

BEFORE THE  
GOVERNING BOARD OF THE  
SANTA CLARA UNIFIED SCHOOL DISTRICT  
SANTA CLARA COUNTY  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GLORIA CURD, BRIAN DARBY,  
DENNIS DONNELLEY, MARCELLA GOVER,  
DAVID GRANT, BRIAN HOLLIDAY, SALLIE HURST,  
YVONNE JASSO, FIAMETTA KAYPAGHIAN,  
HANAH KIM, KATHLEEN LIVERS,  
SUMATHI NATESAN, SANDRA JEAN QUIJANO,  
CECELIA RAMIREZ, DOLORES RAMOS,  
RITA THORAKOS, and SUSAN WARNER,

Respondents.

OAH No. 2009070348

**PROPOSED DECISION**

On July 27, 2009, in the City of Santa Clara, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter.

Richard M. Noack, Attorney at Law, of Hopkins and Carley, The Letitia Building, 70 South First Street, San Jose, California 95113-2406, represented Steve Stavis, Superintendent, Santa Clara Unified School District.

Matthew J. Gauger, Attorney at Law, of Weinberg, Roger and Rosenfeld, 428 J Street, Suite 520, Sacramento, California 95814-2341, represented Respondents in this matter.

The record was held open to afford an opportunity for the parties to file written closing arguments. On July 30, 2009, OAH received from Respondents' a "Request for Judicial Notice and Declaration of Matthew J. Gauger," which was marked<sup>1</sup> as Exhibit "C-

---

<sup>1</sup> On August 5, 2009, OAH received a letter, dated August 5, 2009, from Respondents' counsel, along with the declaration that was part of Exhibit C. However, the declaration was accompanied by the two-page document (School District Revenue Limit-Calculations) as taken from the Department of Education website at the tab captioned "Funding Exhibits – Second Principle Apportionment." The pages were marked as Exhibit C-2, and received as argument.

1,” and received as argument. Also, on July 30, 2009, OAH received “Respondents’ Brief in Opposition to Lay Offs,” which was marked as Exhibit “D,” and received as argument. And, on July 30, 2009, OAH received “District’s Post-Hearing Brief,” which was marked as Exhibit “17,” and received as argument. On August 4, 2009, OAH received “Respondents’ Reply Brief to District’s Post-Hearing Brief,” which was marked as Exhibit “E,” and received as argument. And on August 4, 2009, OAH received “District’s Reply Brief,” which was marked as Exhibit “18,” and received as argument.

On August 5, 2009, the parties were deemed to have submitted the matter and the record closed.

## FACTUAL FINDINGS

1. On July 9, 2009, in his official capacity, Steve Stavis, Superintendent for the Santa Clara Unified School District (Complainant), made the respective accusations regarding Respondents Gloria Curd, Brian Darby, Dennis Donnelley, Marcella Gover, David Grant, Brian Holliday, Sallie Hurst, Yvonne Jasso, Fiametta Kaypaghian, Hanah Kim, Kathleen Livers, Sumathi Natesan, Sandra Jean Quijano, Cecelia Ramirez, Dolores Ramos, Rita Thorakos, and Susan Warner.

### *Preliminary Determinations*

#### *a. Three Teachers who are Retirees*

2. Complainant argues that certain individuals, who were served with an accusation and consequently filed respective request for hearing and are named as respondents, should properly be classified as temporary employees. If such individuals are classified as temporary employees they would have no standing to participate in the hearing.

Complainant contends that Respondent Dennis Donnelly<sup>2</sup> and Respondent Rita Thorakos are retirees of either the District or another school district so that they currently receive pension payments from the California Teachers Retirement System. According to Complainant, under Education Code section 44907, a retiree who receives a pension allowance cannot also be classified by a school district as either a probationary or permanent employee.

Complainant did not provide a copy of the existing contracts that define the employment relationship between the District and the subject three employees. Nor did Complainant identify the short-term assignment held by the subject employees who serve the

---

<sup>2</sup> In argument, Complainant mentioned the name of Ms Nancy Lassotovich, who is an ESL teacher and who is subject to the layoff action. She is a retiree of the District. Complainant advanced that Ms. Lassotovich is a temporary teacher on the same theory that is argued as applicable to Respondent Donnelly and Thorakos. But Ms. Lassotovich did not file a request for hearing or notice of defense, and, hence is not a respondent in this matter.

District because of some other permanent teacher's absence due to long-term illness or administrative leave. Further Complainant did not establish by adequate specificity the nature of the categorically-funded program assignments supposedly to have been held by the subject three employees for the past year so as to deprive the teachers of either probationary or permanent classification.

*Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911, and *Bakersfield Elementary Teachers Ass'n v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, are instructive on this question. The same are paraphrased at length below.

The Education Code contemplates only four possible classifications for certificated employees: permanent, probationary, substitute and temporary. The Education Code establishes a complex and rigid scheme that regulates a governing board's decisionmaking power to classify, hire or dismiss certificated employees. A certificated teacher's classification by the employing school district governs the level of statutory job protection that a teacher enjoys and such classification controls the level of procedural protections that apply if he or she is not reelected. Generally, permanent employees may not be dismissed unless one or more statutorily enumerated grounds are established by a school district. (Ed. Code, § 44932.) Probationary employees may not be dismissed during the school year except for cause or unsatisfactory performance (Ed. Code, § 44948.3.); however, on timely notice, probationary employees "may be nonreelected without any showing or cause, without any statement of reasons, and without any right of appeal or administrative redress." (*Bellflower Education Ass. v. Bellflower Unified School Dist.* (1991) 228 Cal.App.3d 805, 808.) If nonreelection of a probationary employee is for economic reasons (either because of discontinuance/elimination of particular kinds or services, or due to a decline in daily attendance), the probationary teacher is entitled to the procedural protections prescribed by Education Code section 44955. On the other hand, substitute and temporary employees fill the short-term objectives or short range needs of a school district and may be summarily released generally. (*Taylor v. Board of Trustees* (1984) 36 Cal.3d 500, 505.) Temporary teachers may be dismissed "[a]t the pleasure of the [governing] board prior to serving during one school year at least 75 percent of the number of days the regular schools of the district are maintained." (Ed. Code, § 44954, subd. (a)), and after that time he or she may be dismissed so long as such temporary employee is notified before the end of the school year (*id.*, subd. (b)). The Education Code provides heightened job protection for certificated teachers classified as probationary and permanent versus those teachers who are deemed temporary employees. (*Kavanaugh v. West Sonoma County Union High School Dist.*, *supra*, 29 Cal.4th at pp. 916-918.)

Education Code section 44916 provides:

The classification [of a certificated employee] shall be made at the time of employment and thereafter in the month of July of each school year. *At the time of initial employment during each academic year*, each new certificated employee of the school

district shall receive a written statement indicating his employment status and the salary that he is to be paid. If a school district hires a certificated person as a temporary employee, the written statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. *If a written statement does not indicate the temporary nature of the employment, the certificated employee shall be deemed to be a probationary employee of the school district, unless employed with permanent status.* (Italics added.)

The *Kavanaugh* decision notes that Education Code section 44916 mandates that a school district comply with three requirements if it desires to employ a certificated employee as a temporary employee. The district must: (i) give notice of the temporary employee status as well as the salary for the position; (ii) provide such notice in written form; and (iii) provide the written notice “[a]t the time of initial employment.” The *Kavanaugh* decision goes on to set out that Education Code section 44916 places a burden on a district to inform the teacher of the classification and salary before the teacher performs services for the district and that the law enforces the burden “with a default classification that benefits teachers.” (*Kavanaugh v. West Sonoma County Union High School Dist.*, *supra*, 29 Cal.4th at 921.) The default classification tends towards probationary status at a minimum.

The *Kavanaugh* decision cites *California Teacher Assn. v. Governing Board* (1987) 195 Cal.App.3d 285 that dealt with a school district’s presentation of a “Contract of Temporary Employment” to a teacher in March 1983 that was backdated to September 1982. The cited decision includes the following statement of law: “By providing no written statement of the temporary nature of employment at the beginning of employment for the 1982-1983 school year, respondent district’s non compliance triggered the statutory remedy: ‘the certificated employee shall be deemed to be a probationary employee of the school district. . . .’”

The decision in *Bakersfield Elementary Teachers Ass’n v. Bakersfield City School Distr.*, *supra*, 145 Cal.App.4th 1260, sets out that “the Education Code’s ‘complex and rigid’ classification scheme is intended . . . to limit rather than to enlarge the power of school district to classify teachers as temporary employee.” (145 Cal.App 4th at p. 1280.) And the decision notes that because temporary classifications are not guaranteed procedural due process by statute, such classification is narrowly defined by the Legislature, and should be strictly interpreted.

As explained in the *Bakersfield* decision, the Education Code contemplates two kinds of temporary employees. The *Bakersfield* decision referred to the types as “short-term temporary teachers” and “long-term replacement teachers.” The former are those teachers who are employed to serve for less than three or four months, or in some types of limited, emergency, or temporary assignments or classes (Ed. Code, §§ 44919, 44921, 44986). The

latter type of temporary employees are those persons who are employed for up to one year to replace a certificated employee who is on leave or has a lengthy illness (Ed. Code §§ 44920, 44918). Also, teachers employed in categorically funded programs or programs operated by a district under contract are treated like temporary employees (Ed. Code, § 44909), as well as individuals employed as substitute teachers (Ed. Code, § 44917). (*Bakersfield Elementary Teachers Ass'n v. Bakersfield City School Distr.*, *supra*, 145 Cal.App. 4th at p.1281.)

Peculiar to this matter, Complainant asserts that under the authority of Education Code section 44907<sup>3</sup> teachers in the District's Adult Education remain a temporary teacher when such individual are retirees but later return as teachers in adult education. Respondents, who are retirees, contest that they can be viewed as temporary teachers if over the past two or more consecutive years, any such individual has taught an average of 18 hours or more per week over 75 percent of the school year.

Despite the language of Education Code section 44907, the affected teachers have a right to participate in the proceeding so as to contest the applicability of the statute to them. Moreover, such individuals who have taught the required number of hours over a substantial portion of two consecutive years or more should not be deemed as temporary employees, except by proof of their execution of a contract that specifies their temporary status within the meaning of *Kavanaugh v. West Sonoma County Union High School District*, *supra*, 29 Cal.4th 911, and *Bakersfield Elementary Teachers Ass'n v. Bakersfield City School Dist.*, *supra*, 145 Cal.App.4th 1260.

The teachers who may have retired from the employment of the District or some other District, but who have taught for the required number of hours so as to be deemed probationary employees or permanent employees of the District, are not dismissed from this matter. They will remain as respondents in this proceeding.

*b. Teachers Whose Hours Have Been Reduced But Who Have Been Assured Employment for the Coming School Year*

3. Complainant argues under the authority of *Black v. Board of Trustees of the Compton Unified School District* (1996) 46 Cal.App.4th 493, teachers in the Adult Education program who are subject to a reduction of hours of work, yet who will be retained to teach during the coming year must be excused from the proceeding as respondents and deprived of the ability to participate in the process. Complainant's position is not tenable.

---

<sup>3</sup> Education Code section 44907 sets forth:

The retirement of any employee of a school district under the provisions of any retirement law, except for employees retiring for disability under the Teachers' Retirement Law, *shall automatically effect the dismissal of the employee from the employ of the district* at the end of the current school year.

*Black v. Board of Trustees of the Compton Unified School District, supra*, 46 Cal.App.4th 493 does pertain to a controversy initiated by aggrieved teachers in an adult education program. The dispute revolved around the teachers' claim for restoration of hours and to recover back wages when the subject school district reduced the number of hours of teachers by approximately 6 percent to 19 percent. But the affected teachers were not respondents in layoff proceedings brought under Education Code sections 44949 and 44955, rather the teachers were plaintiffs in a wage claim lawsuit. Even though the appellate court sustained the reasonableness of the District's action, the court noted that the affected teachers would be "employed full time, with no loss in benefits" because as partial, minor reduction in hours is not a termination of employment." (*Id.*, at p. 500.)

Here Respondents, who are teachers embroiled in a layoff action, seek to overturn the entire layoff proceeding on several grounds. Even if such grounds or contentions are determined to be without merit, the affected Respondents have a right to remain as participants in the process.

Complainant's motion to dismiss as respondents those teachers whose work hours are being reduced for the coming school years is denied. Adult Education teachers, who filed respective request for hearing in this matter, and who are affected by Complainant's argument, will remain as respondents in this matter.

#### *Overview of the Layoff Action*

4. The Santa Clara Unified School is classified as Basic Aid District. Its revenue largely comes from property tax assessments, which have declined in the past year, and which has been due, in part, to reduction of assessed values of both commercial and residential real property parcels in the county. Despite decreasing revenue, the District will have a larger number of students in the kindergarten to twelfth grade classes (K-12) program. In the revised State Budget, which was finalized on about July 24, the Legislature and the Governor have required that Basic Aid Districts surrender money that has been characterized as categorical funding for the benefit of other districts under a program called "Fair Sharing" funding reduction. As an offset to Basic Aid Districts, the Legislature and the Governor have authorized such districts to close funding gaps by transferring money from the Adult Education programs into K-12 programs. Rather than ending its entire Adult Education program, the Santa Clara Unified School District has elected to continue portions of the Adult Education program while transferring \$1.5 million dollars to its K-12 program so as to forestall reduction or elimination of the education services for children. An ancillary aim of the Santa Clara Unified School District is to preserve the "infrastructure" of Adult Education. The subject layoff action pertains to the reduction of portions of the Adult Education program regarding particular kinds of services as described below.

For this rare "summertime" layoff action, in order to account for a loss of \$1.5 million the Santa Clara Unified School District has discharged nearly all temporary teachers. Also, all program managers received a partial layoff in the way of reductions of between six percent to seven percent in compensation. (None of the Program Managers requested a

hearing.) And notice of non-reemployment was given to 21 teachers in five areas as mentioned below. Of the 21 permanent or probationary Adult Education teachers, whose positions are to be reduced or eliminated, 17 individuals, personally or through a representative, seek a hearing.

*Threshold and Jurisdictional Matters*

5. All Respondents are certificated employees of the Santa Clara Unified School District (the District), who contest the instant proposed teacher layoff action. And Respondents are all tenured (permanent) or probationary teachers with the District and those individuals have assignments in the District’s Adult Education program.

6. On July 7, 2009, the District’s Governing Board adopted Resolution No. 09-28. The resolution recites that, pursuant to Education Code section 44955.5, because the total revenue limit per average daily attendance for the ensuing school year will not increase by at least two percent (2%) over the total revenue limit per average daily attendance for the 2008-2009 school year it has become necessary for the District to decrease, no later than the beginning of the 2009-2010 school year, particular kinds of services in the Adult Education instructional services of 17.94 full-time equivalent (FTE) certificated positions as follows:

Number of Full-Time Equivalent Positions	Particular Kinds of Services <sup>4</sup>
5.61 FTE	English as a Second Language Teachers;
3.30 FTE	Traditional Adult Diploma Teachers;
1.65 FTE	Independence Network Teachers;
3.90 FTE	Health and Safety Teachers;
0.25 FTE	Skills Plus Teachers;
1.20 FTE	Vocational Careers Teachers; and
2.00 FTE	Program Supervisors.

7. Also on July 7, 2009, the District’s Governing Board adopted Resolution No. 09-30. The resolution recites, among other things, that, pursuant to Education Code sections 44949 and 44955, because of the findings and determination as expressed in Resolution No. 09-28 regarding the necessity for the District to reduce particular kinds of Adult Education

---

<sup>4</sup> English as a Second Language (ESL) offers English language proficiency instruction to mostly immigrant residents. Traditional Adult Diploma or TAD entails services similar to the ESL program. (Teachers in the ESL area and TAD area generally possess identical credentials and hold competency to teach English to formally limited English speakers.) The Independence Network provides instruction to disabled adults. Health and Safety programs include fitness instruction for older adults or senior citizens. Skills Plus offers education and specialized training to persons who have experienced strokes or who suffer with similar neurological impairments. Vocational Careers, which also is designated as the skills and technical education area, provides job skills to adult individuals who are homeless or otherwise economically disadvantaged.

instructional services, schedules for the notice of hearing, the hearing date and the service of the decisions were prescribed.

8. The accusations with required accompanying documents and blank notices of defense were timely served on respondents. Each respondent, except for Respondent Fiametta Kaypaghian, timely filed a notice of defense to the accusation, either in person or through counsel. Although Respondent Kaypaghian did not timely provide the District with a duly signed request for hearing or notice of defense, Complainant elected not to seek a disposition under Government Code section 11520 for her default, but rather the District permitted Respondent Kaypaghian to be considered a respondent in this matter in that Respondents' union representative noted Respondent Kaypaghian was out of reach because of her long-term excursion to Mexico.

9. All pre-hearing jurisdictional requirements were met.

#### *Respondents' Contentions Regarding the Proposed Layoff Action*

10. Respondents contend that the District's proposed layoff action, which is made under Education Code section 44955.5, is improper and unlawfully for several reasons. First, Respondents contend that Education Code section 44955.5 absolutely does not apply in the instance of the proposed reduction or elimination of Adult Education Program services. Second, Respondents argue that the facts in this matter do not "trigger the statute." Third, Respondents contend the District did not use the appropriate method for the reduction of certificated employees. Fourth, Respondents aver that the District has retained "numerous temporary teachers" while executing the layoff of permanent certificated and competent employees. Fifth, Respondents contend that the District's "pressed schedule" regarding the procedures employed during July, which led up to the hearing date, violated the affected teachers' due process rights insofar as precluding an accurate determination of bumping rights. Overarching to Respondents' contentions is the ground that the District has failed to establish financial necessity for the layoff of Respondents. Lastly Respondents contend that the District has adequate reserve funds and it has received federal government "stimulus" money so that it is financially capable to avert the proposed layoff of the affected certificated employees of the District.

11. Respondent Brian Holliday has taught English as a Second Language in the District's Adult Education Program. He offered testimonial evidence at the hearing of this matter.

In addition to his teacher position, Respondent Holliday is president of the Santa Clara Federation of Teachers. Respondent asserts that the District has a large sum of money in an account called "Fund 400." Respondent Holliday that believes the account comprises the District's "rainy day" fund that supposedly consists of approximately \$10 million. Also Respondent Holliday expresses that the District has restricted reserves that consists of \$4.6 million. And he proclaims that the District has an unrestricted balance of money that totals nearly \$9 million. In addition to the foregoing, Respondent Holliday states a view that the

District has federal “stimulus” money of over \$2.2 million. Finally, Respondent Holliday understood Mr. Jim Luyau, the District’s Assistant Superintendent for Business Services, to have informed him that the “stimulus” money was not included in the District’s 2009-2010 Budget that was presented at the most recent meeting of the Governing Board.

But Mr. Holliday did not offer evidence that he has sufficient experience, training or education to offer expert witness testimony regarding school finance. And he did not provide competent evidence that the money to which he made reference could be classified as coming within the meaning of the term “total revenue limit per unit of average daily attendance.”

12. Other than Respondent Holliday, no other respondent offered testimonial evidence, under oath, at the hearing of this matter. Nor did Respondents call any competent expert witness to offer evidence in support of the contentions argued by Respondents that would affect the layoff action.

13. Respondents offered no argument or presentation of evidence that suggests the District’s action is improper insofar as the prospective elimination of services represented by a prescribed range of full-time equivalent positions in the District’s Adult Education program. Respondents did not present competent 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. And the arguments and contentions regarding the proposition that the District has ample money so as to avoid the layoff actions were not supported by competent evidence.

#### *Determinations and Opinions by Assistant Superintendent Luyau*

14. Jim Luyau, the District’s Assistant Superintendent for Business Services (the Assistant Superintendent), appeared at the hearing of this matter to provide credible and persuasive evidence. By his demeanor while testifying, his attitude towards the proceedings, and his sincere effort to provide accurate information, which is of a complex nature, Mr. Luyau showed that he is a reliable and credible<sup>5</sup> witness.

The District is a “Basic Aid” district. The distinction means that property taxes generated locally act as the District’s nearly exclusive funding source and the tax receipts act as a “revenue limit,” so that the District receives no State of California aid for its K-12 Program.

Mr. Luyau showed that the total revenue limit per ADA (Principal Apportionment per ADA) for 2009-2010 will not increase by two percent (2%) as measured against the 2008-2009 revenue. Using reliable estimates from the Santa Clara County Tax Assessors’ Office, Mr. Luyau found that for the 2009-2010 school year the revenue to the District will be

---

<sup>5</sup> California Government Code section 11425.50, subdivision (b), third sentence.

\$93,721,170, which is \$231,221 less than the current school year. The decrease in revenue represents negative twenty-five one hundredths percent (-.25%) for the coming school year.

Mr. Luyau also found that total student enrollment for the current school year is 14,069. But for the ensuing school year the enrollment is estimated to increase to 14,210.

Mr. Luyau determined that \$6,678 represents the per unit of average daily attendance for the 2008-2009 school year. The projected per unit average daily attendance for the 2009-2010 school year will be \$6,591.

Mr. Luyau established that for the ensuing school year the total revenue limit per unit of average daily attendance will be negative one point three percent (-1.3%) relative to the 2008-2009 school year.

15. In calculating the two percent determination for this matter, Mr. Luyau followed the directive of Education Code section 44955.5 and he applied generally accepted accounting principles. Also, Mr. Luyau used the California School Accounting Manual (2008 Ed.) in formulating his opinion. He pointed to the manual, at page 510-3, that provides “total Revenue Limit entitlement is funded through a combination of local property taxes and state aid.” This term means that the District’s revenue generated from property taxes is divided by the District’s average daily attendance. Mr. Luyau persuasively stated that the District will not receive “state aid” for the coming school year for general purposes for K-12 Programs.

Mr. Luyau, during cross-examination, provided a reasonable explanation regarding the difference between secured property roll growth comparisons versus the unsecured projections of tax revenue. Mr. Luyau referred Respondents’ use of a document from the Tax Assessor’s Office that suggests percentage growth for tax collections for the 2009-2010 tax collection season.

16. Mr. Luyau established that the District’s Adult Education program is a Tier III categorical program. The Adult Education program is wholly funded by the State of California. Under existing legislation, money previously designated for Adult Education may be used for any educational purpose of the District. To forego reduction of services to the K-12 classroom instructional program the District will redirect \$1.5 million from the Adult Education program to the District’s General Fund.

*Opinions and Actions Recommended by the District’s Adult Education Program Director*

17. Kathy Martarano, the District’s Director of Educational Options and Adult Education, appeared at the hearing of this matter to provide credible and persuasive evidence. She was a credible witness.

Before July 7, 2009, Ms. Martarano was informed that the District faced a fiscal emergency in the State of California as well as declining revenue from multiple sources that

required the District to take drastic action to reduce or eliminate portions of the Adult Education program so as to divert about \$1.5 million from the subject categorically funded program. She rendered assistance in denoting the reduction of particular kinds of services identified in Board Resolution 09-29.

*Adult Education Program ESL/TAD Division Teachers*

18. Ms. Martarano identified the Adult Education program teachers in the ESL/TAD division who received layoff notices as being: Respondents Holliday, Kaypaghian, Livers, Natesan, Quijano, Quijano, Thorakos, and Warner.

Respondent Kathleen Livers is the most junior of the ESL/TAD program teachers on the District's Seniority List. She has a first date of paid service to the District of July 5, 2005. But because Respondent Livers holds a Life Standard Elementary credential with authorizations in Anthropology and English, Respondent Livers has the right to bump a junior teacher in the District's elementary school program. (At the time of the hearing in this matter, Respondent Livers had not completed discussions with the District regarding her taking an assignment as an elementary school teacher.) However, Respondent Livers provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to her for which Ms. Livers possesses a credential and is currently competent to teach. Nor did Respondent Livers establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District's Adult Education program.

Respondent Brian Holliday has a seniority date of July 1, 2003. He holds a Clear Designated Subject Adult Education credential. He possesses authorization in English as a Second Language, English, Elementary and Secondary Basic Skills, and Social Science. But he cannot bump any junior teacher in the K-12 program. However, Respondent Holliday provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to him for which Mr. Holliday possesses a credential and is currently competent to teach. Nor did Respondent Holliday establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects his teacher position with the District's Adult Education program.

Respondent Sumathi Natesan has a seniority date of July 1, 2001. She holds a Clear Designated Subject Adult Education credential in ESL. She has authorizations in English and English as a Second Language. However, Respondent Natesan provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to her for which Ms. Natesan possesses a credential and is currently competent to teach. Nor did Respondent Natesan establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District's Adult Education program.

Respondent Sandra Jean "Sandy" Quijano has a seniority date of August 28, 1998. She holds a Preliminary Designated Subject Adult Education credential. She possesses

authorizations for Social Science, Spanish, English, English as a Second Language, French, and Elementary and Secondary Basic Skills. However, Respondent Quijano provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to her for which Ms. Quijano possesses a credential and is currently competent to teach. Nor did Respondent Quijano establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District's Adult Education program.

Respondent Rita Thorakos has a first date of paid service to the District of September 4, 1997. She has a Life General Elementary credential and a CLAD authorization. Respondent. But because she holds a Life Standard Elementary credential, Respondent Thorakos has the right to bump a junior teacher in the District's elementary school program; however, she is a retiree who receives a retirement stipend from California State Teachers' Retirement System (CalSTRS). (The District may elect to end her teaching rights under Education Code section 44907 should she remain in retired status rather than making herself available as an employable credentialed employee.) However, Respondent Thorakos provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to her for which Ms. Thorakos possesses a credential and is currently competent to teach. Nor did Respondent Thorakos establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District's Adult Education program.

Respondent Fiametta Kaypaghain has a seniority date of July 6, 1995. The Clear Designated Subject Adult Education credential that has been issued to Respondent Kaypaghain expired on May 1, 2008. She has authorizations in Basic Education and Social Science, which have expired. Respondent Kaypaghain provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to her for which Ms. Kaypaghain possesses a credential and is currently competent to teach. Nor did Respondent Kaypaghain establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District's Adult Education program.

Respondent Susan Warner has a seniority date of July 5, 1995. She holds a Life Standard Secondary credential. Respondent Warner possesses authorizations in Spanish and English. She can bump a teacher in the high school program in either Spanish or English subjects. Respondent Warner has expressed no interest in teaching at the high school level. However, Respondent Warner provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to her for which Ms. Warner possesses a credential and is currently competent to teach. Nor did Respondent Warner establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District's Adult Education program.

## *Independence Network Teachers*

19. Resolution No. 09-28 sets out that the Adult Education Program will have 1.65 FTE reduced for Independence Network teachers. The layoff action affects six permanent or probationary teachers, who will primarily have work hours reduced. The reduced hours will come from “preparation time” that amounts to a loss of two hours per day or 10 hours each week.

Respondent Cecilia Ramirez has a seniority date of July 1, 2005. She has a Clear Designated Subject Adult Education: Full-Time credential. She has an authorization in Self-Maintenance Skills (Adults with Disabilities). However, Respondent Ramirez provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to her for which Ms. Ramirez possesses a credential and is currently competent to teach. Nor did Respondent Ramirez establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District’s Adult Education program.

Respondent Yvonne Jasso has a seniority date of July 2, 2001. She has a Clear Designated Subject Adult Education: Full-Time credential. She has authorizations in Parenting Education and Self-Maintenance Skills. (Respondent Jasso’s supplemental authorization enables her to teach Parenting Education at the high school level. But the proposed layoff contemplates that she will have her 40 hour per week schedule reduced to 30 hours in the Independence Network program; while, the District has only a 15-hour assignment for her in the Parenting Education program.) However, Respondent Jasso provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to her for which Ms. Jasso possesses a credential and is currently competent to teach. Nor did Respondent Jasso establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District’s Adult Education program.

Respondent Dennis Donnelly has a seniority date of November 21, 1995. He holds a Clear Designated Subject Adult Education: Full-Time credential. He possesses an authorization in Handicapped instruction. Respondent Donnelly worked only 20 hours per week and has retirement status with the District as he is paid a stipend from CalSTRS. (Respondent Donnelly can elect to end his retirement status so as to resume a teaching career.) However, Respondent Donnelly provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to him for which Mr. Donnelly possesses a credential and is currently competent to teach. Nor did Respondent Donnelly establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects his teacher position with the District’s Adult Education program.

Respondent Brian Darby has a seniority date of August 5, 1991. He holds a Clear Designated Subject Adult Education: Full-Time credential as well as a Preliminary Designated Technician Education credential. However, Respondent Darby provided no

competent evidence that the District has retained in the Adult Education Program any teacher junior to him for which Mr. Darby possesses a credential and is currently competent to teach. Nor did Respondent Darby establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects his teacher position with the District's Adult Education program.

Respondent David Grant has a seniority date of July 6, 1987. He holds a Preliminary Designated Subject Adult Education: Full-time credential. Respondent Grant possesses authorizations in Elementary and Secondary Basic Skills, Financial Services, Bookkeeping and Accounting, Self-Maintenance Skills (Adults with Disabilities). However, Respondent Grant provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to him for which Mr. Grant possesses a credential and is currently competent to teach. Nor did Respondent Grant establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects his teacher position with the District's Adult Education program.

#### *Health and Safety Program Teachers*

20. Resolution No. 09-28 sets out that the Adult Education Program will have 3.9 FTE reduced for Health and Safety Program teachers. Ms. Martarano identified the Adult Education program teachers in the Health and Safety Program who received layoff notices as being: Respondents Kim, Ramos and Gover.

Respondent Hanah Kim has a seniority date of July 9, 2007. He holds a Preliminary Designated Subject Adult Education: Full-time credential. Respondent Kim has authorizations in Physical Fitness (Older Adults), Adaptive Physical Education, Elementary and Secondary Basic Skills, Physical Fitness and Conditioning. However, Respondent Kim provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to him for which Mr. Kim possesses a credential and is currently competent to teach. Nor did Respondent Kim establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects his teacher position with the District's Adult Education program.

Respondent Dolores Ramos has a seniority date of July 2, 2007. She possesses a Preliminary Designated Subject Adult Education: Full-time credential. Respondent Ramos holds authorizations in Office Occupations, Public Affairs (Older Adults), Physical Fitness and Conditioning, Performing Arts (Older Adults), and Communication Skills (Older Adults). However, Respondent Ramos provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to her for which Ms. Ramos possess a credential and is currently competent to teach. Nor did Respondent Ramos establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District's Adult Education program.

Respondent Marcella Gover has a seniority date of July 3, 2006. She possesses a Preliminary Designated Subject Adult Education: Full-time credential. Respondent Gover holds authorizations in Adaptive Physical Education, as well as Physical Fitness and Conditioning. However, Respondent Gover provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to her for which Ms. Gover possesses a credential and is currently competent to teach. Nor did Respondent Gover establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District's Adult Education program.

#### *Skills Plus Teacher*

21. Resolution No. 09-28 sets out that the Adult Education Program will have 0.25 FTE reduced for Skills Plus service teachers. Ms. Martarano identified the Adult Education program teachers in the Skills Plus division who received a layoff notice as being: Respondent Salle Hurst.

The layoff action will reduce Respondent Hurst's hours by 0.25 FTE that translates to five hours each week. The reduced hours pertain to Respondent Hurst's work as a lead teacher, which is a quasi-administrative duty. She will be a full-time employee for the ensuing year, but she has a right to participate in the hearing as a respondent. However, as to the reduced hours sustained by Respondent Hurst, she provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to her for which Ms. Hurst possesses a credential and is currently competent to teach. Nor did Respondent Hurst establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District's Adult Education program.

#### *Vocational Career and Technical Education Teacher*

22. Resolution No. 09-28 sets out that the Adult Education Program will have 1.20 FTE reduced for Vocational Careers service teachers. Ms. Martarano identified the Adult Education program teacher in the Vocational Careers division who received a layoff notice as being: Respondent Gloria Curd.

Respondent Gloria Curd had been a Program Supervisor, whose position was eliminated as of June 30, 2009. She became a full-time teacher and she has a seniority date of July 7, 2009. Respondent Curd hold a Clear Designated Subject Vocation Education: Full time credential. And she possesses a Clear Designated Supervision and Coordination credential. She has an authorization in business management. However, Respondent Curd provided no competent evidence that the District has retained in the Adult Education Program any teacher junior to her for which Ms. Curd possesses a credential and is currently competent to teach. Nor did Respondent Curd establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District's Adult Education program.

### *District Resolution that Contemplates Tie-Breaking Criteria*

23. Ms. Martarano established by persuasive evidence the reasonableness in the application of the Board-created criteria for tie-breaking regarding determining the District's retention of teachers having the same date of paid service to the District. The District created Resolution 09-29 that is titled "Resolution for Determination of Seniority Among Certificated Employees with the Same Seniority Date ('Tie-Breaking Resolution')". She developed a vividly clear and easily interpreted seniority list for District certificated employees. Ms. Martarano credibly proclaimed that the District has not committed to hire temporary teachers for the coming year; however, if funds are available and the demand for ESL courses is high the District may offer temporary positions to those teachers who are competent to teach and who have status on the District's rehire or "call back" list.

24. Ms. Martarano established that the District has a seniority list for teachers in the Adult Education program. The seniority list reflects the names of many individuals who are considered temporary teachers. The District used a reasonable formula to determine the status of temporary teachers. The methodology identified respective individuals who had not taught an average of more than 18 hours per week over two consecutive years with the individual teaching seventy-five percent (75%) of the school year. The Adult Education Director accepted assistance from the teachers' union's formula that used sixty percent (60%) of 1080 hours for a school year that resulted in 648 hours. So that any teacher who worked more than 648 hours or more was looked to as being eligible to avoid the designation of being a temporary teacher after providing two years of service to the District so as to gain status on the seniority list.

### *Ultimate Findings*

25. Respondents offered no competent expert witness evidence in support of their arguments regarding the proper use by a school district of the process contemplated under Education Code section 44955.5. The District authority to implement a layoff under section 44955.5 is not limited because the District engaged in the Spring (March 15 through May 15) layoff process. Respondent failed to prove that the District cannot proceed with the instant Summer (June-August 15) layoff action.

26. 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.

27. Respondents offered no argument or presentation of evidence that suggests the District's action is improper insofar as the prospective elimination of 17.94 FTE positions. Respondents did not present evidence that the corresponding lay-off of credentialed

employees, relative to the elimination of the subject FTE positions of the District, is contrary to law and unnecessary.

28. Respondents offered no competent evidence to establish that the District failed to comply with Education Code section 44955 and the principles for bumping rights. The District was not shown to retain a junior teacher to render a service that a senior teacher, who is subject to the layoff action, is competent and credentialed to perform.

29. The decision of the District's Board to eliminate or discontinue a total of 17.94 FTE positions as specified in Resolution 09-28, including the positions held by each respondent, was neither arbitrary nor capricious. Rather, the District's determination was within the proper exercise of the discretion bestowed by law upon the District.

30. The Board'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, and in particular the students in the K-12 Program.

31. The Board determined that it will be necessary, due to the elimination of particular kinds of services, to decrease the number of teachers in the District's Adult Education Program before the beginning of the next academic year. At the direction of the Board, the Superintendent lawfully directed the notification to Respondents of the elimination of the certificated positions, as identified in Factual Finding 6, and as held by each Respondent.

## LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44951, 44955 and 44955.5 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately described particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838; see, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. Education Code section 44955.5, subdivision (a), provides as follows:

During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number

of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board.

Education Code section 44955 provides in pertinent part:

(b) Whenever in any school year . . . whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

Education Code section 44955.5, which was enacted under SB 813 in 1983 as a major “education reform” bill establishes that school district governing boards have the authority to layoff certificated employees when the board determines that its total revenue limit per average daily attendance has not increased by at least 2 percent and that the subject school’s plight makes it necessary to reduce certificated staff. The companion statute-Education Code section 44955-also permits a school district to reduce the number of certificated employees, but under a separate and distinct time scheme and rationale than Education Code section 44955.5. Section 44955 authorizes a school district to serve a final notice of the layoff action of teachers before May 15 when services are reduced/eliminated or when student enrollment declines. Education Code section 44955.5 directly makes reference to section 44955 so as to require a school district to follow the procedural provision of the latter statutory provision so that affected teachers have during an “August layoff” the same procedural rights, including administrative adjudication scheme under Chapter Five of the Administrative Procedure Act (Gov. Code, § 11500 et seq.), seniority principles for layoffs that contemplate a reverse order for layoffs relative to initial hiring; bumping privileges and other well-established practices.

Complainant compellingly argues that the District has met the threshold jurisdictional requirement under Education Code section 44955.5, which dictates that a school district's governing board must act during the time period between five days after the enactment of the State Budget Act and August 15 so as to implement a proposed "summer time" layoff action. As sought by Complainant- official notice<sup>6</sup> is taken of the fact that the original Budget Act of the 2009-2010 fiscal year was adopted in February 2009, but revised and adopted by the Governor in July 2009, shortly before the hearing of this matter. And on May 19, 2009, the state's electorate rejected ballot propositions that were believed to provide tax revenue to the State. The Governing Board adopted Resolution 9-28 on July 7, 2009, which was well within the jurisdictional time frame of Education Code section 44955.5. As Complainant persuasively noted it is beyond dispute that the economic and fiscal realities of July 2009 are very different than the financial conditions of February 2009, which justifies the District's Resolution 09-28.

Lastly, Complainant established that the third jurisdictional requirement for a school district's use of Education Code section 44955.4 was met by the District. That last requirement turns upon the determination as to whether due to the insufficient increase in total revenue limit per unit of average daily attendance "in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the District." That express finding as made in Resolution 09-28, and as bolstered by the evidence offered at the hearing of this matter, shows that the District met this last threshold consideration for the implementation and execution of the layoff action that must culminate by August 15.

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.

4. Respondents argue that the phrase "total revenue limit per unit of average daily attendance" as used in Education Code section 44955.5 means that a "basic aid district" such as the District must be prohibited from using the "summer time" layoff action as authorized by the subject statutory provision. But, Respondents' interpretation is too rigid and restrictive. As Complainant points out the State Accounting Manual provides that the term "total revenue limit" is a concept that the State defines. Because the State aid for a basic aid district is "nil" does not mean that the concept under Education Code section 44955.5 is meaningless for the District in attending to a summer time layoff to address grave fiscal questions. More accurately the language in Education Code section 44955.5 as to "total revenue limit" means that the Legislature intended for a growth or decline in average daily attendance to be taken into account by the Governing Board in its exercise of discretion

---

<sup>6</sup> Official notice may be taken of "facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute." (Gov. Code § 11515 and Evid. Code §451, subd. (f).)

to use a layoff to address the fiscal crisis. As Complainant noted a decline in average daily attendance along with a stable “total revenue limit” would yield an increase in “total revenue limit per unit of average daily attendance” even though revenue had not increased. In this matter, the District proved that not only would the District receive less total revenue for school year 2009-2010 as compared with school year 2008-2009, but also the District contemplates the obligation to provide educational services to more students in the K-12 Program.

5. As noted in Findings 14 through 15, the District’s total revenue limit per unit of average daily attendance will not increase by at least two percent. The District’s Governing Board has determined that as a result it needs to reduce the number of certificated employees in the District. The District’s revenue limit will actually decrease to a level that is negative one point three percent (-1.3%) of revenue received for the preceding school year.

6. Respondents make much about a rainy day fund, reserve accounts and “stimulus money.” But such argument is irrelevant to the layoff process as authorized under Education Code section 44055.5. That statutory provision does not allow for consideration of any amount of money other than “total revenue limit per unit of average daily attendance.”

7. Respondents contend that the District has not demonstrated that it is financially necessary to reduce particular kinds of services in the Adult Education instructional services represented by 17.94 FTE certificated positions. But Respondents’ argument is without merit.

Education Code section 44955.5 authorizes a public school governing board to “terminate the services of any permanent or probationary certificated employees” where the “total revenue limit per unit of average daily attendance for the fiscal year . . . has not increased by at least two percent.” It is undisputed in this case that the District’s total revenue limit per unit of average daily attendance will not be increased by at least two percent. Education Code section 44955.5 makes no mention of the need to also consider other revenue sources, including federal stimulus or other fund balances on reserve. It does appear that once a threshold determination is made that the two percent increase has not been satisfied, the District Governing Board has discretion to opine that it “is therefore necessary to decrease the number of permanent employees in the district. . . .”

8. The “necessity” language is similar to the wording of Education Code section 44955. The determination of the necessity to reduce or discontinue particular kinds of services should therefore be reserved to the discretion of the District Governing Board. The policymaking decisions of a district governing board, an elected legislative body, should not be subject to arguments as to the wisdom of their enactment, the necessity of the resolution, the selection of services, or questions as to the board’s motivation. (*California Teacher’s Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529; *Horwath v. Local Agency Formation Comm. of San Mateo County* (1983) 143 Cal.App.3d 177, 182.) The board’s action need only be reasonable under the circumstances. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796.) Here, the District articulated its rationale for using the financial

analysis of its Assistant Superintendent for Business Services, Mr. Luyau, in calculating its base revenue limit. Insufficient evidence exists to establish that the District has not accounted for a “rainy day” fund so as to avert the subject layoff action. And no competent evidence demonstrates that the District has failed to account for its use of federal stimulus and other funding sources to pay salaries of teachers assigned to the Adult Education program. There was no evidence that the District Governing Board acted arbitrarily or capriciously in passing Resolution No. 09-28. It was within the discretion of the District Governing Board to make such fiscal and policy decisions.

9. Respondents were not persuasive that the District’s layoff is legally deficient because the process pertains to an impermissible elimination of particular kinds of services (namely, ESL, Traditional Adult Diploma, Independence Network, Health and Safety, Skills Plus and Vocational Careers teacher positions) that are actually indivisible within a particular kind of service that is Adult Education. Respondents used the notion that the District’s action is an impermissible layoff in being a reduction or elimination of “a particular kind of service within a particular kind of service.” Respondents’ analogy to the Russian doll that has a progressively set of smaller dolls within a series of dolls did not serve to advance its argument. Respondents offered no authority under the Education Code that prohibits the type of layoff action sought by Resolution No. 09-28. Contrary to Respondents’ argument, the District is authorized to exercise wide latitude to determine the educational service that the District will prospectively provide. Moreover, Respondents point to no legal requirement that the District offer any form of Adult Education services. The statutory flexibility given school districts is shown in the rule expressed in *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 474:

[Plaintiffs’ argument] would frustrate the express purpose of the statute: i.e., to allow districts with . . . decreasing funds to curtail certain types of educational services. . . . [T]he distinction between discontinuance of a particular kind of service and the termination of an employee’s service is more than semantic. It is a deliberate statutory arrangement which allows the district the flexibility of modifying the types of educational service which it provides while continuing to meet its legal obligations to permanent employees through reassignments.

The District exercised its lawful flexibility to reduce its Adult Education Program and to divert funds from that program into the K-12 Program so as to avoid reduction or elimination of classroom services to students who are children.

Respondents were vague in advancing the argument that the District deprived them of due process regarding the implementation of the adopted schedule of notices and hearing. Education Code section 44955.5 directs school districts to adopt a schedule of notice and hearing. The Governing Board adopted such a schedule on July 7, 2009, by way of its resolution. No Respondent claimed that the District failed to provide any affected person of the actual notice of the layoff proceeding or hearing. Respondent were afforded 17 days notice of the hearing, which is greater than the time specified by Government Code section

11509. And Respondents were given seven days to file respective notices of defense responses, although five days is required by Education Code section 44949. Although the number of days for discovery was shortened from 15 days to seven days, the District addressed the discovery requests so that Respondents offered no substantive complaint regarding the District having failed to provide the teachers, or their lawyers, with documents that were available at the time of the Board adopted Resolution 09-28. Respondents' contention regarding having been deprived of due process is without merit.

10. Respondents argue that the press of time associated with the proceeding that resulted from the Governing Board's resolution of July 7, 2009, pressed the time for Respondents' preparation that they were deprived of due process.

Education Code section 44955.5 specifically incorporates by reference the reasons for layoffs in section 44955. Code section 44955.5 allows for additional adjustments upon an event trigger – a determination that the base revenue limit per average unit of daily attendance has not increased by more than two percent. The statute then allows a school district to account for fiscal changes and to make additional reductions in force, including those based on the reasons specified in section 44955, as the budget revenue picture changes. Respondents' characterization of section 44955 layoff as being limited to long-term programmatic changes is not persuasive. The District Governing Board is authorized to make programmatic changes, even long term, when changes in fiscal circumstances dictate that such is necessary. The administrative law judge then performs much the same evaluation under Education Code section 44955.5, as under sections 44949 and 44955. The same consideration is given to issues relating to seniority, bumping, skipping, tie-break criteria, teacher certification, competency and classification. In contrast, and as already noted, review of the necessity or wisdom of the governing board's decision is very limited. Board actions should not be subject to independent de novo review. Rather, the administrative law judge should look only to whether there is any evidence that a board's decision was arbitrary or capricious. In this case the action taken by the District's Governing Board was reasonable under the circumstances.

Education Code section 44955 authorizes a school district's governing board to notice the layoff of teachers prior to May 15 in situations pertaining to reduction or elimination of services and also for a decline in student enrollment for the ensuing year. Education Code section 44955.5 enables a district to further engage in teacher layoff actions prior to August 15 in addressing the district's declining revenue. Neither statute contains any language that precludes a district from implementing a layoff of teachers in May under Code section 44955 and then initiating a layoff action in August of the same year under Code section 44955.5. The two statutory provisions are not mutually exclusive. Moreover, under rules of statutory construction, statutes *in pari material*-that is, statutes relating to the same subject matter-should be construed together. The rule of *in pari material* is a corollary of the principle that the goal of statutory interpretation is to determine legislative intent. (*Apartment Assoc. of Los Angeles Cnty., Inc. v. Los Angeles* (2009) 173 Cal.App.4th 13.) To interpret Education Code sections 44955 and 44955.5 as mutually exclusive would be to add words or meaning to the statutes that were not intended by the Legislature. Had mutual exclusivity of the

subject provisions been intended by the lawmakers, the Legislature would have included such a proviso in the language of the statutes to prohibit a school district from using the two statutes in a single year. No such legislative intent is evident. Moreover, Education Code section 44955.5 was enacted following the adoption of section 44955. And by directly making reference to section 44955, Education Code section 44955.5 must be read to mean that the procedural due process rights of notice and hearing procedures for a layoff embraced the procedures of Code section 44955 are applicable here. Respondents did not establish that the District's authority to implement a "summer time" layoff under section 44955.5 is limited in any manner by having conducted a May layoff.

11. The District applied bumping rules correctly, allowing bumping based upon the more senior employee holding a credential or authorization to teach the assignment of the less senior teacher.

12. No permanent or probationary certificated employee with less seniority is being retained to render a service which Respondents are certificated and competent to render.

13. The services identified in Board Resolution No. 09-28 are particular kinds of services that may be reduced or discontinued under Education Code sections 44955 and 44955.5. The District Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

14. 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 44951 and 44955. The District's exercise of discretion to reallocate \$1.5 million from the Adult Education Program's divisions of instruction to the K-12 Program's classrooms for children and juveniles was reasonable and lawful.

15. Contentions made and arguments pertaining to questions of law as advanced by Respondents that were not specifically addressed above are found to be without merit and are rejected.

16. Cause exists for the reduction of the particular kinds of services and for the reduction of full-time equivalent certificated positions at the end of the 2008-2009 school year pursuant to Education Code sections 44951, 44955 and 44955.5. Therefore, cause exists to give Respondents notice that their services will be reduced or will not be required for the ensuing 2009-2010 school year.

## RECOMMENDED ORDER

1. The accusation served on each respondent is sustained.

2. Final notice may be given to Respondents Gloria Curd, Brian Darby, Dennis Donnelley, Marcella Gover, David Grant, Brian Holliday, Sallie Hurst, Yvonne Jasso, Fiametta Kaypaghian, Hanah Kim, Kathleen Livers, Sumathi Natesan, Sandra Jean Quijano, Cecelia Ramirez, Dolores Ramos, Rita Thorakos, and Susan Warner, 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 Santa Clara Unified School District.

DATED: August 7, 2009

---

PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings