 Walnut Avenue, Vallejo, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Lawrence M. Schoenke, Attorney at Law, of Miller Brown and Dannis, 71 Stevenson Street, Nineteenth Floor, San Francisco, California 94105, represented Superintendent Mary M. Bull, Ph.D., (the Superintendent), for the Vallejo City Unified School District (the District).

David Weintraub, Attorney at Law, and David C. Coleman, Attorney at Law, of Beeson, Tayer and Bodine, 1404 Franklin Street, Suite 500, Oakland, California 94612, represented Respondents whose names appear on Attachment "A," hereto.

Respondent Ann Griffin was not represented by legal counsel at the hearing, and she attended part of the proceeding, but, she chose to take no active part in the proceedings.

Before March 15, 2009, the District Superintendent's personnel served other individual certificated employees, who were not represented by attorneys, with a Notice of the Hearing but they failed to appear for the hearing of this matter, even though some of those individuals may have filed Request for Hearing forms. But the District made no motion for an order to deem the absent respondents, who were not represented by legal counsel, to be in default pursuant to Government Code section 11520. Hence, the hearing proceeded in their absence.

On April 28, 2009, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. On or before March 4, 2009, the District’s Superintendent presented the District’s Governing Board with a recommendation that the District give notice that particular kinds of services, then offered through the District, be reduced or eliminated for the ensuing school year (2009-2010).

2. Respondents to the proceeding are identified by name on the list attached hereto as Attachment “B.”

3. Respondents are employees of the Vallejo City Unified School District, who contest the instant proposed teacher lay-off action. Respondents are either probationary certificated employees or permanent (tenured) certificated employees with the District.

4. On March 4, 2009, the District’s Governing Board adopted Resolution No. 2431. The resolution recites that, pursuant to Education Code sections 44949 and 44955, it has become necessary for the District to reduce or to eliminate, no later than the beginning of the 2009-2010 school year, particular kinds of services in the form of 190.1 full-time equivalent (FTE) certificated positions as follows:

Particular Kinds of Services	Number of Full Time Equivalent (FTE) Positions
Alternative Education Teacher, Vallejo Education Academy	3.00
Independent Study Teacher	5.00
High School Counselor	13.00
Teachers without Cross Cultural Language Academic Certificate (CLAD)	25.20
Class Size Reduction Instruction (CSRI) K-3	50.00
Class Size Reduction Instruction (CSRI) 9-12	11.00
Categorical Funded Teacher Leader	38.20
Categorical Funded Support Teacher	6.20
Categorical Funded Intervention Teacher	2.00
Categorical Funded Elementary P.E. Teacher	2.50
Categorical Funded Teacher on special Assignment, Library Media	1.00
*Increase Class Size, Middle School (6-8) (Subject Areas, including, but not limited to: English, Social Science, Mathematics, Physical Science, Biological Sciences, Spanish, P.E., Multiple Subjects, Band, Electives)	8.00
*Increase Class Size, High School (9-12) (Subject Areas, including, but not limited to: English, Social Science, Mathematics, Physical Science, Biological Sciences, P.E., Spanish, Electives)	25.00

5. The written preliminary notice to each respondent from the District's Superintendent states legally sufficient reasons of the District Board's intent to eliminate the course as taught by respondents.

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. The District's Superintendent timely served upon each respondent the Accusation, dated March 23, 2009, and related documents. Each respondent filed a timely notice of defense.

8. All pre-hearing jurisdictional requirements were met.

9. At the hearing of this matter, the District rescinded the notice of lay-off and resultant accusations as filed against Respondents Larry Baracco, Christina Naval and Irmozine Petite. By its withdrawal of the accusations, the District will retain the services of Larry Baracco, Christina Naval and Irmozine Petite. (Also, at the hearing, the District amended the Seniority List to revise the first date of paid service to the District for Respondent Naval as November 11, 2002, as opposed to August 26, 2005, and for Respondent Katy Thomas as September 17, 2007, as opposed to October 1, 2007.)

Respondents' Contentions

10. Respondents filed a Notice of Defense that sets out that the accusations are flawed as the Superintendent's pleading failed to state acts of omissions on which the lay-off of Respondents may proceed. Further Respondents object to the accusations on the ground that the District's proposed reduction-in-force action does not comply with Education Code section 44955. And Respondents object to the form of the accusations on the ground that the pleadings are so indefinite or uncertain that Respondents cannot identify the transaction or prepare a defense so as to assure their respective due process rights.

Respondents, collectively, contend that the District's proposed lay-off action, as contemplated by the accusations filed against each respondent, should be dismissed. First, respondents argue that the Superintendent failed to offer in evidence sufficient cause for the reduction or elimination of the services as set out in Board Resolution No. 2431. Second, Respondents aver that the Superintendent, through her designee, improperly "overnoticed" individual certificated employees for prospective layoff action for the ensuing school when such noticed individuals occupy about 230 FTE positions. Third, Respondents, together, contend that the District cannot reduce certificated employees in teaching positions who do not possess a CLAD (Cross-cultural Language Acquisition and Development) certificate.

And two individual certificated employees contend that the District erred in setting out on the seniority list of certificated employees their respective first date of paid service to the District. Hence, those two individuals advance that the lay-off action should not proceed against them.

The contentions and arguments advanced by Respondents, collectively and as individuals, are without merit and are rejected.

Individual Respondents

a. Ms. Laura Moreira

11. Respondent Laura Moreira (Respondent Moreira) offered evidence at the hearing of this matter.

12. Respondent Moreira holds a multiple subject credential. She does not possess a CLAD. Respondent Moreira has a first date of paid service to the District of September 13, 2005. Currently she works as a tenured certificated employee at the fifth grade level. Respondent Moreira advanced that the classroom to which she is assigned does not contain any students who can be classified as English language learners. Hence, she suggests the District erred in determining that she cannot teach without possessing a CLAD.

13. Respondent Moreira erroneously advances that her first day of paid service to the District should be recorded on the seniority list as August 25, 2005. She asserts that on that date in August 2005 she was in a classroom along with a substitute teacher, but because the Solano County of Education had not “cleared her fingerprints” she did not have a contract with the District. Respondent Moreira notes that the school principal indicated to her in August 2005 that an effort would be made to “retro pay” Respondent Moreira for the period between August 25, 2005, and September 13, 2005; however, no documentary proof exists to show that Respondent Moreira was ever compensated other than at the pay rate for an employee serving in the capacity of a substitute teacher.

The District’s Human Resources Director offered persuasive evidence that the District’s personnel records, which pertained to Respondent Moreira, do not show that she had a first day of paid service to the District as a probationary employee other than the date of September 13, 2005. And the District’s Human Resources Director had no record that Ms. Moreira’s assigned school principal had authority to bind the District to “retro pay” Respondent Moreira as a contract probationary teacher for the time she spent in the classroom before September 13, 2005.

14. Also Respondent Moreira asserts that she is aware that the District is retaining, at least, one teacher, Ms. Betty Ellis, who is junior to her on the seniority list. Ms. Ellis has a first date of paid service to the District as August 25, 2006, which is one

year after the first date for Respondent Moreira. But, Ms. Ellis possesses a CLAD. And Ms. Ellis is shown on the seniority list to have a Resource Specialist Certificate and a Restricted Special Education credential. And the District employs Ms. Ellis as a teacher leader.

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

b. Ms. Cheryl Gewing

16. Respondent Cheryl Gewing (Respondent Gewing) offered evidence at the hearing of this matter.

17. Respondent Gewing was not persuasive that the District should have granted her a seniority date that reflects the date of August 25, 2005, when she began her initial employment relationship with the District. On August 25, 2005, Respondent attended an orientation program for new teachers. And beginning on August 29, 2005, she provided services in a classroom along with a substitute teacher. Similar to Respondent Moreira, Respondent Gewing was delayed in entering a contract with the District because the County Office of Education had been unable to timely cause a fingerprint clearance to be issued for the benefit of Respondent Gewing.

18. Respondent Gewing is a permanent and tenured certificate employee of the District. She has a first date of paid service with the District of September 13, 2005. She holds a multiple subject credential and a ELD/SDAIE. Also she has a supplemental authorization to teach "Introduction to English." Respondent Gewing notes that her leadership at the elementary school is important. She does not possess a CLAD. Respondent Gewing works as a third grade teacher at Patterson Elementary School.

19. But Respondent Gewing provided no competent evidence that the District has retained any teacher junior to her for which Ms. Gewing possesses a credential and is currently competent to teach. Nor did Respondent Gewing establish that the Superintendent committed a procedural error in the initiation in the initiation of the lay-off action that adversely affects her teacher position with the District.

District's Reasonable Basis to Proceed

20. The District's Assistant Superintendent for Human Resources, Reynaldo Santa Cruz, offered evidence at the hearing of this matter.

Assistant Superintendent Santa Cruz persuasively established that prospective elimination of particular kinds of services for the 2009-2010 school year directly results

from a prospective shortfall in money for the District's budget. In order to partially aid the District in crafting a responsible and prudent budget for the ensuing school year, the Superintendent, or her designee, recommended to the Governing Board that certain certificated positions be eliminated due to lack of money to fund operations, programs and functions of the District.

In particular, Assistant Superintendent Santa Cruz demonstrated that over considerable time before the adoption of Resolution No. 2431 the District became aware of deficits in income so that it was required to formulate a framework to address revenue reductions for the 2009-2010 school year that fell in a range of \$8 million to \$11 million dollars. The projected revenue loss was raised at a February 18, 2009, Board meeting where draft budget assumptions were assessed in formulating prospective resolutions to initiate the instant lay-off action that involves Respondents.

21. Ms. Nona Cohen-Bowman, in her capacity as the District's Director of Human Resources, came at the hearing. She provided competent, credible and persuasive evidence on each of the two days of that administrative adjudication proceeding.

22. The District's Human Resources Director established that upon learning that the District was required to initiate lay-off proceedings regarding positions held by certificated employees of the District, she, with her staff, took reasonable and lawful steps to develop the District's seniority list for the District's certificated employees. She studied records of certificated employees and set forth on the District's 2009-2010 seniority list the dates calculated as the hire dates or first date of paid service for all teachers employed by the District.

23. The District's Human Resources Director was credible and compelling in refuting the contentions of Respondent Moreira and Respondent Gewing that the District erred in crafting the seniority list as to their respective first date of paid service in a probationary position with the District. The District's Human Resources Director persuasively noted that the District's seniority list was correct as to those respondents. Respondent Moreira and Gewing each hold a first date of paid service to the District of September 13, 2005. Those respondents' respective claims that they were entitled each to have a first date of paid service to the District reflected as the date in August 2005 that they reported to classrooms along with substitute teachers were not correct. In addition, an orientation or in-service training date by respondents is voluntary in nature, although employees are paid a stipend for participation. Furthermore, such training is an exercise that springs from the discretion of a supervisor or principal in the process of orientation or staff development. And, such orientation in-service training is not a component of the contract between the District and the new certificated employee.

The District's Human Resources Director was clear that when a potential probationary teacher's fingerprints have not cleared with the County Office of Education such individual is not considered an employee of the District for purposes of placement

on the District's seniority list. Accordingly, Respondents Moreira and Gewing were paid under an Extra Service Agreement at the substitute teacher rate of pay for the time between August 29, 2005, and September 13, 2005.

Also the District's Human Resources Director was credible when she advanced that the District had received a poor assessment on a audit by the California Department of Education regarding compliance with providing services to English language learners. There is a state mandate to have CLAD certificated teachers in every classroom of the District. Accordingly, the Board adopted as its initial tie-breaking criteria for teacher having the same date of paid service to the District "Instruction of English Language Learners," which calls for certificated teachers to either possess a CLAD, or by February 2, 2009, possess a current emergency CLAD permit through the 2009-2010 school year (or, in the alternative, obtain a CLAD certificate by the end of the 2009-2010 school year, prior to the expiration of the emergency CLAD permit).

Ms. Cohen-Bowman in her official capacity exercised reasoned judgment when she weighed a Board resolution that proposed to reduce 42 FTE certificated administrators, including principals, coordinators, assistant directors, and directors. Those individuals have bumping rights into respective full-time (1.0 FTE) teacher positions. In order to accommodate the bumping rights of the administrators, there are Respondents who hold partial FTE positions. Hence, in some instances two or more Respondents were affected by the bumping rights of the administrators so that teachers holding an aggregate of about 230 FTEs were noticed for lay-off, and received accusations, when the Board's resolution as adopted before March 15, 2009, only proposed the reduction or elimination of 190.1 FTE positions. The District's Human Resources Director also compellingly observed that a number of part-time employees who were originally full-time employees at the outset of the current school year; but, in fact, the District has no current plan to have part-time positions available for the ensuing school year. Hence, any senior teacher, who now holds a part-time position, has a right to claim a full-time position, which the District is required to provide on demand of such senior teacher.

Regarding the charge of Respondent Moreira that Ms. Ellis, who has a later first date of paid service than the subject respondent, is being retained, the District's Human Resources Director clarified Ms. Ellis's services to the District. Ms. Ellis is a teacher leader. That position is a "non-classroom teacher" position for which an individual must complete specialized training and then be interviewed by administrators before taking on the role. A teacher leader is skilled in remediation services to students and provides "intervention" on behalf of students. A certificated teacher with a multiple subject credential, although more senior than a teacher leader, cannot "bump" into a teacher leader position.

Ultimate Factual Findings

24. During the immediate past school year, the Board has found that the District faces a prospective budget shortfall in that the amount of funding from the State of California may be markedly reduced for the upcoming school year. Hence, the Board has determined that sufficient money is not available to provide the same number of services during the ensuing school year so that the District must prospectively reduce or eliminate a number of FTE particular kinds of services, including the positions held by many of the affected respondents.

25. 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.

26. The recommendation of the District's Superintendent and the Board's decision to eliminate or discontinue most of a total of 190.10 FTE positions were neither arbitrary, capricious nor fraudulent. Rather, the Superintendent's recommendation and the Board's decision were within the proper exercise of their discretion.

27. The District's proposed elimination or discontinuation of a number of FTE positions for the ensuing school year is related to the welfare of the District and its overall student population.

28. 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 Board lawfully directed the notification to respondents of the elimination of the certificated positions held by each respondent.

LEGAL CONCLUSIONS

Motions by Respondents for Dismissal All Accusations

1. Respondents made a motion for dismissal of the accusations as against all affected certificated teachers because of the supposed failure by the District to state a prima facie case for reduction of particular kinds of service by not stating justification during the first day of the proceeding. The second basis for the dismissal motion as advanced by Respondents was due to the Superintendent's designee having "overnoticed" credentialed teachers who hold many more full-time equivalent positions than prescribed in the Board resolution. And the third ground for dismissal was that the District cannot lay-off certificated employees having greater seniority than junior teachers simply because the junior teacher possesses a CLAD while the more senior teacher lacks such certificate. Respondents' arguments are not persuasive and the motion for dismissal of the accusations is denied.

a. *Cause for the Layoff Action*

Respondent argue that no reason was provided by evidence from the Superintendent, or her designee, on the first day of the hearing,¹ so that the process was so flawed that the lay-off action must be rejected in its entirety.

The Superintendent argued that “nowhere in Education Code sections 44949 and 44955 is it required that a specific reason be stated for a PKS action or even an action by the Board before May 15. . . . [¶]. . . . There is no ‘necessity provision’ per se in either of these sections. Rather, the statutory language connects the termination of certificated employees with the reductions of particular kinds of service, i.e., the reductions make the layoffs’ ‘necessary.’ There is nothing in section 44949 or in section 44955 that requires a showing of the necessity for the reduction of particular kinds of services. The District need generally only show that there is a recommendation for reductions of particular kinds of services, that notices were to affected employees, and that no junior employee is being retained for a service that a senior employee being noticed could render. Ultimately, the Governing Board, as long as it is acting in good faith, retains the discretion to determine what the particular kinds of services will or will not be provided. . . .² In the absence of specific evidence that the Board is acting in bad faith to eliminate specific employees, a burden on respondents, for nefarious reasons under the ruse of a reduction of services, [the Board’s] exercise of discretion will not be disturbed.”³

¹ The Notice of Hearing set out that the administrative adjudication proceeding was scheduled for two days of hearing, April 27 and April 28, 2009, beginning each day at 3:00 p.m. Although scores of teachers were present at the hearing site well before 2:45 p.m., Respondents’ counsel did not reach the hearing room until 3:10 p.m. On motion of Respondent’s counsel for a recess at the outset of the proceeding so that counsel could meet with the affected certificated employees and also confer with the District’s lawyer regarding stipulations. The recess was granted with a representation from Respondents’ counsel that about twenty minutes would be needed before the hearing would commence. But the recess consumed about two hours, so that the hearing did not resume until after 5:00 p.m. (The parties had been informed at the outset of the proceeding that a one-hour long dinner break would be taken from 6:30 p.m. until 7:30 p.m., and the hearing’s termination time for the day would be at about 8:45 p.m. so that everyone, including the court reporter, would be out of the building no later than 9:00 p.m.) The Superintendent’s case concluded at after 8:15 p.m. Respondents’ case consisted of two witnesses, namely the two certificated teachers mentioned above. At 8:32 p.m., the rebuttal evidence was concluded by the Superintendent. At about 8:39 p.m., Respondent made the motion for dismissal with the primary basis being the failure of the Superintendent to offer a necessary basis or the cause for the lay-off action. Respondents argued that because closing arguments had started the matter had to be deemed submitted. A ruling was made that the matter was not submitted until articulated by each party and so ordered by the presiding officer, namely the ALJ. Respondents strenuously objected to the motion by the Superintendent to reopen the record for taking evidence to address the basis for the motion for dismissal. The Superintendent’s motion was granted so that the second day of the proceeding took place where the District’s Assistant Superintendent Santa Cruz and Human Resources Director Cohen-Bowman offered testimonial evidence.

² The argument cited *Hildebrandt v. St. Helena Unified School District*. (2009) 172 Cal.App.4th 334; *Martin v. Kentfield School Dist.* (1983) 33 Cal.3d 294, 299-300; *Gallup v. Alta Loma School Dist. Board of Trustees* (1996) 41 Cal.App.4th 1571, 1589; and *Fuller v. Berkeley School Dist.* (1934) 2 Cal.2d 152.

³ The argument cited *Gallup v. Board*, *supra*, 41 Cal.App.4th at p. 1589.

Although the Superintendent's argument that no necessity must be shown during the hearing is not well received⁴ and is not persuasive, the testimony from Assistant Superintendent Santa Cruz regarding a projected revenue loss of between \$8 and \$11 million dollars adequately showed the need for the Board's resolution and the Superintendent's reasonable execution of the lay-off action.

b. Claim of "Overnoticing"

Respondents demand the dismissal of the entire lay-off action be granted because the Superintendent's designee sent accusations to teachers holding 232.10 FTE positions when the Board's resolution prescribed an elimination of 190.1 FTEs.

Evidence at the hearing showed that to properly account for the bumping rights of administrators into teacher positions for the ensuing years, current certificated teachers were given lay-off notices that resulted in a number of teachers being subject to lay-off that exceeded 190.1 FTE elimination as set out in the Board's resolution.

Further, the Superintendent's argument was persuasive that the District is not required to match exactly the FTE positions with those persons receiving the notice of lay-off. Only an average daily attendance reduction action requires a "corresponding percentage" of certificated employees to be identified in such a reduction of staff. 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. The number of terminations by a PKS reduction of certificated employees depends entirely on the district's governing board's decision regarding how many, or which, services to reduce or to eliminate. It 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, 635-636.)

Further the Superintendent correctly noted that *Hilderbrant v. St. Helena Unified School Dist. supra* 172 Cal.App.4th 334, supports the proposition that the District is not

⁴ A noted authority on the law of teacher lay-off actions wrote:

The decision to lay off teachers is generally motivated by financial necessity. However, that is not the only reason school districts embark on this torturous route. Declining enrollment, a change in course popularity, a shift in priorities, a change in method or technology, changes or modifications in curriculum requirements (such as are occasioned by new graduation requirements) all can trigger the decision to reduce staff. All of these reasons are legitimate; all have been recognized by the courts as a reasonable basis for the decision by the governing board that 'it shall have become necessary' to reduce staff. (Education Code Section 44955.)

Lillian Lee Port, *A Survival Guide to Teacher Layoffs*, (1999).

compelled to split an existing full-time FTE position into parts so as to accommodate certificated employees who are subject to a lay-off action.

c. Contention that Teacher Cannot Be Subject to Lay-off due to Lack of a CLAD

Teaching without a CLAD certificate is a practice that has occurred during the existing school year. But the District is confronted with a California Department of Education mandate that requires a teacher in every classroom to hold a CLAD. The Board adopted a tie-breaking criterion that stresses possession of a CLAD. Accordingly, the Superintendent is persuasive in advancing that the District cannot accommodate teachers who do not possess a CLAD, and there is “no place to put them and to have them actually teach. If the District were required to keep these teachers who could not be assigned to any classroom in the District, there would be a tremendous waste of scarce or finite public funds.”

Ruling on Motion to Dismiss Accusations

As indicated by the factual findings, the proposed reductions of teachers because of an elimination of particular kinds of service are for the welfare of the District and its students. Accordingly, the motion for dismissal is denied.

Lawful Basis for the Reduction or Elimination of Particular Kinds of Services

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

3. 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 through 8, inclusive.

4. Judgments entered by a tribunal on the stipulation of the parties have the same effect as acts tried on the merits. (*John Siebel Associates v. Keele* (1986) 188 Cal.App.3d 560, 565.) The District stipulates to withdraw the Accusation against the certificated employee named in Factual Finding 9. The stipulation is binding on the parties.

5. 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.

Board Resolution 2431, as adopted on March 4, 2009, stated that it was the Board’s determination that it was necessary to reduce or eliminate particular kinds of services for the 2009-2010 school year.

Education Code section 44949, subdivision (a), requires that no later than March 15 and before an employee is given notice that his or her services will not be required for the ensuing year, the governing board and the employee will be given notice by the superintendent that it has been recommended that preliminary notices be given to employees and the reason for that recommendation.

The preliminary notice is intended to assure that affected employees are informed of the facts upon which they can reasonably assess the probability that they will not be reemployed. The preliminary notice must state the reasons for the recommendation. (*Karbach v. Board of Education* (1974) 39 Cal.App.3d 355.) That goal was attained by the Superintendent's designees.

The Vallejo City School District Governing Board's decision to eliminate 190.10 F.T.E. positions for the 2009-2010 school was a discretionary decision that constituted a valid basis for reduction in particular kinds of service under the Education Code.

Ultimate Determinations

6. Pursuant to Education Code sections 44949 and 44955 cause exists for the District to eliminate or reduce particular kinds of services for the ensuing year where such services are now offered in District schools. And cause exists to give certain respondents notice that for the ensuing school year they will not be reemployed to provide services now rendered by such respondents. These determinations are made by reason of the matters set out in Factual Findings 13 through 16, 18, 20 through 27, and 29.

7. 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 Findings 28.

RECOMMENDED ORDER

1. The Accusation served on each respondent is sustained, except that the accusations are dismissed as to Respondents Larry Baracco, Christina Naval and Irmozine Petite.

2. Except as to the respondent named above, final notice may be given to respondents, named in Attachment B hereto, that their respective 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 District.

DATED: May 4, 2009

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings