

BEFORE THE  
GOVERNING BOARD OF THE  
SAN JUAN UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED EMPLOYEES  
OF THE SAN JUAN UNIFIED SCHOOL  
DISTRICT,<sup>1</sup>

OAH No. 2011010189

Respondents.

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Dian M. Vorters, Office of Administrative Hearings, State of California, on April 11 through 14, 2011, in Carmichael, California.

Linda C. T. Simlick, General Counsel, San Juan Unified School District (SJUSD), represented the Board of Education, San Juan Unified School District. Larry Graser, Director, Human Resources, Kent Kern, Senior Director of Facilities, and Deann Carlson, Analyst, were also present.

Michael N. McCallum, Attorney at Law,<sup>2</sup> represented all respondent teachers. Sandra Galindo, Assistant Executive Director of the San Juan Teachers Association and Robin Thompson, Paralegal, were also present.

Dennis Pedersen, Executive Director for the San Juan Professional Educators Coalition (SJPEC), as a non-attorney advocate, represented Teresa Heath, Vice Principal of Adult Education and Susan Kerhoulas, Vice Principal at Del Campo High School.

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<sup>1</sup> List of Certificated Employees of the San Juan Unified School District who the Superintendent served with an Accusation. (Attachment A.)

<sup>2</sup> Michael N. McCallum, Attorney at Law, 5820 Landis Avenue, Suite 3, Carmichael, California 95608.

Evidence was received and the record was left open for an offer of proof on behalf of Joseph Pallen (respondent) to be received by April 15, 2011, and the parties' written closing briefs to be received by April 29, 2011, at 4:00 p.m. On April 15, 2011, OAH received from the Law Office of Michael N. McCallum, Joseph Pallen's Offer of Proof. This item was marked as Exhibit FF and admitted in evidence. The District's closing brief was received on April 29, 2011, was marked as Exhibit 40, and admitted in evidence. Respondent teachers' closing brief was received on April 29, 2011, was marked as Exhibit GG, and admitted in evidence. Respondent administrators' closing statement was received on April 27, 2011, was marked as Exhibit AA2, and admitted in evidence, over the District's objection. The record was closed on April 29, 2011.

## FACTUAL FINDINGS

### *Jurisdiction*

1. Dr. Pat Jaurequi, is the Superintendent of the San Juan Unified School District (SJUSD). Ruth G. Peshkoff, is the Assistant Superintendent of Human Resources (HR). They performed their duties solely in their official capacities.

2. Before March 8, 2011, the Superintendent determined that funding for the 2011-2012 school year would be reduced, thereby necessitating the reduction or elimination of certain particular kinds of services (PKS). The Superintendent's recommendation to eliminate and reduce teaching services was made solely for the welfare of students.

3. On February 8, 2011, the Board adopted Resolution No. 2553, providing for the reduction or elimination of PKS, resulting in the reduction or elimination of 357.19 certificated positions. Areas identified for reduction or elimination included K-12 classroom instruction, administration, adult education, nursing, and counseling.

4. Also on February 8, 2011, the Board adopted Resolution No. 2554, specifying criteria to be used in determining the order of termination of certificated employees who first rendered paid service as a probationary teachers on the same date (tie-breaking criteria). The tie-breaking criteria are attached as Attachment C.

5. On March 8, 2011, the Board adopted a revised Resolution No. 2553, providing for the reduction or elimination of particular kinds of services, resulting in the reduction or elimination of 364.79 certificated positions.<sup>3</sup> The revised PKS list is attached as Attachment B. The revised resolution also authorized application of competency and skipping criteria as more fully set forth below.

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<sup>3</sup> The additional 7.6 FTE consist of a Program Specialist position at 1.0 FTE and Nurse positions at 6.6 FTE.

6. On March 9, 2011, the Superintendent served on persons affected by the reduction and elimination of PKS a “Preliminary Notice of Recommendation That Service Will Not Be Required” for the ensuing 2011–2012 school year (Layoff Notice or Notice). The Notice stated that the Superintendent had recommended to the Board that notice be given to respondents pursuant to Education Code sections 44949 and 44955, that their services would not be required for the ensuing school year. The Notice advised that the Board had passed a Resolution reducing or discontinuing particular kinds of services in order to reduce certificated staff, and included copies of the Resolutions identifying the PKS to be reduced or eliminated.

7. Respondents, with the exception of two teachers represented by counsel, timely requested a hearing to determine if there was cause for not re-employing them for the ensuing school year.<sup>4</sup>

8. The Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations, required accompanying documents, and blank Notices of Defense were timely served on those employees. Respondents timely filed Notices of Defense to the Accusations.

*Larry Graser, Director of Human Resources*

9. Larry Graser is the Director of HR for the District. He testified that the District is experiencing budget constraints that have necessitated a reduction in force of certificated employees and/or an elimination of PKS before the start of the 2011-2012 school year. In implementing the layoff, no certificated employee was retained to render any service for which there was a more senior employee who was competent and certificated to render the service. In the event that two or more certificated employees first rendered paid service as probationary teachers on the same date, tie-breaking criteria were employed. Mr. Graser explained the process by which the District implemented the layoff including provision of notice, verification of personnel records, competency criteria, skipping, tie-breaking, and bumping, as set forth more fully below.

10 *Verification of Personnel Records.* The District gave employees an opportunity to verify their personnel data. On or about November 29, 2010, the HR Department sent letters by first class mail to every employee with their personnel data

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<sup>4</sup> Respondents Christina Cova and Evie Pierce did not timely request a hearing. However, both Ms. Cova and Ms. Pierce timely filed a “Supplemental Notice of Defense” through counsel. The District objected to and moved to strike their Notice of Defense at the pre-hearing conference held April 1, 2011. After argument, the ALJ ordered, on due process grounds, that both teachers be permitted to participate in the Layoff hearing.

including credentials, status, and seniority date. The letter requested that employees review the data, correct any errors, sign, date and return the letter to HR by December 15, 2010. HR staff reviewed all responses, verified data, and made valid corrections. On or about February 4, 2011, the District sent an e-mail to all employees inviting them to review the final seniority lists at either the SJUSD District Office or at the San Juan Teachers' Association Office, both in Carmichael. Mr. Graser stated that the purpose of this verification was to ensure that the District was working with accurate data for implementation of potential layoffs.<sup>5</sup> Despite these efforts, not all corrections were returned or made known to the District as requested. Evidence of additional information was presented at hearing and is discussed below.

### *Stipulated Rescissions*

11. At hearing, the District agreed to rescind layoff notices issued to the following certificated employees: Amber Betzler, Mitchell Crowden, Susan Reardon, Josh Costa (.30 FTE), Kara Macomber, and Michele Senini.<sup>6</sup>

### *Employment Status and Seniority Date Stipulations*

12. *Employment Status.* The Education Code permits certificated employees to be classified in one of four ways: permanent, probationary, substitute, or temporary. (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916.) "A certificated employee is classified as permanent, i.e., acquires tenure, if after having been employed for two complete successive school years in a position requiring certification qualifications, he or she is reelected for the following year." (Ed. Code, § 44929.21, subd. (b).) "Regardless of the number of years that the employee may have served in a temporary status in a position with certificated qualifications, the employee must serve one year as a probationary employee before acquiring permanent status. (*Schnee v. Alameda Unified School Dist.* (2004) 125 Cal.App.4th 555, 564.) Substitute and temporary employees fill the short range needs of a school district and generally may be summarily released. (*Bakersfield Elem. School Dist. v. Bakersfield City School Dist. et al.* (2006) 145 Cal.App.4th 1260, 1278.)

13. *Seniority Dates.* Seniority is the relationship between the teachers within a school district. Layoffs of certificated employees classified as probationary or permanent take place in accordance with seniority. If a school district seeks to terminate employment for economic reasons (such as a decline in daily attendance or discontinuance of services), probationary and permanent employees are entitled to certain procedural protections pursuant

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<sup>5</sup> Neither day-to-day or long-term substitute teachers were included on the seniority lists.

<sup>6</sup> Ms. Betzler won the tie-breaker at hearing. Ms. Reardon was omitted from the District's closing brief. However, at hearing, the District agreed to rescind her notice.

to Education Code section 44949. No permanent employee may be laid off if a probationary employee, or any other employee of less seniority, occupies a position the permanent employee is certificated and competent to fill. (Ed. Code, § 44955, subd. (b).) Also, “a probationary employee, may ‘bump’ another probationary employee with less seniority.” (*California Teachers Assoc. et al., v. Vallejo City Unified School Distr.* (2007) 149 Cal.App.4th 135, 145.) Seniority is determined as of the date the employee “first rendered paid service in a probationary position.” (Ed. Code, § 44845.) “Temporary employees, therefore, do not accrue seniority, and so must be released before probationary employees.” (*California Teachers Assoc. et al., v. Vallejo, supra*, 149 Cal.App.4th at p. 145.)

14. *Stipulations Related to Seniority Dates.* At hearing, the District took into account additional information received from respondents. The District stipulated to earlier seniority dates for several certificated employees. Respondents agreed to the following corrections to their seniority dates:

<b>Employee</b>	<b>Incorrect Hire Date</b>	<b>Correct Hire date</b>
Buckmaster, Christine	November 19, 2010	October 29, 2010
Verigin, Hannah	January 20, 2011	October 11, 2010
Tupper, Cara	January 20, 2009	December 2, 2008
Jones, Elisha	September 15, 2008	August 27, 2008
Matt, Amy	August 14, 2008	August 13, 2008
Ju-Nolan, Amy	September 7, 2006	August 16, 2006
Smith, Robert	August 15, 2007	August 31, 2006
Delzer, Shannon	August 18, 2005	August 17, 2005
Madden, David	August 18, 2005	August 17, 2005
Martinez, Paquito	August 18, 2005	August 17, 2005
Teachout, Christine	August 18, 2005	August 17, 2005
Utley, Patricia	August 18, 2005	August 17, 2005
Winney, Gayle	August 31, 2004	August 19, 2004
Oates, Melissa	September 16, 2004	August 19, 2004
D'angelo, Janine	August 20, 2004	August 19, 2004
Fischer, Sarah	August 31, 2004	August 18, 2004
Garrett, Marcia	August 31, 2004	August 18, 2004
Stahle, Joan	August 30, 2004	August 18, 2004
McAllister, Michael <sup>7</sup>	August 19, 2002	September 27, 2001

*Competency Criteria*

15. The Board, in Resolution 2553, established “competency criteria” for the Regional Occupational Program (ROP), Career Technical Education (CTE), and Non-ROP/CTE teachers. Mr. Graser testified that the District decided to look at recent teaching experience to ensure that teachers are a “good match” for the positions they are bumping

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<sup>7</sup> The District agreed to adjust Mr. McAllister’s seniority date in their closing brief.

into. The District included “highly qualified” status to comply with “No Child Left Behind” (NCLB) state and federal mandates. Such determinations “involve discretionary decisions which are within the special competence of the school districts.” (*Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 565.)

16. *Certificated and Competent.* Pursuant to Resolution 2553, for the ROP or CTE programs, a teacher is considered “certificated and competent” if that teacher:

- a) Holds a valid credential issued by the State of California which is associated with the course(s) being taught, and
- b) Has taught the course(s) for at least one semester in the current school year or either of the two preceding school years.

For Non-ROP/CTE positions, a teacher is considered “certificated and competent” if that teacher:

- a) Holds a valid credential issued by the State of California which is associated with the courses(s) being taught AND, for course(s) identified by NCLB as core curriculum, is NCLB Highly Qualified to teach the course(s) or
- b) If there is no credential issued by the State of California associated with the course(s) being taught, has taught the specific course(s) for at least one semester in the current school year or either of the two preceding school years.

17. ROP/CTE programs include courses in automotive mechanics, retail sales, and culinary arts. According to Mr. Graser, competency standards are stricter for the ROP/CTE program than for the regular Kindergarten through 12th (K-12) grade program because ROP credentials can be fairly broad and the District wants to ensure experience to teach the occupational subject. As such, a teacher with a K-12 credential who is teaching English is considered competent to bump into a Math assignment (if highly qualified), even if the teacher last taught Math 20 years ago. But, a teacher with an ROP credential teaching retail sales, cannot bump into an ROP automotive assignment, even if the teacher last taught automotive mechanics four years ago.

18. *No Child Left Behind/Highly Qualified Status.* State and federal mandates under NCLB require teachers to be “highly qualified” in specific core subjects (English, Math, Science, Social Science, Visual and Performing Arts (VAPA)). Districts are audited by state and federal Departments of Education and risk losing funding if found to be non-compliant. To acquire NCLB/HQ status, a teacher must possess a valid State issued credential in a core subject and show subject matter competency. Subject matter competency can be established by either passing a test in that subject or having earned a Bachelors degree in a single-subject major. If hired before July 1, 2002, HQ status can be gained through a process called HOUSSE which stands for High Objective Uniform State Standard of

Evaluation. This is an approved Individual Professional Development Plan (IPDP) which assigns points for experience, Master's degrees, leadership roles such as department chair positions, and training.

19. Though NCLB was passed in 2001, this is the first year that the District has included NCLB qualification in the layoff resolution. The District is approximately 90 percent compliant with NCLB standards and the goal is to be 100 percent NCLB compliant. As such, teachers in the District must establish that they are NCLB/HQ to be found competent for purposes of bumping into another position. Mr. Graser stated that the District has made more of an effort to identify and increase the number of NCLB/HQ teachers. However, employees not affected by the layoff who teach Core subjects and are not NCLB/HQ will remain in those positions.

20. *Elizabeth Wallace, Cheryl Dultz, Laurel Lyda, Brooke Thomas, Jerilynn Ferrari, Anna Del Mul, and Lucas Anderson.* As of February 23, 2011, HR had not verified HQ status for all affected certificated employees. Respondents raised the issue that the HQ status of some senior teachers who bumped junior teachers was not established in the record. Mr. Graser stated that he believed these teachers were HQ because they had taught in the District for long periods and would qualify under HOUSSE provisions. During the hearing, HR verified the HQ status of these teachers. Mr. Graser confirmed that each of them was, in fact, NCLB/HQ. The following determinations are made regarding their ability to bump into positions held by junior teachers:

a. *Nicole Sandoval and Elizabeth Wallace.* Ms. Wallace is permanent with a seniority date of August 25, 1978. She is on special assignment/special education. She holds a multiple subject self-contained classroom credential and a specialist learning handicapped credential. Mr. Graser confirmed that Ms. Wallace was HQ for a multiple subject position based on the HOUSSE point system.<sup>8</sup> Ms. Sandoval is a probationary teacher with a seniority date of February 2, 2011. Ms. Sandoval teaches second grade. Ms. Wallace is certificated and competent to bump Ms. Sandoval for 1.0 FTE in multiple subject self-contained position.

b. *Cheryl Dultz, Judith Jordan, and Amy Day.* Ms. Dultz is permanent with a seniority date of July 30, 1985. She is on special assignment providing PAR (peer assistance and review) support at .50 FTE. She holds a multiple subject self-contained credential, a resource specialist certificate, and a CLAD authorization. Mr. Graser confirmed that Ms. Dultz was HQ for a multiple subject position. Amy Day is a permanent teacher with a seniority date of August 13, 2008. She teaches Social

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<sup>8</sup> Applying the HOUSSE system to Ms. Wallace, she scored the requisite 100 points by having taught for five years (10 points per year) and completing a Commission on Teacher Credentialing (CTC) approved liberal studies waiver program (50 points).

Studies, World History, and English (Core).<sup>9</sup> Ms. Jordan is a traveling physical education teacher with a multiple subject self-contained credential. Ms. Dultz is certificated and competent to bump Ms. Day for .30 FTE and Ms. Jordan for .20 FTE in multiple subject self-contained positions.

c. *Laurel Lyda, Andrea Mager, and Angela Nodolf.* Ms. Lyda is permanent with a seniority date of August 23, 1996. She is a resource teacher/special programs. She holds a multiple subject self-contained credential, an administrative service certificate, and a CLAD authorization. Mr. Graser confirmed that Ms. Lyda is HQ for a multiple subject position. Ms. Nodolf is permanent with a seniority date of August 17, 2006. She teaches World History and English Core. Ms. Mager is permanent with a seniority date of September 5, 2006. She teaches Social Studies and English Core. Ms. Lyda is certificated and competent to bump Ms. Nodolf for .30 FTE and Ms. Mager for .70 FTE in multiple subject self-contained positions.

d. *Brooke Thomas and Grace Wahl.* Ms. Thomas is permanent with a seniority date of August 21, 2000. She is a Vice Principal/Elementary Title I. She holds a multiple subject self-contained credential and a CLAD authorization. Mr. Graser confirmed that Ms. Thomas is HQ for a multiple subject position. Ms. Wahl is permanent with a seniority date of October 20, 2005. She teaches Social Studies and English (Core). Ms. Thomas is certificated and competent to bump Ms. Wahl for 1.0 FTE in a multiple subject self-contained position.

e. *Jerilynn Ferrari, Ryan Gantenbein, Natalie Hanson, and Robert Smith.* Ms. Ferrari is permanent with a seniority date of August 23, 1996. She teaches computer applications/retail sales. She holds single subject credentials in Business, Introductory Mathematics, Introductory General Science, an administrative services certificate and is CLAD authorized. Mr. Gantenbein is permanent with a seniority date of August 13, 2008. He serves as a traveling Elementary Classroom teacher. Ms. Hanson is permanent with a seniority date of August 20, 2007. She teaches World History, Geography, Economics, and American Government at the high school level. She holds a single subject Social Science credential, an EL authorization, and is NCLB/HQ. Mr. Smith is permanent with a seniority date of August 15, 2007. He teaches digital imaging and business office professional functions. Mr. Graser testified that there is no NCLB/HQ competency for technology or business areas. He confirmed that Ms. Ferrari was HQ in the area of Economics. Ms. Ferrari is certificated and competent to bump Mr. Gantenbein for .33 FTE Elementary Classroom, Ms. Hanson for .20 FTE Economics, and Mr. Smith for .07 FTE Digital Imaging.

f. *Anna Del Mul.* Ms. Del Mul is permanent with a seniority date of September 14, 2007. She teaches Science and Directed Study at Lichen (K-8). She holds a

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<sup>9</sup> A Core assignment is when a teacher teaches two or more subjects with the same group of students.

multiple subject credential in English and Science, has an English Learner Authorization (ELA), and is NCLB/HQ. Several employees with greater seniority than Ms. Del Mul hold multiple subject credentials with Science and/or English authorizations, but are not NCLB/HQ. As such, they were not considered competent to bump into her position. These teachers challenged the District's inclusion of HQ status as a competency criteria.<sup>10</sup> It is within the District's "special competence" to include NCLB/HQ status as a competency standard for purposes of bumping. (see *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 565.)

g. *Lucas Anderson.* Mr. Anderson is permanent with a seniority date of August 10, 2006. He is a teacher on Special Assignment in Psychiatric Services at Kenneth School. He holds a multiple subject credential self-contained for which he is NCLB/HQ, an Education Specialist Mild/Moderate, and an EL authorization. The District identified 14.0 FTE in reductions to Teachers on Special Assignment (TOSA). Mr. Anderson's assignment was not targeted for elimination. Mr. Graser stated that there is no credential for his assignment; hence, for a more senior teacher to bump into Mr. Anderson's assignment, the teacher would need to demonstrate subject matter competence through recent experience. Though there were some TOSA with greater seniority, none of them met the competency criteria to bump into Mr. Anderson's particular assignment.

### *Skipping Criteria*

21. The Board, in Resolution 2553, also established skipping criteria. "Junior employees may be given retention priority over senior employees only if they possess special skills or capabilities which their more senior counterparts lack." (Ed. Code, § 44955, subd. (d)(1); *Poppers v. Tamalpais Union High School Dist.* (1986) 184 Cal.App.3d 399, 405.) Resolution 2553 states that employees with the following special skills are to be skipped. Those who:

- a. Hold a valid credential authorizing special education service other than a Mild/Moderate Credential, Learning Handicapped Credential, Resource Specialist Certificate, or Development Center Permit.
- b. Hold a valid multiple subject credential and a valid BCLAD (Bilingual Cross-cultural Language and Academic Development) in Spanish.
- c. Have experience teaching in a Montessori classroom for at least one semester in the current school year or either of the two preceding school years or have Montessori training in the current school year or either of the two preceding

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<sup>10</sup> Stephanie Jones, David Madden, Sarah Swallow, Kara Borgman, Melissa Oates, Deborah Ortmann, Cassondra Anderson, and Gerell Elliott challenged inclusion of NCLB/HQ as a competency criteria.

school years. Such training must lead to certification by a program accredited by the Montessori Accreditation Council for Teacher Education (MACTE). On-line Montessori training does not meet this criteria.

22. *BCLAD Employees.* Mr. Graser explained that the District started an immersion program at Edison Elementary that they want to expand. The skipping criteria allow any teacher with a multiple subject credential and a BCLAD authorization in Spanish to be skipped. He stated that some people skipped on this basis will not be teaching at Edison Elementary.

a. *Hilda Fernandez.* Ms. Fernandez is permanent with a seniority date of April 15, 1997. She is a Vice Principal/Elementary. She holds a multiple subject credential for General Subjects and Spanish, and is BCLAD authorized. The District targeted 5.0 Elementary Vice Principal Positions for elimination. Mr. Graser did not know if Ms. Fernandez would be teaching next year or if she would remain an administrator. She was skipped because of her BCLAD authorization. She did not bump any other certificated employee. Administrators are not afforded the same protections as teachers in economic layoffs. (Factual Finding 28.)

b. *Maria Alvarado and Armando Galvan.* Ms. Alvarado is probationary with a seniority date of August 19, 2010. She teaches Spanish I and II at Mesa Verde High School. She holds a multiple subject self-contained credential for which she is NCLB/HQ and a BCLAD in Spanish. Mr. Galvan is probationary with a seniority date of August 19, 2009. He teaches Spanish I and II at El Camino High School. He is a District Intern and holds a single subject credential in Spanish, an English Learner authorization, and is NCLB/HQ in Spanish. Neither Ms. Alvarado nor Mr. Galvan are currently teaching at Edison Elementary. Mr. Graser testified that the District has not made teacher assignments for the 2011-2012 school year and he could not say where Ms. Alvarado would be assigned next year. Though Ms. Alvarado is junior to Mr. Galvan, the District skipped Ms. Alvarado because of her BCLAD authorization.

Mr. Galvan is properly classified as a probationary employee and is entitled to all protections afforded probationary employees. (Ed. Code, § 44885.5; *Calif. Teachers Assoc. v. Vallejo City Unified School Dist*, *supra*, 149 Cal.App.4th at p. 147.) “With respect to teachers having different seniority dates, ‘needs’ are considered only in relation to the program requirements.” (*Alexander v. Delano Joint Union High School Dist.* (1983) 139 Cal.App.3d 567, 574.) Both Ms. Alvarado and Mr. Galvan are currently assigned to teach high school Spanish and both are certificated and competent to provide this service. There was no evidence that program requirements for this assignment have changed. There was no evidence that either employee will be assigned to an immersion program next year or what the needs of an expanded immersion program at Edison Elementary will be. As such, Mr. Galvan was improperly skipped by Ms. Alvarado, a junior probationary employee. Because a senior employee was noticed who is certificated and competent

to perform Ms. Alvarado's assignment, Mr. Galvan's notice for .87 FTE must be rescinded.

### *Tie-Breaking Application*

23. The Board, in Resolution 2554, established tie-breaking criteria to be used in the event that the layoff affected employees with the same status and seniority date. Tie-breaking criteria were broken into three categories. Category I assigned points for certifications and experience. Category II assigned a value based on teaching experience within the District for service not under contract. If employees remained tied in ranking after application of Categories I and II, Category III authorized the District to conduct a lottery.

The District properly applied tie-breaking criteria to those certificated permanent and probationary employees who shared the following hire dates: August 15, 2007, August 13, 2008, August 14, 2008, August 20, 2009, and August 18, 2010. For employees with a start date of August 13, 2008, after the District applied the first two tie-breaking categories, there remained a tie between Amber Betzler and Michele Senini. The District conducted a lottery on April 11, 2011, and Amber Betzler prevailed. As such, the District rescinded Amber Betzler's layoff notice.

### *Bumping Application*

24. Mr. Graser testified that the District implemented the layoff by first identifying the positions known to be affected by reduction or elimination. The District then identified the most junior persons in each position up to the target FTE. The District next determined if any of the more senior affected employees were qualified to bump into positions held by less senior employees. Mr. Graser stated that the District sought to follow the language of the law, referring to Education Code section 44955, subdivision (b). During the bumping process, if a more senior teacher did not hold a corresponding credential for the subject, the District looked at whether the teacher had taught that subject in the current or two preceding years. The District did not consider as between equally certificated and competent teachers, who was "best qualified" to teach a class or perform a service.

25. *Kaija Perkins-Uno and Robert Smith.* Ms. Perkins-Uno is permanent with a seniority date of August 18, 2006. She teaches Beginning and Advanced Photography, and Art Studio (Mixed Media). She holds a single subject Art credential, an ELA authorization, and is NCLB/HQ. Mr. Smith is permanent with a seniority date of August 15, 2007. He teaches Digital Imaging and Business Office Professional functions. He holds a multiple subject credential, an EL authorization, and a single subject Business credential. The Digital Imaging course description changed after the start of the current school year. The course is currently envisioned to encompass photography, manipulation of photographs, and video. Mr. Graser stated that it is appropriately taught by a person with an Art credential. Ms. Perkins-Uno appropriately bumped Mr. Smith for .23 FTE to teach Digital Imaging.

*Special Education Employees*

26. The District has three Special Education Centers (Ralph Richardson, Laurel Ruff, and La Vista) that offer a full program for students in special education.

a. *Cheryl Bates and Courtney Sledge.* Ms. Bates is permanent with a seniority date of August 31, 1979. She works with developmentally handicapped minors at Ralph Richardson Special Education Center. She holds a Life Development Center Permit that allows her to teach developmentally handicapped minors, not adults, at a “special education center.”<sup>11</sup> Ms. Bates’ authorization is for a 225-day (12-month) position. This is the only 12-month position within the District and it is being eliminated.

Courtney Sledge is a probationary teacher with a seniority date of September 24, 2007. She teaches in a nine-month assignment in a pre-school level special day class at Citrus Heights Elementary. The class consists of young children (pre-school and some Kindergarteners) with autism. According to Mr. Graser, Ms. Bates does not meet the competency criteria established for purposes of bumping. She is not NCLB/HQ to bump into a pre-school teaching position and does not possess the proper credential to teach outside of a Special Education Center.

Mr. Graser initially testified that Ms. Bates’ permit limits her to bumping into a 12-month assignment at a Special Education Center and no like positions exist within the District. However, he later stated that there are teachers more junior to Ms. Bates at Ralph Richardson Center and that there are many classes at either Laurel Ruff or Ralph Richardson Centers that she could teach.

The District’s identification of Ms. Bates for layoff is not proper when more junior teachers are being retained at Special Education Centers within the District. (Ed. Code, § 44955.) Ms. Bates has almost 32 years of experience in the District and is certificated and competent to teach developmentally handicapped minors at a special education center, for a period of less than 12 months. Ms. Bates is senior, certificated and competent to retain her position within the District’s Special Education Centers relative to more junior teachers at those centers.

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<sup>11</sup> The Life Development Center Instruction Permit authorizes the holder to teach in programs for children who are severely handicapped as defined in Education Code section 56030.5. “Severely disabled” means individuals with exceptional needs who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severely orthopedic impairments, serious emotional disturbances, severe mental retardation, and those individuals who would have been eligible for enrollment in a developmental center for handicapped pupils. (Ed. Code, § 56030.5.)

b. *Marta Kinney and William Tillery.* Marta Kinney is permanent with a seniority date of March 22, 1978. She teaches adult education/high school completion. She holds a Special Learning Handicapped credential. Mr. Tillery is permanent with a seniority date of August 25, 2003. He teaches adult education/handicapped at Orange Grove. He holds credentials in Fine Arts, Self-Maintenance Skills for Adults with Disabilities, Basic Skills for Elementary and Secondary Education, and Adaptive Arts and Crafts. Ms. Kinney is certificated and competent to bump Mr. Tillery for 1.0 FTE.

### *Adult Education Employees*

27. Employees at the Orange Grove program work with adults with handicap conditions. Some of the classes employ assistants to help work with disabled adults. Students at the District's Adult Education Centers have multiple handicaps to varying degrees. Some "learning handicapped" students are able to learn life skills such as sewing. Others are so severely disabled that "self-maintenance skills" are the focus. The District treated Adult Education program assignments as separate from the regular program assignments. Mr. Graser explained that adult educators have "designated subject credentials" that are not as common as in the K-12 programs. Regular education employees who do not possess credentials that authorize them to work with handicapped adults cannot bump into Adult Education assignments. Adult Education administrators with appropriate credentials were able to bump into Adult Education classroom assignments. The commitment of the senior teachers who received notice of potential layoff was evident. In consideration of all of the facts and circumstances, the District properly implemented the Adult Education PKS reduction.

a. *Paige Ashley and Alexis Reid-Garcia.* Ms. Ashley has a seniority date of February 17, 1995. She is assigned to Orange Grove as a Vice Principal in Adult Education. She holds an Administrative Services credential and an Adult Education credential in Psychology, Functional Living/Handicapped, and Counseling. Ms. Reid-Garcia has a seniority date of August 27, 2001. She is a permanent teacher assigned to Orange Grove. Ms. Ashley is certificated and competent to bump Ms. Reid-Garcia for 1.0 FTE in Adult Education.

b. *David Wittenborn and Christine DeSoto.* Mr. Wittenborn is permanent with a seniority date of September 7, 1993. He teaches special education. He holds a Resource Specialist Certificate, a multiple subject self-contained credential (NCLB/HQ), a single subject credential in Social Science, and a Title 5 Emotionally Disturbed (ED) authorization, formerly severely emotionally disturbed (SED). Mr. Graser testified that Mr. Wittenborn had completed a CTC approved Title 5 program. Ms. DeSoto is permanent with a seniority date of October 15, 2010. She teaches an

ED classroom. Mr. Wittenborn is certificated and competent to bump Ms. DeSoto for 1.0 FTE in Adult Education.

c. *William Tillery and Marta Kinney.* Ms. Kinney is permanent with a seniority date of March 22, 1978. She is assigned to Adult Education, High School Completion. She holds a specialist credential for Learning Handicapped. Mr. Tillery is permanent with a seniority date of August 25, 2003. He is assigned to Adult Education, Handicapped at Orange Grove School. He has a Bachelor's Degree in Art and holds credentials in Fine Arts, Self-Maintenance Skills for Adults with Disabilities, Elementary/Secondary Basic Skills, and Adaptive Arts and Crafts. Some of Mr. Tillery's students use adaptive devices that enable them to communicate electronically using a head pointer. Mr. Tillery is familiar with the equipment used by his students. Ms. Kinney is certificated and competent to bump Mr. Tillery for 1.0 FTE in Adult Education.

d. *Elizabeth Friend.* Ms. Friend is permanent with a seniority date of June 18, 1990. She teaches Adult Education at Sunrise Technical Center and Winterstein Adult School. She holds a single subject credential in Art for which she is NCLB/HQ pursuant to a stipulation of the District at hearing. She also holds a Developmental Services credential and a multiple subject/self-contained credential. She is certificated and competent to bump into an Art assignment pursuant to the competency criteria established by the Board. Pursuant to Education Code section 44955, no permanent or probationary teacher with less seniority may be retained by the District to teach Art, which Ms. Friend is qualified to teach. The District must review its assignments for compliance with Ms. Friend's vested right to retention.

e. *Lynn Starks.* Ms. Starks is permanent with a seniority date of August 26, 1990. She teaches Adult Education/High School Completion at Winterstein School. She holds single subject credentials in English and Art and is NCLB/HQ in both subjects pursuant to a stipulation of the District at hearing. She is certificated and competent to bump into an English or Art assignment pursuant to the competency criteria established by the Board. Pursuant to Education Code section 44955, no permanent or probationary teacher with less seniority may be retained by the District to teach English or Art, which Ms. Starks is qualified to teach. The District must review its assignments for compliance with Ms. Stark's vested right to retention.

*Administrative Reductions - Vice Principals Susan Kerhoulas and Teresa Heath.*

28. School administrative employees hold their administrative positions at the pleasure of the employer. They have no statutory right or tenure in their administrative position, as distinguished from their tenure as a teacher, and no right to due process prior to a change in assignment. (*Tucker v. Roach* (1985) 163 Cal.App.3d 1051, 1053; *Barthuli v. Board of Trustees* (1977) 19 Cal.3d 717, 721-722; *Hentschke v. Sink* (1973) 34 Cal.App.3d 19, 23.) Upon compliance with the notice requirements of Education Code section 44951, a

school board may, without due process and for any reason, refuse to reappoint an administrator for the following school year. (*Barton v. Governing Board* (1976) 60 Cal.App.3d 476, 479.) Administrators whose assignments are being eliminated retain their tenure as classroom teachers and have the right to bump into non-administrative positions provided they have the appropriate credential, competence, and seniority. (see *Tucker v. Roach, supra*, 163 Cal.App.3d at p. 1053.)

29. The District determined to eliminate 8.0 FTE Vice Principals at the High School level. Sandy Karagianes is a Vice Principal at Encina High School. Her name was left off of the list of affected administrators. Mr. Graser did not know why her name was not on the PKS List for High School Vice Principals. He stated that he would look into it.

30. *Susan Kerhoulas*. Ms. Kerhoulas is a Vice Principal at Del Campo High School. She is permanent with a seniority date is August 1, 2007. She holds credentials in Pupil Personnel Services, Administration/Clear, and School Counseling. She received a notice for 1.0 FTE. This is Ms. Kerhoulas' fourth year with the District. She has worked as a site administrator at Sierra Nuevo High School in a program for pregnant and expecting students, and subsequently at La Entrada and Del Campo High Schools. She believes that the District should bump her into another administrative position.

Mr. Graser stated that Ms. Kerhoulas is certificated and competent to bump into a High School Vice Principal position, but not into another administrative position in which she has not served. She lacks a teacher credential. Her pupil services for counseling credential would allow her to bump into a counseling position, but she is junior to other counselors subject to layoff.

31. *Teresa Heath (aka Teresa Potter)*. Ms. Heath is permanent with a teacher seniority date of August 13, 1997. She has been a Vice Principal of Adult Education at Orange Grove since 2007. She holds a Children's Center Permit/Supervision.<sup>12</sup> She received a preliminary notice for 1.0 FTE. Another Adult Education Vice Principal, Margaret Holiday, receive a preliminary notice for .50 FTE. Ms. Holiday is permanent with a teacher seniority date of August 2, 2008. Mr. Graser stated that Ms. Holiday was retained for .50 FTE because she had been an administrator for a longer period of time. Ms. Heath believes that she has re-hire rights to a ECE teaching position.

On September 2, 1997, Ms. Heath signed a contract, wherein she agreed to provide .80 FTE Adult Education and .20 FTE Early Childhood Education (ECE) services to the

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<sup>12</sup> According to the CTC, a Children's Center Supervision Permit allows the holder to supervise a children's center program consisting of any number of centers and to supervise and instruct children in such a program.

District. On April 25, 2000, the District sent Ms. Heath a letter seeking to confirm an earlier “Agreement of Understanding,” from June 1999.<sup>13</sup> The letter stated:

As of the current school year, you are classified as an Adult Education teacher having fully transitioned from the Child Development program to the Adult Education program. You have taught for the required 2 years in Adult Ed to gain permanent status as an Adult Ed teacher. Effective 7/1/00, although your calendar will reflect 8hrs per day, you will be changed to a 6hr position in keeping with all Adult Education teachers. ... Please be assured that should you wish to return to the Child Development Department, you would be given every consideration as openings occur. You would also be given longevity credit for your service in Adult Education.

Ms. Heath signed the margins of the confirmation letter on April 25, 2000, apparently consenting to its terms. Hence, as of April 2000 she had achieved tenure in Adult Education. The letter does not change Ms. Heath’s seniority date or rights or void her ECE credential. Education Code section 44929.26 applies to adult school and day school service. This statute requires that service towards permanency in one program be considered as separate from service towards permanency in the other. It does not, however, negate all experience gained in a separate program. With respect to transitions between the two programs relative to permanency, it states:

[S]ervice in the evening school shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee in the day school, except service in the evening school rendered by a person rendering services in the day school who is directed or specifically requested by the school district to render services in the evening school either in addition to, or instead of, rendering service in the day school.

Ms. Heath’s permit/credential would allow her to bump into an ECE position, which is not a core subject for purposes of NCLB/HQ status. The evidence is that from September 2, 1997 to approximately August 1999 (the start of the 1999-2000 school year), she worked in a split assignment in both Adult Education and ECE. From August 1999 to 2007, she worked in Adult Education. From 2007 to present, she worked as a Vice Principal in Adult Education. As such, she has tenure in Adult Education and two years service in ECE. By law, her Children’s Center Permit (credential) authorizes her to bump into an ECE position held by a more junior employee.

32. Mr. Graser acknowledged that the District had advertised for a vacant PAR position but had filled this opening from within the District. Mr. Graser also acknowledged that the District has a current advertisement on its website soliciting applications for

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<sup>13</sup> The June 1999 “Agreement of Understanding” is not in evidence. It essentially amended Ms. Heath’s employment contract by classifying her as an Adult Education teacher only, for the 1999-2000 school year.

administrative positions. Applications from within and outside of the District are being sought. A valid administrative services credential is required. According to Mr. Graser, the administrators' collective bargaining agreements do not grant any right to administrative openings. However, both Ms. Heath and Ms. Kerhoulas hold valid administrative services credentials. Both are entitled to apply for the open positions.

*Temporary Employees v. Employees on Leave of Absence*

33. Education Code section 44920 governs employment of temporary employees by the District. "The employment of such persons shall be based upon the need for additional certificated employees during a particular semester or year because a certificated employee has been granted leave for a semester or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board." (Ed. Code, § 44920.) This section does not specify a one-to-one match. A "temporary teacher need not be replacing a particular regular teacher on leave." (*Bakersfield, supra*, 145 Cal.App.4th at p. 1283.) Mr. Graser stated that generally, temporary employees are replacing "a service" provided by employees on leave. Also, periodically, the District reviews and syncs its lists by moving some temporary employees to probationary status.

*Credit for Prior Service as Long-Term Substitute or Temporary Employee*

34. Status as a temporary or substitute teacher is narrowly defined by statute. Teachers must be "classified as probationary employees if they are not permanent and do not fall within one of the narrowly defined classes of temporary employees." (Ed. Code, § 44915.) Teachers serving in a substitute capacity serve as "day-to-day" or "long-term" substitutes. "[S]ection 44918 does not make reemployment rights dependent upon one's formal classification as day-to-day or long-term substitute. The statute states only two classifications, 'temporary' employees and 'substitute' employees." (*Eureka Teacher's Assoc. v. Board of Education* (1988) 202 Cal.App.3d 469, 473.) The law respects substance over form. (*Ibid.*)

35. According to Mr. Graser, "long-term" substitutes take on "medium length positions" replacing teachers who are absent for a minimum of "a month or two." Shorter time periods are considered "day-to-day" assignments. Substitute teachers usually have assistance and planning from the regular teacher and coordinate lesson plans and materials. A teacher is considered "temporary" or "probationary" if they are not replacing anyone. Also, temporary teachers usually have "complete control over the classroom."

36. The Legislature has sought to limit the ability of school districts to classify teachers as temporary employees. (*California Teachers Assn. v. Vallejo city Unified School Dist.* (2007) 149 Cal.App.4th 135.) Education Code section 44918 pertains to employees hired as substitutes and temporary employees.<sup>14</sup>

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<sup>14</sup> Education Code section 44918, subdivision (d), specifically excludes service as an

Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of the days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year. (Ed. Code, § 44918, subd. (a).)

Service to the District is not limited to instructional days, but includes all days upon which a “substitute or temporary employee ... performed the duties normally required of a certificated employee.” The District calendars show that the total number of instructional and non-instructional days was 185 days during all periods relevant to this decision.

37. The District and San Juan Teachers Association entered into a Memorandum of Understanding (MOU) in February 2009 that reflects the statutory mandate that temporary employees who serve 75 percent of the regular school year and who are subsequently appointed to probationary positions, receive a full year’s probationary credit. According to the MOU, “the seniority date of the certificated employee shall be the first date upon which the employee rendered paid service in the immediately preceding school year of temporary employment.” (MOU, p. 2.) The MOU does not specifically mention service as a substitute (long or short term), however, the statute does. Public policy requires that statutes trump contracts, express or implied, including MOUs. “[C]ontract terms cannot supersede the statutory protections for teachers set forth in the Education Code, including provisions governing their classification and termination.” (*California Teachers Assoc. v. Vallejo City Unified School Dist.*, *supra*, 149 Cal.App.4th at p. 147; *Bakersfield Elementary Teachers Assoc. v. Bakersfield City School Dist.*, *supra*, 145 Cal.App.4th at p. 1275.) Teachers are “not estopped to claim probationary status if the statutory scheme of the Education Code compels the latter classification under the particular facts of each petitioner’s employment situation.” (*Bakersfield*, *supra*.) Based on their “particular facts,” several teachers challenged the seniority dates published by the District as follows:

- a. *David Burkhard*. Mr. Burkhard is probationary with a seniority date of August 18, 2006. He has taught ROP Automotive Technology since September 1, 2005, which he asserted should be his seniority date. He was initially hired as a temporary employee.

Pursuant to Education Code section 44910, “Service by a person as an instructor in classes conducted at regional occupational centers or programs, ... shall

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on-call substitute replacing a teacher on a “day-to-day” basis, from the benefits of this section. Clearly, the type of “substitute” service the statute refers to is “long-term” in nature.

not be included in computing the service required as a pre-requisite to attainment of, or eligibility to, classification as a permanent employee of a school district.” There are two exceptions outlined in this section which do not apply to Mr. Burkhard. Clearly, ROP service does not count towards acquiring tenure or permanent status in a District.

Education Code section 44918 applies only to a “substitute or temporary employee” who “has performed the duties normally required of a certificated employee of the district.” The statute applies to “certificated rather than ... classified employees, i.e. non-certificated employees or certificated employees performing jobs not requiring certification.” (*Kalamaras v. Albany Unified School Dist.* (1991) 226 Cal.App.3d 1571, 1576.) Because the ROP assignment in question is not a certificated teaching position, this statute does not apply.

However, Education Code section 44845 applies to “every probationary or permanent employee employed after June 30, 1947” and mandates that their seniority date be “the date upon which [an employee] first rendered paid service in a probationary position.” The evidence is that Mr. Burkhard began as a temporary teacher on September 1, 2005, but was later converted to probationary status. His seniority date is properly the date upon which he achieved *probationary* status. The District should confirm this date and adjust accordingly.

b. *Larry Hawe.* Mr. Hawe is probationary with a seniority date of August 18, 2006. He disputes this date. He has taught ROP and Regular Automotive Technology since August 17, 2005, which he asserted should be his seniority date. Pursuant to Education Code section 44910, his ROP services cannot be included in computing his eligibility towards permanency. Pursuant to Education Code section 44845, Mr. Hawe’s seniority date is the date upon which he became a *probationary* employee. The District should confirm this date and adjust accordingly.

c. *Jason Keith.* Mr. Keith is a probationary employee with a seniority date of August 15, 2007. He teaches ROP and Regular Automotive Technology at San Juan High School. He began teaching in the District in August 2004 and has taught continuously with the exception of the 2005-2006 school year. He believes that he began the 2006-2007 school year on August 16, 2006, as a temporary employee. Pursuant to Education Code section 44845, Mr. Keith’s seniority date is the date upon which he became a *probationary* employee. The District should confirm this date and adjust accordingly.

d. *Daniel Alexander.* Mr. Alexander is probationary with a seniority date of September 7, 2010. He disputes this date. He began teaching in the District on November 7, 2008, in a split assignment (50 percent). He completed the remainder of the 2008-2009 school year. He began the 2009-2010 school year as a substitute teacher on or before October 9, 2009, and taught continuously through the end of the

school year, replacing a teacher on leave of absence. On January 14, 2010, he became a temporary employee. He began the 2010-2011 school year on September 7, 2010 as a probationary teacher. The evidence supports a finding that Mr Alexander worked 75 percent of the 2009-2010 school year. He missed the first 35 days of instruction out of 185 work days, as such, he worked 81 percent of the school year. Education Code section 44918 applies to “substitute or temporary employees,” (long-term as opposed to day-to-day substitutes) and as such, Mr. Alexander’s seniority date must reflect his earlier service since October 9, 2009.

e. *Sandra Butler (aka Sandra Bianco)*. Ms. Butler is permanent with a seniority date of August 31, 2004. She disputes this date. She began teaching in the District on August 23, 2004, in a third grade assignment at Howe Elementary, and taught continuously through the remainder of the 2004-2005 school year. She received the keys to her classroom on August 16, 2004, and attended two staff development sessions on August 18 and 19, 2004. These sessions were six hours each and Ms. Butler was paid to attend. Between August 23 and 24, 2004, she was paid as a substitute teacher, replacing a teacher who did not return to service. Ms. Butler signed her contract as a temporary teacher on August 30, 2004.

Upon signing her contract on August 30, 2004, Ms. Butler raised this issue and recalls being told by Monique Powell in HR that “it didn’t matter.” It does matter. “[A]ny contractual provisions purporting to waive the protections accorded certificated employees” are overruled by the Education Code. (*Bakersfield Elementary Teachers Assoc. v. Bakersfield City School Dist.*, *supra*, 145 Cal.App.4th at p. 1275.) Ms. Butler served more than 75 percent of the 2004-2005 school year as a long-term substitute and temporary employee. Hence, she is deemed to have served the complete 2004-2005 school year as probationary. (Ed. Code, § 44918.) Further, she is deemed to have been employed upon the date she first rendered paid service in a probationary position. (Ed. Code, § 44854.) The District must adjust Ms. Butler’s seniority date to August 18, 2004.

f. *Kathryn Carlson*. Ms. Carlson is probationary with a seniority date of August 18, 2010. She disputes this date. She began teaching in the District on October 5, 2009, and taught continuously through the end of the 2009-2010 school year, replacing a teacher on maternity leave. This assignment was as an English teacher at Mira Loma school. She signed a temporary contract on November 10, 2009. (see *Bakersfield, supra*.) She missed the first 30 days of instruction out of 185 work days, as such, she worked 84 percent of the school year. Pursuant to the plain language of Education Code sections 44918 and 44845, Ms. Carlson’s seniority date must reflect her earlier service since October 5, 2009.

g. *Kristi Char*. Ms. Char is permanent with a seniority date of September 11, 2007. She disputes this date. She began teaching in the District on August 20, 2007, and taught continuously through the end of the 2007-2008 school year, replacing a

teacher on maternity leave. Further, she attended teacher in-service training on August 16, 2007, for which she was paid. Pursuant to Education Code sections 44918 and 44845, Ms. Char's seniority date must reflect her earlier service since August 16, 2007

h. *Celeste Freeman*. Ms. Freeman is permanent with a seniority date of August 16, 2007. She disputes this date. She began teaching in the District on or about October 1, 2006, and taught continuously through the end of the 2006-2007 school year, as a long-term substitute for a teacher on leave of absence. She signed a temporary contract in November 20, 2006. She missed the first 30 days of instruction out of 185 work days, as such, she worked 84 percent of the school year. Pursuant to Education Code sections 44918 and 44845, Ms. Freeman's seniority date must reflect her earlier service since October 2, 2006.

i. *Lisa Hurst*. Ms. Hurst is permanent with a seniority date of September 14, 2007. She teaches 4th grade at Dyer Kelly School. She presented evidence at hearing that she began teaching in the district on September 4, 2007, as a long-term substitute. She signed her temporary employment contract on September 13, 2007. Pursuant to Education Code section 44845, Ms. Hurst's seniority date must reflect her first date of paid service to the District on September 4, 2007.

j. *Larry Patterson, Jr.* Mr. Patterson is permanent with a seniority date of August 31, 2004. He disputes this date. He began teaching in the District on August 23, 2004, as a substitute replacing a teacher who was pending retirement. He has taught continuously since that date. He signed his temporary contract on August 31, 2004. He testified that the principal told him that the classroom was his. Pursuant to Education Code section 44845, Mr. Patterson's seniority date must reflect his first date of paid service to the District on August 23, 2004.

k. *Michael McAllister*. Mr. McAllister is permanent with a seniority date of August 19, 2002. He disputes this date. He holds a single subject credential in music, an English Learner (EL) authorization, and is NCLB/HQ in Arts/Music. He has taught music at Casa Roble High School for nine years. He recalls starting on September 4, 2001, the Tuesday after Labor Day, and completing the 2001-2002 school year. He signed a temporary contract on or about January 18, 2002, to complete the school year. He was re-hired for the 2002-2003 school year. Pursuant the District's closing brief, they have stipulated to a seniority date of August 21, 2001.

l. *Jill Stewart*. Ms. Stewart is probationary with a seniority date of August 19, 2010. She disputes this date. She first taught in the District from September 28, 2009, to October 25, 2009, as a long-term substitute. From October 30, 2009, to February 1, 2010, she worked under a part-time temporary contract at Orangevale Elementary. From February 1, 2010, to the end of the 2009-2010 school year, she taught six to seven classes a day, five days a week, as a traveling teacher at Cottage

and Sierra Oaks. Ms. Stewart missed 27 out of 185 work days during the 2009-2010 school year. As such, she worked 85 percent of the school year. Pursuant to the express language of Education Code sections 44918 and 44845, Ms. Stewart's seniority date must reflect her earlier service to the District since September 28, 2009.

m. *Donna Ward*. Ms. Ward is probationary with a seniority date of August 21, 2003. She disputes this date. She began teaching in the District on September 24, 2001, as a temporary ROP teacher. In August 2004, she was made probationary. For the last three years her assignment has been ROP Culinary Arts for .40 FTE and ROP Retail Sales for .60 FTE. Pursuant to Education Code section 44845, Mr. Ward's seniority date is the date upon which she became a *probationary* employee. The District should confirm this date and adjust accordingly.

n. *Nicole Sandoval*. Ms. Sandoval is probationary with a seniority date of February 1, 2011. She disputes this date. She began teaching in the District on October 19, 2010, as a long-term substitute replacing a teacher on leave of absence. On November 16, 2010, she signed a temporary contract. She became probationary on February 1, 2011. Pursuant to Education Code sections 44918 and 44845, Ms. Sandoval's seniority date must reflect her earlier service to the District since October 19, 2010.

38. *Alice Dodge*. Ms. Dodge is probationary with a seniority date of August 19, 2010. She disputes this date. She began teaching in the District on October 20, 2008, and taught continuously through the end of the 2008-2009 school year, as a .60 FTE (three days per week) temporary employee. She started the 2009-2010 school year on September 28, 2009, and taught one day per week, continuously through the end of that school year as a .20 FTE temporary employee. She is currently assigned to a traveling Elementary/Art position at .83 FTE. She signed a temporary contract on September 29, 2009. Ms. Dodge missed 25 days of instruction out of 185 school days during the 2009-2010 school year. As such, she worked 86 percent of the school year. Pursuant to Education Code sections 44918 and 44845, Ms. Dodge's seniority date must reflect her earlier service since September 28, 2009, at .20 FTE.

#### *Part-time Accruals*

39. Part-time teachers accrue credit toward permanent status. (*Reis v. Biggs Unified School Dist.* (2005) 126 Cal.App.4th 809, 821.) Part-time employment as a classroom teacher in a position requiring certification qualifications during the period of probation will result in the right to permanent employment on a part-time basis. (*Holbrook v. Board of Education of Palo Alto Unified School Dist.* (1951) 37 Cal.2d 316; *California Teachers Assoc. v. Santa Monica Community College Dist.* (1978) 79 Cal.App.836.) The retroactive credit provisions of Education Code section 44918 apply. "Once the temporary gets on 'tenure track,' her year as a temporary counts toward the two-year probationary period required to become a permanent employee." (Ed. Code, § 44929.21; *Kalamaras v.*

*Albany Unified School Dist.* (1991) 226 Cal.app.3d 1571, 1575.) Permanent employees possess the same employment rights that they would have had if no layoff had intervened, but no greater rights. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 341.)

a. *Julie Finney.* Ms. Finney is probationary with a seniority date of August 19, 2002. She initially worked full-time in the District, then took a shared assignment teaching two days a week. She has been a probationary employee for nine years. The District has never granted her permanency. The District has improperly classified her as probationary. Pursuant to Education Code sections 44918 and 44929.21, Ms. Finney is properly classified as a part-time permanent employee with a seniority date of August 19, 2002.

b. *Jodie Benstead.* Ms. Benstead is a registered nurse in the District's Early Development program. She is probationary with a seniority date of August 21, 2006. She disputes her status as probationary and asserts she should be permanent. From 2006 through the end of the 2009-2010 school year she worked continuously at .50 FTE (five hours a day for three days a week). For the 2010-2011 school year, she worked .625 FTE. Pursuant to Education Code sections 44918 and 44929.21, Ms. Benstead's status is properly classified as permanent for a .50 FTE nursing position.

c. *Judith Jordan.* Ms. Jordan is probationary with a seniority date of August 14, 2008. She disputes her status as probationary. This is her third year teaching in the District. She teaches a split assignment consisting of .20 as a traveling teacher, and .45 as a physical education/"kick start" teacher. During the 2008-2009 and 2009-2010 school years she taught in a three day/two day .50 percent teaching assignment. Ms. Jordan holds a multiple subject/self-contained credential in Physical Education, English, Social Science, and General Subjects, with a CLAD authorization. Pursuant to Education Code sections 44918 and 44929.21, Ms. Jordan's status is properly permanent for a .50 FTE teaching position.

#### *Other Issues Raised by Respondents*

40. *Paula Lloyd, Stephanie Bauman, Bret Tujague, Jennifer Anderson, Disa Banker, Sonia Takanikos, and Martha Velasko.* Several teachers asserted that their assignment encompassed unique standards and expertise that are not readily acquired or available to the District. As such, they believe that their assignment should be skipped.

a. Ms. Lloyd teaches Independent Study/Core Subjects and visual and performing arts (VAPA) at El Sereno High School. She stated that there are no other teachers qualified to provide VAPA instruction.

b. Ms. Bauman teaches Physical Education at Churchill Middle School. She possesses skills and training unique to the International Baccalaureate (IB) Program.

This program is an international initiative that integrates social, environmental, health, and community service focused learning. Ms. Takanikos is in the ROP program at Winston Churchill Elementary. She too has acquired special training to be able to teach in the IB Program. Further, she stated that the parents have invested approximately \$1,500 in her training expenses.

c. Mr. Tujague teaches English and is the coordinator for the Advancement Via Individual Determination (AVID) Program at Del Campo High School. Mr. Tujague possesses special skills to administer and instruct other teachers within the professional learning community (PLC). Ms. Anderson and Ms. Banker made the same assertion that the training and skills that will be lost by the District require their assignment to be maintained.

41. It is clear from the testimony of these teachers that their programs were built at great financial and professional expense. Further, each expressed the high personal investment in their respective programs that we want to see in high achieving schools. The courts have made equally clear that school districts have discretion to decide which PKS to reduce or eliminate in an economic layoff. It is the District's burden to demonstrate a specific need for personnel or services such that those qualifications may be skipped in the layoff process. (Ed. Code, § 44955, subd. (d), *Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 135.) There is no evidence that any of the challenged assignments are mandated by state or federal law. It is within the District's discretion to identify the AVID, VAPA, PLC, and IB program assignments for reduction. (see *Duax, supra*, 196 Cal.App.3d at p. 565.)

42. *Martha Velasko.* Ms. Valasko has been a counselor in the District since August 2006. She asserted that her assignment should be skipped for layoff because she is fluent in Spanish and 30 percent of her students speak Spanish. She pointed out that special consideration was given to teachers with a BCLAD authorization. For the reasons stated in Factual Finding 22, this "special consideration" given to teachers must comply with program considerations as articulated in *Alexander, supra*, 139 Cal.App.3d 567. The District may properly exercise its discretion to identify counseling as a PKS for reduction or elimination without special consideration for spoken languages.

43. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

## LEGAL CONCLUSIONS

### *Applicable laws*

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, by reason of Factual Finding 1 through 8. All notices and other jurisdictional requirements

of sections 44949 and 44955 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. (Ed. Code, §§ 44949, subd. (a) and 44955, subd. (c); *Bakersfield Elementary Teachers v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1272.)

2. The services listed in Attachment B are particular kinds of services that can be reduced or discontinued under section 44955. The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe the particular kinds of services identified for reduction or elimination. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838.)

3. Competency criteria used by the District were legally valid. Determinations related to whether employees are “certificated and competent” to render a particular service “involve discretionary decisions which are within the special competence of the school districts.” (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565.) The District’s actions will not be overturned unless shown to be “arbitrary and capricious.” (*Fair v. Fountain Valley School Dist.* (1979) 90 Cal.App.2d 180.)

4. With the exception of the BCLAD authorization as set forth in Factual Finding 22, skipping criteria used by the District were appropriate. A school district may deviate from terminating a certificated employee in order of seniority when, “The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide service authorized by a service credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.” (Ed. Code, § 44955, subd. (d)(1); *Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 137.) However, use of a BCLAD authorization must support a particular program requirement. (*Alexander, supra*, 139 Cal.App.3d at p. 574.) As such, Mr. Galvan’s notice must be rescinded. (Factual Finding 22.)

5. The “manifest intent of the Legislature is that discontinuance of a position must result in termination of the most junior qualified employee.” (*Poppers v. Tamalpais Union High school Dist.* (1986) 184 Cal.App.3d 399, 406.) With the exception of Ms. Bates (Factual Finding 26), and Ms. Friend and Ms. Starks (Factual Finding 27), the District appropriately employed bumping to ensure that subject to economic layoff, no permanent employee was terminated who possessed the seniority and qualifications which would entitle him or her to be assigned to another position. (Ed. Code, § 44955, subd. (b); *Bledsoe, supra*, 170 Cal.App.4th at p. 136-137.) Also, the District should review whether a position in ECE is held by any junior employee that Ms. Heath is certificated and competent to teach. (Factual Finding 31.)

6. As set forth in Factual Findings 34 through 38, the seniority dates for these respondents must be adjusted. They each first served in temporary or long-term substitute

positions for more than 75 percent of the year immediately preceding the year they became probationary employees. They are now credited with an additional year of seniority by virtue of this fact. Their seniority dates must be adjusted to reflect their first date of paid service as temporary or long-term substitutes in the year preceding their probationary status.

7. As set forth in Factual Finding 39, the status of these part-time respondents must be adjusted. As part-time certificated employees, their service does accrue to establish permanency. They are not doomed to perpetual probationary status. They have a vested interest in their part-time employment. (*Reise v. Biggs Unified School Dist.* (2005) 126 Cal.App.4th 809, 821; *Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 341.)

8. *Equitable Estoppel.* A party may be bound by an equitable estoppel when, “the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of the estoppel.” (*Fullerton Union High School District v. Riles* (1983) 139 Cal.App.3d 369, 379.) To apply the doctrine of equitable estoppel against a public entity, four elements must be present. First, the party to be estopped must be apprised of the facts; Second, he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; Third, the other party must be ignorant of the true state of facts; and Fourth, he must rely upon the conduct to his injury. (*Id.* at p. 378.)

The issue of estoppel as a bar to certificated employees claiming statutory protections under the Education Code has been dealt with in numerous cases. (Factual Finding 37.) Certificated employees are not estopped to seek redress under the Education Code, contracts notwithstanding. Further, at least one employee, Sandra Butler, raised the issue of her seniority date at the layoff hearing in April 2010. Finally, estoppel does not apply to the current fact scenario. The District sent verification information to employees by first class mail. The District asked employees to inform HR of any errors. (Factual Finding 10.) However, there is no evidence that respondents acquiesced in the District’s final determinations or desired for the District to act on what respondents believe to be incorrect personnel data. What is known is that HR reviewed and verified requested corrections and posted the final seniority lists by February 4, 2011. For any employee who was still not satisfied with the District’s determinations prior to hearing, due process afforded them a right to be heard and their evidence to be considered. Those employees timely requested a hearing on the matter.

9. *Laches.* The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay. (*California School Employees Association v. Tustin Unified School District* (2007) 148 Cal.App.4th 510, 521.) The District’s affirmative defense of laches is not supported by the evidence. There was no unreasonable delay, as the certificated

employees who contested the correctness of their personnel data timely requested a hearing at which to present their evidence.

10. In the event of two or more teachers having first rendered paid service to the district on the same date, Districts are required to establish criteria to “determine the order of termination solely on the basis of needs of the district and the students thereof.” (Ed. Code, § 44955, subd. (b); *Bledsoe, supra*, 170 Cal.App.4th at p. 144.) As set forth in Factual Finding 23, the District’s tie-breaking criteria and application of tie-break criteria were appropriate.

11. Cause exists for the District to reduce or discontinue the particular kinds of services listed in Attachment B at the end of the 2011-2012 school year. Cause relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. With the exception of employees identified in these Legal Conclusions, no employee with less seniority than any respondent is being retained to render a service which any respondent is certificated and competent to render.

12. The District shall rescind the preliminary notices of layoff to Ms. Bates and Mr. Galvan, and any other employees after the above adjustments to seniority dates are made, to comply with rights afforded certificated employees as a matter of law. Pursuant to the stipulation set forth in Factual Finding 11, the District shall rescind the preliminary notice of layoff of Amber Betzler, Mitchell Crowden, Susan Reardon, Josh Costa (.30 FTE), Kara Macomber, Michele Senini.

13. The District’s Governing Board may give the remaining respondents whose preliminary notices have not been rescinded final notice before May 15, 2011, that their services will not be required for the ensuing school year, 2011-2012.

#### RECOMMENDATION

Cause exists for the reduction of 364.79 full-time equivalent certificated positions at the end of the 2010-2011 school year. After making the adjustments set forth in the Factual Findings and Legal Conclusions, notice shall be given to the remaining respondents that their services will be reduced or will not be required for the ensuing school year, 2011-2012, because of the reduction and discontinuance of particular kinds of services. Notice shall be given in inverse order of seniority.

DATED: May 2, 2011

DIAN M. VORTERS  
Administrative Law Judge  
Office of Administrative Hearings

**Attachment A (page 1)****San Juan Unified School District Respondents Service with Accusations**

Alexander, Daniel	Chrisman, Sara	Galvan, Armando
Allen, Kristen	Cook, Joanne	Garcia, Nicole
Allenbaugh, Victoria	Costa, Josh	Garrett, Marcia
Amador, Jenny	Cottingham, Elizabeth	Glass, Charlotte
Anderson, Cassandra	Cox, Heather	Goltz, Linda
Anderson, Jennifer	Crowden, Mitchell	Goodall, Stephanie
Angelis, Susan	Da Marto, Joseph	Gragg, Jeannette
Applegate-Surratt, Lindsay	D'angelo, Janine	Grimm, Patricia
Armstrong, Jessica	Daniels-Landeros, Catherine	Grinstead, Susan
Banker, Disa	Davis, Monique	Grupp, Jr., Robert
Bates, Cheryl	Day, Amy	Guarducci, Erin
Battistessa, Kimberly	Deal, Greg	Hadzi-Antich, Diana
Bauman, Stephanie	Delgado, Rene	Hall, Darcy
Beam, Nicole	Delzer, Shannon	Hansen, Bruce
Benstead, Jodie	Derum, Anthony	Harshbarger, Nichole
Berkness, Heather	Desoto, Christine	Hawe, Larry
Betzler, Amber	Dickstein, Mimi	Heath, Teresa
Billo, Natalie	Dillon, Sarah	Hein, Beth
Blackwell, Jakob	Dingman, Brandon	Hermes, Kimberly
Borgman, Kara	Dismukes, Natalie	Hesse, Marilyn
Bowman, Kevin	Disney, Whitney	Higgins, Amanda
Brandt, Angelique	Dodge, Alice	Hodge, Christina
Brizzi, Chrystania	Doris, Adam	Hodge, Erin
Buckmaster, Christine	Edie, Shannon	Hoffman, Claire
Burkhard, David	Elliott, Gerell	Hoffmore, Katherine
Burns, Kathryn	Ellis, Bethany	Hoke, Melinda
Burnsed, Sarah Jane	Ellison, Amy	Holiday, Margaret
Butler, Sandra	Ewing, Melissa	Holmes-Dorner, Belinda
Caldwell, John	Fanchar, Brent	Horger, Jinne
Carlson, Kathryn	Ferrari, Kiley	Hubble, Lori
Cassady, Erin	Filger, Krista	Hudson, Carolyn
Cataldi-Price, Janice	Finney, Julie	Hudson, Christopher
Cater, Nikki	Fischer, Sarah	Hudson, Jessica
Chahal, Reet	Fleming, Mark	Hughes, Mary
Chapralis, Katina	Foster, Christopher	Hurst, Lisa
Char, Kristi	Freeman, Celeste	Jenkins, Tanya
Chi, Joannie	Friedman, Rebecca	Johnson, Debra
Cho, Mary	Friend, Elizabeth	Jones, Elisha

**Appendix A (page 2)****San Juan Unified School District Respondents Served with Accusations**

Jones, Stephanie	Matthews, Sara	Rhodes, Joan
Jordan, Judith	Mc Allister, Michael	Richter, Angela
Ju-Nolan, Amy	Mc Candless, Kathleen	Riordan, Mary
Kastl, Brenda	Mc Cormick, Melissa	Robertson, Melissa
Keith, Jason	Mc Elhinney, Carol	Robinson, Richard
Kellogg, Susan	Mc Kinnon, Lori	Roper, Carol
Kerhoulas, Susan	Michell, Dominika	Rowland, Joanna
Kiesner, Maxwell	Mickelson, Keith	Roycroft, Nancy
Kogos, Katherine	Mills, Nellie	Salazar, Monica
Kozel, Allison	Mole, Lindsey	Sandoval, Nicole
Kramer, Erica	Moon, Chris	Sato, Lori
Labelle, Alicia	Moon, Elizabeth	Sayler, Kimberly
Lampshire, Misty	Morgan-Voyce, Erin	Schmelling, Marlene
Lane, Garrett	Morgenstern, Jennifer	Scholtes, Greta
Ledesma, Maria Luz	Oates, Melissa	Schreiber, Robert
Lewis, Lyndsay	O'Brien, Amy	Schumaker, Derek
Lieberman, Babette	O'Brien, Kristi	Seley, Jennifer
Link, Kimberly	Olivarria-Matson, Debra	Senini, Michele
Little, Ellen	O'Neal, Megan	Shelton, Tammi
Lloyd, Paula	Orton, Vicki	Simin, Susan
Locke, Tracie	Paixao, Adrienne	Slofkosky, Michelle
Lucus, Tracy	Pallen, Joseph	Smiley, Jennifer
Lyle, Laura	Parsley, Sabrina	Smith, Robert
Lysaght, Vikki	Parsons, Bethany	Smith, Sheena
Macklem, Stephanie	Patterson, Brandi	Stahle, Joan
Macomber, Kara	Patterson, Larry	Starks, L. Lynn
Madden, David	Paulsen, Melanie	Stewart, Jill
Madison-Knipp, Carol	Perkins-Uno, Kaija	Stricker, Frances
Mager, Andrea	Perry, Jonathan	Strombom, Thor
Malone, Melissa	Pfarr, Sarah	Sutherland, Molly
Markos, Kellee	Pope-Mets, Kennesey	Swallow, Sarah
Marks, Ryan	Probasco, Carrie	Swan, Kara
Martin, Sherry	Probasco, Daniel	Takanikos, Sonia
Martinez, Kelly	Ramey, Gerilyn	Tang Leung, Gina
Martinez, Paquito	Reardon, Susan	Tannehill, Christina
Massetti, Christina	Register, Kristen	Teachout, Christine
Matt, Amy	Reid-Garcia, Alexis	Tillery, William

**Appendix A (page 3)**  
**San Juan Unified School District Respondents Served with Accusations**

Tillett-Downie, Cherie
Tobey, Karen
Trask, Jarrett
Tujague, Brett
Tupper, Cara
Umemoto, Heidi
Utley, Patricia
Vargas-Chavez, Gitzel
Vasquez, Jaime
Velasco, Martha
Verigin, Hannah
Wallace, Pamela S.
Walters, Carolyn
Ward, Donna
Wehe, Kathryn
Williams, Lawrence
Wilson, Aris
Winney, Gayle
Wohlford, Lindsay
Wolfe, Jennifer
Wolff, Jenna
Wong, Karis
Yassu, Brenda
Young, Aubree
Zylstra, Kathryn

**ATTACHMENT B**

**San Juan Unified School District Resolution No. 2553 (Revised March 8, 2011)  
Reduction or Discontinuation of Particular Kinds of Services**

<b><u>Administrators, Central Office Support</u></b>	FTEs
Administrator, Central Review	1.00
Program Specialist, Foster Youth	1.00
Program Specialist, Pupil Personnel Services	1.00
Subtotal	3.00

<b><u>Administrators, Schools</u></b>	FTEs
Principal, Adult Education	1.00
Vice Principal, Adult Education	2.00
Vice Principal, Alternative Education	0.50
Vice Principal, Elementary School, Teaching & Learning, Title I	5.00
Vice Principal, High School	6.00
Vice Principal, High School, Teaching & Learning, Title I	2.00
Vice Principal, Middle School, Teaching & Learning, Title I	2.00
Subtotal	18.50

<b><u>K-12 Certificated, Non-Administrative Positions</u></b>	FTEs
Art	10.57
Auto	0.33
Business	0.33
Computers	0.40
Counselor	23.60
Early Literacy Coaches	3.00
English	5.09
English Learner Instructional Specialist	4.71
Foster Youth	1.00
German	0.20
Health	0.34
Home School Teacher	2.00
Independent Study	2.00
La Entrada	4.00
Math	5.76
Multiple Subject/Self Contained	177.18
Music	10.10
Nurse	6.60
Palos Verde/Via Del Campo	1.00
Physical Education	11.18
ROP - Auto	2.27
ROP - Business Office Professional	0.57

ROP - Culinary Arts	0.40
ROP - Retail/Entrepreneurship	1.87
ROP - Woodworking	1.40
Science, Biology/Life/Earth/Geo	4.76
Social Science	4.76
Spanish	2.67
Special Education - Developmental Handicapped Minor Permit Teacher	1.00
Special Education - Resource Specialist Program	5.00
Special Education - Special Day Class	9.00
Teachers on Special Assignment	14.00
Woods	0.20
	Subtotal 317.29
<b><u>Adult Education Certificated, Non-Administrative Positions</u></b>	FTEs
Counselor	2.00
Nurse	1.00
Teacher	23.00
	Subtotal 26.00
	Total 364.79

**Attachment C (page 1)**

**San Juan Unified School District Resolution No. 2554 - Tie-Breaking Criteria**

Whereas, this board anticipates that it will be necessary to terminate the services of certificated employees effective at the close of the school year; and

Whereas, this board has determined that as between certificated employees who first rendered paid service as a probationary teacher to the district on the same date, certain criteria should be used in determining the order of termination based upon the needs of the district and the students thereof.

Now, therefore, be it found, ordered, and resolved as follows:

1. Each and all of the foregoing recitals are true and correct.
2. The criteria used to determine the order of termination of certificated employees who first rendered paid service as a probationary teacher to the district on the same date, and the weight to be given to such criteria, shall be the following:
  - a. Category I – Certifications and Experience

Need: To retain teachers with: greatest flexibility of assignment based on California credentials held; National Board Certification; and/or experience teaching at schools identified as Title I and Program Improvement schools.

<b>Criteria</b>	<b>Points</b>
Each full K-12 based credential (e.g., multiple subject, single subject, pupil personnel services, school nurse, librarian)	4
Each foundational level base credential	3
Each supplemental authorization with NCLB/Highly Qualified Teacher	2
Other services credential (administration)	2
National Board Certified	2
Taught at a Program Improvement School during 2010-11 school year	1
Taught at a Title I School during the 2010-11 school year	1

If there is still a tie after applying the above criteria, then Category II will be utilized.

**Attachment C (page 2)**

**San Juan Unified School District Resolution No. 2554 - Tie-Breaking Criteria**

b. Category II – District Teaching Experience

Need: To recognize certificated experience in the San Juan Unified School District under contract which is not reflected by the employees seniority date.

<b>Experience</b>	<b>Value</b>
Each year or portion of a year of in-district experience as a certificated employee under contract prior to the employee's seniority date	Percentage of school year(s) served

c. Category III – Lottery

If any two or more certificated employees who first rendered paid service as a probationary employee on the same date still have the same number of points after application of points provided above, the ranking of such employees shall be determined by a lottery conducted by the Assistant Superintendent, Human Resources or designee.