

BEFORE THE
GOVERNING BOARD
LONG BEACH UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Certain Probationary and Permanent
Certificated Employees and Temporary and
Categorical Certificated Employees of the
Long Beach Unified School District,

Respondents.

OAH Case No. 2011020278

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 4 – 7 and 11, 2011, at Long Beach.

The Long Beach Unified School District was represented by Anthony P. De Marco, Attorney at Law, Jabari A. Willis, Attorney at Law, and Cathie L. Fields, Attorney at Law, of the law firm Atkinson, Andelson, Loya, Rudd & Romo.

Except for those 16 respondents who represented themselves, the remaining 545 respondents were represented by Marianne Reinhold, Attorney at Law, and Kent Morizawa, Attorney at Law, of the law firm Reich, Adell & Cvitan. The complete list of the 545 probationary and permanent certificated employees and temporary and categorical certificated employees represented by Reich, Adell & Cvitan is set forth in Exhibit FF and is hereby incorporated into this Proposed Decision by this reference.

The following 16 respondents represented themselves: Gabriela Arredondo, Spencer Barber, Rosalin Bender, Loshonda Bogin, Mikel Edillon, Ariel Gonzales, Meylin Johns, Derek Johnson, Catherine Jones, Janet Jones, Michell Koga, Erika Medina, Kathleen Nugal-Yayoshi, Carlin Stein, Carol Takagi, and Nora Valdez. The List of Self-Represented Respondents is set forth in Exhibit 24 and is hereby incorporated into this Proposed Decision by this reference.

At the conclusion of the evidentiary hearing, the parties' request to file written argument was granted. On April 20, 2011, the school district's counsel filed a Closing Brief, which was marked as Exhibit 25. On April 27, 2011, counsel for the majority of respondents filed a Closing Brief, which was marked as Exhibit GG. On April 27, 2011, the only self-

represented respondent to have filed a written argument was respondent Carlin Stein, whose Response was marked as Exhibit HH.¹

Oral, documentary, and stipulated evidence having been received and written arguments reviewed, the Administrative Law Judge submitted this matter for decision on April 27, 2011, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on March 18, 2011, the Accusation was made and filed by Christopher J. Steinhauser in his official capacity as Superintendent of the Long Beach Unified School District, State of California (District).

2. Respondents, and each of them, are employed by the District as probationary and permanent certificated employees or as temporary and categorical certificated employees.

3. The District is a large unified school district comprised of several high schools, numerous middle and elementary schools, adult and continuation schools, and other schools and programs. The District also operates child development centers and a Head Start program. The District serves and educates pupils in kindergarten through twelfth grade who reside in the Long Beach area of Los Angeles County.

4. Due to the ongoing economic downturn, the State budget deficit, and the anticipated reduction in State funding, the District has determined that it must reduce expenditures to maintain a balanced budget and its reserve. The Superintendent determined that the District's budget must be curtailed by \$56 million for the 2011-2012 school year and by \$85 million for the next two school years from 2011 through 2013. On February 15, 2011, the Superintendent recommended to the Governing Board that particular kinds of services be reduced or discontinued no later than the beginning of the 2011-2012 school year.

5. (A) On February 15, 2011, in Resolution No. 020111-B, and pursuant to Education Code sections 44949 and 44955 and upon the recommendation of the Superintendent, the Governing Board determined that the District faced financial constraints resulting from revenue being insufficient to maintain the current levels of programs and program changes were necessary. The Governing Board resolved that it was in the best interests of the District and its students to reduce or discontinue certain particular kinds of services no later than the beginning of the 2011-2012 school year and to terminate or layoff

¹ The Administrative Law Judge on his own motion admitted the Declaration of Carlin Stein, which was attached to respondent Stein's Response, into evidence. In addition, a Section List by Teacher for 2009-2010 for respondent Stein was separately marked as Exhibit II and likewise admitted into evidence.

certificated employees equal in number to the positions affected in the reduction or discontinuance of particular kinds of services. The Governing Board further determined that it was necessary to reduce or discontinue particular kinds of services even after having considered all positively assured attrition due to resignations, retirements, and other permanent vacancies in reducing services. The Governing Board resolved that the layoff of probationary and permanent certificated employees shall be in addition to the release of all temporary and categorical certificated employees of the District.

(B) On February 15, 2011, in adopting Resolution No. 020111-B, the Governing Board also adopted Exhibit A to the resolution, which is the list of particular kinds of services recommended for reduction or discontinuance. Under Exhibit A, the Governing Board resolved to reduce or discontinue particular kinds of services totaling 777.50 full-time equivalent (FTE) positions. On March 1, 2011, the Governing Board amended Exhibit A, decreasing the reduction or discontinuance of district-wide programs by 9.00 FTE and increasing the reduction or discontinuance of Head Start school readiness teachers by 4.00 FTE and school readiness education specialist by 1.00 FTE. As a result of the March 1, 2011 amendment to Exhibit A, the Governing Board has resolved to reduce or discontinue particular kinds of services by 773.50 FTE.

(C) On February 15, 2011, the Governing Board directed the Superintendent or his designee to send notices to all probationary or permanent certificated employees, possibly affected by the reduction or elimination of particular kinds of services, and in accordance with Education Code sections 44955 and 44949, that their services will not be required for the next school year. The Governing Board also directed the Superintendent or his designee to notify all temporary and categorical certificated employees pursuant to Education Code sections 44954, 44949, and 44955, that their services will not be required for the 2011-2012 school year and they will be released, and that, if they claim that they cannot be released and believe they are entitled to a hearing, then those temporary and categorical certificated employees should be told that they can request a hearing.

6. Beginning on February 28, 2011, and continuing until March 15, 2011, and pursuant to Resolution No. 020111-B and the provisions of Education Code sections 44949 and 44955, Ruth Perez Ashley, Assistant Superintendent, Human Resource Services, as the designee of the Superintendent, gave written notices by personal service and certified mail to probationary and permanent certificated employees that their services will not be required for the ensuing 2011-2012 school year because the Governing Board had determined to reduce or discontinue certain particular kinds of services at the end of the current school year due to financial constraints and had resolved that it was necessary to layoff certificated employees under Education Code section 44955. The written notices informed probationary and permanent certificated employees of the reasons for this "Notice of Recommendation Not to Reemploy Certificated Employees" and their right to request a hearing to determine whether there was cause for not reemploying them for the ensuing school year. The written notices included a copy of Resolution No. 020111-B with the list of particular kinds of services and the tie-breaking criteria, copies of Education Code sections 44955 and 44949, and a Request for Hearing Form.

7. Beginning on March 1, 2011, and continuing until March 15, 2011, and pursuant to Resolution No. 020111-B and the provisions of Education Code sections 44949, 44955, and 44954, the Assistant Superintendent, as the designee of the Superintendent, also gave written notices by personal service and certified mail to temporary and categorical certificated employees that the Governing Board had determined that their services will not be required for the ensuing 2011-2012 school year and to release them from their temporary employment. The written notices informed the temporary and categorical employees that the reasons for their release were that the Governing Board had determined to reduce or discontinue certain particular kinds of services at the end of the current school year due to financial constraints and had resolved that it was necessary to layoff certificated employees. The written notices also informed temporary and categorical certificated employees of their limited right to participate in the layoff proceeding applicable to probationary and permanent certificated employees and their right to request a hearing under Education Code section 44955. The written notices included a copy of Resolution No. 020111-B with the list of particular kinds of services and the tie-breaking criteria, copies of Education Code sections 8366, 44954, 44955, and 44949, and the Request for Hearing Form.

8. (A) The District had principals and site and program administrators obtain signatures of probationary and permanent certificated employees and temporary and categorical certificated employees on Proofs of Service to demonstrate that service of the preliminary notices and release notices was made by personal delivery or mail. Principals and site and program administrators then signed the Proofs of Service under penalty of perjury.

(B) Respondents are those probationary and permanent certificated employees and temporary and categorical certificated employees of the District who requested a hearing to determine if there is cause for not re-employing or releasing them for the ensuing school year. There were approximately 674 certificated employees who had been served with preliminary notices and notices of release and then filed requests for hearing.

9. The District's preliminary notice of layoff dated February 28, 2011, was sufficient under Education Code sections 44949 and 44955 in providing written notice to respondents who are probationary and permanent certificated employees that their services will not be required for the ensuing school year. Likewise, the District's notice of release dated March 1, 2011, was sufficient under Education Code sections 44949, 44955, and 44954 in providing written notice to respondents who are temporary or categorical employees that their services will not be required for the ensuing school year. Respondents were not prejudiced by errors in the notices, if any, with respect to the attachments, spellings of their names, addresses, site or school locations, employee numbers, or any other matters. No claims or complaints were raised in the hearing that the preliminary notices, or notices of release, or contents thereof, were deficient in any respect.

10. On or about March 15, 2011, the District properly served respondents by personal delivery or certified mail with an Accusation, Notice of Accusation and Acknowledgement of Request for Hearing, copies of pertinent sections of the Government

Code and Education Code sections 44949 and 44955, a blank Notice of Defense form, and Notice of Hearing. Subsequently, 550 respondents filed notices of defenses, requesting a hearing to determine if there is cause not to employ or to release them for the ensuing school year and objecting to the Accusation. Approximately eight respondents filed notices of defense that were late or untimely but the District nevertheless allowed them to participate in the layoff hearing. When the location of the hearing was changed, the District served all respondents with an Amended Notice of Hearing, setting forth the new hearing location. All prehearing and jurisdictional requirements have been met by the parties.

11. On February 15, 2011, in Resolution No. 020111-B and Exhibit B thereto, and pursuant to Education Code section 44955, the Governing Board adopted a tie-breaking resolution, which was entitled, “Criteria to be Applied to Determine Order of Layoff for those Certificated Employees with the Same Date of First Paid Probationary Service.” This tie-breaking resolution set forth criteria to be used in determining the order of termination or layoff of certificated employees who first rendered paid service to the District on the same date or have the same first date of paid service. Under the tie-breaking criteria, the Governing Board gave the three highest tie-breaking priorities to the possession of credentials authorizing service as a speech therapist, possession of preliminary or clear English Learner (EL) Certificate with an included bilingual component (BCLAD or Bilingual Cross-cultural Language and Academic Development or equivalent) and preliminary or clear credentials authorizing service in special education, and possession of a non-bilingual preliminary or clear EL certification (CLAD or Cross-cultural Language and Academic Development/SB395 or equivalent) and a preliminary or clear credentials authorizing service in special education. The Governing Board gave the 17th tie-breaking priority to the possession of specialized training in Advanced Placement (TB17-A), National Board Certification (TB17-B), GATE Certification (TB17-C), AVID (Advancement Via Individual Determination) (TB17-D), International Baccalaureate Certificate (TB17-E), and Non-Violent Crisis Intervention Certificate (TB17-F) and the 18th tie-breaking priority to total years of service in the District. The Governing Board found that the tie-breaking criteria were based solely on the needs of the District and its students at the present time.

12. On February 15 and March 1, 2011, pursuant to Resolution No. 020111-B and its findings, the Governing Board resolved and took action to reduce or discontinue certain particular kinds of services or programs offered by the District for the 2011-2012 school years in the following FTE positions:

<u>Elementary School Services</u>	<u>FTE</u>
Elementary Classroom Instruction (K-3)	319.00
Elementary Classroom Instruction (4-5)	
Elementary Computer Instruction	1.00
Elementary Guidance	1.00
Elementary Itinerant Music—Vocal/Instrumental	5.00
Elementary Reading	1.00
Elementary Special Ed—Mild Moderate	1.00
Intervention Specialist	10.00

ELL Specialist	7.00
Subtotal--Elementary School Services	345.00

<u>Middle School Services</u>	<u>FTE</u>
Middle School Art Instruction	1.00
Middle School Dance Instruction	1.00
Middle School English Instruction	11.00
Middle School Language Arts Instruction	1.00
Middle School Language Arts/Spanish	1.00
Middle School Computer Instruction	1.00
Middle School Guidance Instruction	1.00
Middle School Health Instruction	4.00
Middle School Humanities Core Instruction	1.00
Middle School Humanities Core/Spanish	1.00
Middle School Math Instruction	7.00
Middle School Social Science Instruction	1.00
Middle School Math/Science Instruction	1.00
Middle School Special Ed—Mild Moderate	8.00
Middle School 6th Grade Self-Contained	21.00
Middle School Technology Core/Spanish	1.00
Middle School Technology Core	2.00
Subtotal--Middle School Services	64.00

<u>High School Services</u>	<u>FTE</u>
High School Art Instruction	5.00
High School Auto Shop	1.00
High School Business Education	2.00
High School Computer Applications Instruction	22.00
High School English Instruction	12.00
High School Foreign Language Instruction	
-French	1.00
-Italian	1.00
-Spanish	3.00
-Japanese	2.00
-Khmer	1.00
High School Graphic Arts Instruction	1.00
High School Health/Health Science Instruction	18.00
High School Home Economics Instruction	4.00
High School Junior ROTC	2.00
High School Math Instruction	
-Algebra	15.00
-Integrated (CAMS)	2.00
-Geometry	6.00

High School Music Instruction	2.00
High School Physical Education Instruction	9.00
High School Special Ed—Mild Moderate	3.00
High School Social Science Instruction	5.00
Millikan High School Opportunity Program	1.00
Subtotal--High School Services	118.00

<u>District-Wide Programs</u>	<u>FTE</u>
Counseling Services	35.00
Assistant/Vice-Principals	10.00
Teacher Librarians	7.00
Nurses	11.00
Psychologists	9.00
6th Grade AVID—Full-Time Instruction	2.00
Subtotal--District-Wide Programs	74.00

<u>TOSA/Program Facilitators/Coordinators</u>	<u>FTE</u>
AVID/AP Coordinator	1.00
Coordinated Student Services/Special Education	
-Intensive Learning Program	3.00
-Intervention & Progress Specialist	43.00
EL Coordinator/Program Facilitator (Cabrillo)	0.50
Elementary Physical Education Coach	1.00
Elementary Specialist (ARRA)	12.00
Learning Directors	10.00
Middle School—Professional Learning Community Coach	1.00
Office of Curriculum, Instruction & Professional Development	
-Peer Assistance& Review Coach	1.00
-ELD Specialist	1.00
-Home Schooling K-8/PMIS	1.00
-Program Facilitator	1.00
-TOSA (ELL Teacher Coaches)	11.00
-Parent Center Instruction	1.00
Program Facilitator—ACE Academy	0.50
Program Facilitator—IB-MSAP (Hudson K-8 School)	0.50
Program Facilitator—IB-MSAP (Lindsey Middle School)	0.50
Program Specialist—IB-MSAP (Dooley Elementary)	0.50
Subtotal--TOSA/Program Facilitators/Coordinators	89.50

<u>Child Development Center</u>	<u>FTE</u>
School Aged Care—Teachers	35.50
School Aged Care—Coordinating Teachers	
Full Day Preschool—Teachers	26.50

Full Day Preschool—Coordinating Teachers	
Subtotal--Child Development Center	62.00

<u>Head Start</u>	<u>FTE</u>
First Five—School Readiness Teachers	4.00
First Five—School Readiness Education Specialist	1.00
Subtotal--Head Start	5.00

<u>Adult Education</u>	<u>FTE</u>
Adult Education - Long Beach School for Adults	6.00
Subtotal--Adult Education	6.00

<u>Career Technical Education</u>	<u>FTE</u>
Career Technical Education Instruction	2.00
Law Enforcement	1.00
Co-Op Foods/Retail	1.00
Careers with Children	1.00
Retail Merchandising	1.00
Media Occupations	1.00
Medical Assistant	1.00
Animal Care	1.00
Occupational Health	1.00
Subtotal--Career Technical Education	10.00

The reduction or discontinuance of the particular kinds of services set forth hereinabove constitute a total of 773.50 FTE.

13 The services set forth in Finding 12 above are particular kinds of services performed by certificated employees of the District which may be reduced or discontinued within the meaning of Education Code section 44955. The determination of the Governing Board to reduce or discontinue these services is within its sound discretion and not arbitrary or capricious. The reduction or discontinuance of these particular kinds of services is related to the welfare of the District and its pupils and is necessary in order for the District to maintain a balanced budget. Following the reduction or discontinuance of these particular kinds of services, the District will still be able to provide mandated and essential services.

14. (A) The District prepared a Certificated Seniority List (Exh. 8), or seniority list, which contains the names of certificated employees, their seniority rankings, job information (status, FTE, and titles), seniority dates or first dates of paid service, whether they were served with a preliminary layoff notice, whether they possess an EL authorization, their current work sites, basic subject area, credentials and authorizations, and tie-breaker

rankings and credits. In addition, the Certificated Seniority List includes special contract or temporary employees who work at the District's child development centers under child development permits and children's center instructional permits, Head Start teachers and education specialists, and certificated employees who were laid off last year, placed on re-employment lists, and then hired as temporary or special contracts teachers. While named on the seniority list, the temporary teachers were not given or listed with any seniority dates. The District has operated an on-line system whereby certificated employees are able to check their job status, credentials and authorizations, special training and skills, and to respond, question, or submit information on the on-line system to confirm, correct, or change information maintained by the District for purposes of its Certificated Seniority List.

(B) For respondents and certificated employees who first rendered paid service in a probationary position on the same date, the District applied the tiebreaking criteria and ranked them in order of termination on the Certificated Seniority List. The District also developed a seniority list of employees who are assigned and work at child development centers (Exh. 9), a Bumping Chart (Exh. 10), a Lay-off Analysis sorted by particular kinds of services (Exh. 11), a List of Employees on Leaves of Absence (Exh. 12), a List of Teachers on Special Assignments (TOSA) (Exh. 13), a List of Certificated Administrators (Exh. 14), a List of Job Shares (Exh. 15), a list of temporary certificated employees in leave replacement positions (Exh. 16), and a list of certificated employees in categorically-funded positions (Exh. 17).

(C) The District reviewed the particular kinds of services which are subject to reduction or discontinuance and determined how many temporary and categorically certificated employees were working in those services under special contracts. After taking into account the release of temporary and categorically certificated employees under special contracts, the District identified the least senior probationary or permanent certificated employees assigned to the particular kinds of services subject to being reduced or discontinued. The District reviewed the seniority and credentials of the probationary and certificated employees and the particular kinds of service to which they are currently assigned. The District then determined whether they held credentials and authorizations in other areas of service or teaching and were entitled to bump other less senior probationary and permanent certificated employees and whether certain certificated employees should be skipped and retained. The District continued to conduct its seniority and bumping analysis during and until the conclusion of the hearing.

15. Further, the District has obviated the need to reduce or discontinue all of the particular kinds of services described in Finding 12 above and to terminate the employment of all respondents given preliminary notice and the Accusation by giving notices of release to temporary and categorical certificated employees under special contracts and by taking into account the personnel changes and attrition due to retirements and resignations of individual certificated employees within the District. The District has reasonably determined and accounted for what will be positively assured attrition among its certificated staff for the ensuing 2011-2012 school year and reduced by corresponding number the number of

certificated employees whose employment must be terminated due to the present reduction or discontinuance of particular kinds of services.

16. (A) In testifying during the hearing, the Assistant Superintendent reviewed the Certificated Seniority List and delineated which respondents and certificated employees who were served with preliminary notices, were still subject to layoff in this proceeding. At the outset, the Assistant Superintendent announced that certificated employee Kelley V. Meade (1), who is first on the seniority list, was served with a preliminary notice but that she was no longer subject to layoff because she teaches earth science and chemistry based on her credential and board authorization and there is no more senior certificated employee who is qualified and competent to bump or displace her.² Likewise, certificated employees Laura Bridwell (2) and Ann Mantel (4) were not given preliminary notices because they serve in the areas of speech and language and special education-mild and moderate, respectively, which are not subject to the current reduction or discontinuance of particular kinds of services. The first respondent or certificated employee on the Certificated Seniority List subject to layoff is respondent Dirk Davis (25), a 0.5 FTE high school physical education teacher, who lacks the qualifications or competency to bump or displace another certificated employee.

(B) The District determined that certificated employee Leigh Alexander (86), who is on special assignment in speech and language, possesses the qualifications and competency to bump into another position. Alexander was not served with a preliminary notice and is not subject to layoff. The District further determined that respondent Ryan Burns (122), an administrator and psychologist at Lakewood High School, has a special skill of interpreting for the deaf and will not be subject to layoff in this proceeding.

(C) Further, the District announced that, because she possesses a special education credential, respondent Debra Davis-Garriott (1259) is able to bump a less senior certificated employee or respondent or a vacant position. The District also determined that respondent Barbara Gilmore (2810) is able to bump into the position of a less senior certificated employee or respondent or a vacant position. The District determined to withdraw the preliminary notice and Accusation issued to respondents Davis-Garriott and Gilmore.

17. During the hearing and based upon information elicited on the cross-examination of the Assistant Superintendent Perez Ashley and testimony by individual respondents, the District re-checked its information and data on respondents' credentials, authorizations, and assignments, and continued to determine whether respondents were entitled to bump less senior respondents or certificated employees. As such, the District modified or amended the Bumping Chart, the most current version of which was marked as Exhibit 22.

² The number in parentheses following the name of each respondent or certificated employee corresponds to his or her rank or place on the Certificated Seniority List relative to other certificated employees.

18. (A) As set forth in the Amended Bumping Chart (Exh. 22), the District rescinded the preliminary notice and/or dismissed the Accusation issued against respondents Ryan Burns (122), Lidia Santana (147), Mikel Edillon (1175), Dalis La (1438), and Helen Magana (1444). The names of these respondents were lined out or stricken in the Amended Bumping Chart. In addition, the District requested that respondent Michael Humphries (285) be stricken from the bumping chart. These respondents will not receive final layoff notices and will be re-employed for the next school year.

(B) During the hearing, the District rescinded the preliminary notice and/or dismissed the Accusation issued to all of the respondents named in the two-page exhibit entitled, "Release from Hearings 4/6/2011" on page 1 and "Release From Hearing—Not on Bumping Chart" on page 2. Moreover, the District added respondent Justin Gaschen (1087) to this list of respondents, each of whom will not receive a final notice and will be retained for employment for the next school year.

Changes in Seniority Dates and Application of Tie-Breaking Criteria

19. (A) During the hearing, the District changed the seniority dates and rankings on the seniority list for the following respondents: Meghan Carungcong to August 20, 2007, and ranking 179A; Blanca Pacheco-Jones to September 2, 2003, and ranking 263A; for Griselda Rodriguez to August 20, 2001, and ranking 1323A; Arcelia Salazar to August 20, 2001, and ranking 1338A; and Jennifer Ito to January 16, 2001, and ranking 1445A;

(B) The District changed the seniority date for respondent Marnelle Leonard to August 20, 2001, and her ranking to 1300A. She attended training at the New Teacher Institute in 2001.

(C) The District also changed the seniority dates for respondents Alicia Huizar, Michelle Twogood, Holly Camarillo, and Karen Hardy to August 18, 2003, and their respective rankings to 796A, 801A, 809A, and 838A for having attended training at the New Teacher Institute that year.

(D) The District changed the seniority list ranking for respondent Anna Lim from 927 to 928A after giving her tiebreaker credit under TB14 for possessing a multiple subject credential and supplemental credential.

(E) The District changed the seniority date for respondent Beverly Wiegand to June 27, 2002, and her ranking to 1145A; the seniority list ranking for respondent Elida Rangel to 1277A; and the seniority list ranking for respondent Daniel Yaeger to 1301A; .

(F) The District also credited respondent Erika Medina (216A) with additional tiebreaker credit for having completed the Non-Violent Crisis Intervention training (TB 17-F).

20. As set forth in the written Stipulations (Exh. 20), the District and respondents stipulated that certain respondents will have their seniority dates modified to the following dates: Dustin Shade (32), September 2, 2008; Obiorah Ebo (81), August 18, 2008; Stacy Burcham (143), August 13, 2007; Geoffrey Barbe (275), August 21, 2006; Toiya Smith (757), August 18, 2003; Melinda Clare (968), August 19, 2002; David Noyes (1145), July 1, 1993; Heidi-Lynn Doon-Samaniego (1501), August 21, 2000; Rosio Dominguez (891), August 4, 2003; and Anselm Feliciano (1392A), July 9, 2001. These changes in seniority dates have had or will have the concomitant effect of changing these respondents' rankings on the District's seniority list.

21. The District and respondents further stipulated that certain respondents will receive additional tiebreaker (TB) credits for the following criteria set forth in Exhibit B to Resolution No. 020111-B as follows: Valdez (257), TB 18-H; Goldman (312), TB 6; Alicia Huizar (894), TB 8; Ward (1449), TB 18-I; Christina Cancino (1413), TB 17-F and 18-I; Ornelas (629), TB 18-F; Valenzuela (446), TB 18-E; and Jackson (2347), TB 18-M. These additional tiebreaker credits will modify the rankings of these respondents among other certificated employees having the same first date of paid service with the District.

22. The District and respondents further stipulated that all respondents who participated in training or sessions of Open Court/Reading First, New Teacher Institute, Language!, High Point, PEACE Academy, and Linda Mood Bell programs will receive credit towards their seniority dates in a manner consistent with the Decision in Case No. 2010020244 in last year's layoff proceeding. The District will recognize the attendance of respondents at these mandatory training programs as their first dates of paid service in a probationary position for the purposes of delineating seniority.

23. The District and respondents further stipulated that all respondents who are teachers at Addams Elementary School, and who were first hired for the 2001-2002 school year and then worked on the first school day for that school year, will have a seniority date of July 23, 2001.

24. The parties further stipulated that the date of July 1, 2001, was a Sunday and therefore a non-working and non-school day. The District will designate a correct seniority date for those certificated employees who were assigned a seniority date of July 1, 2001.

25. (A) The seniority date of respondent Diane Gagnon (1040) shall be August 15, 2002, because she attended the phonics training at the Open Court/Reading First! program on direction of her principal and was paid for that first date of service. Gagnon's seniority date shall be changed pursuant to the stipulation of the parties regarding this training.

(B) Respondents Patricia De Koekkoek (1215), Bernadette Wheeler (1217), and Jacqueline Hernandez (1224) all attended the training in Las Vegas that was required and mandatory of new certificated employees at Edison Charter School that school year. These respondents shall have their seniority dates changed to August 16, 2001, pursuant to the parties' Stipulation.

Seniority Claims of Individual Respondents

26. (A) Respondent Kem Sokvylay (1124) contended that her seniority date should be backdated by approximately two weeks to July 29, 2002, because she attended SDAIE (Specially Designed Academic Instruction in English) training at her school site. Sokvylay began teaching on August 13, 2002, at a year-round school and began receiving her 12-month salary in July 2002. She was told by the principal that she had to “make-up” 31 work days during the school year if she wanted to receive her full salary for the school year. Sokvylay choose to attend the SDAIE training as one of her make-up dates.

(B) Respondent Stacy Wills (827) is a second grade teacher and has been assigned a seniority date of August 18, 2003. Wills likewise contends that her first date of paid service was July 21, 2003, because she was hired to teach at a year-round school and told that she had to work make-up days to earn her full year’s salary. She elected to work as a substitute teacher on July 21, 2003, and was paid for her service.

(C) Respondent Kathleen Daley (1045) has been assigned a seniority date of August 19, 2002. She contends that her first date of paid service as a probationary employee was July 31, 2002, because she reported to work and taught in the classroom in order to make-up days to earn a full salary for her first year.

(D) Respondent Iyaunna Towery (1058) has been assigned a seniority date of August 19, 2002, but claims that her first date of paid service was July 3, 2002, when she participated in training to “learn the ropes” as suggested by her new principal. Towery admitted that she had to work 20 make-up dates in her initial year of employment to earn her full year’s salary.

(E) Because the evidence did not show that respondents Sokvylay, Wills, Daley, and Towery were required or directed by their principals to attend their respective trainings or activities and did not show they began providing paid service to the District in a probationary position on those earlier claimed dates, these respondents’ make-up dates, much like summer school teaching or substitute teaching stints, did not begin to accrue service or seniority credit for them. As such, these respondents’ claims for changes in their seniority dates must be rejected. (See Ed. Code, §§ 44913 and 44918.)

27. (A) Respondents Marnelle Leonard (1300A) and Gary Burg (1221A) were both assigned new seniority dates of August 20, 2001, and September 4, 2001, respectively, after the District determined that their prior seniority dates of July 1, 2001, was a Sunday, as set forth in Finding 24 above. Leonard was credited for having attended training at the New Teacher Institute. During the hearing, both Leonard and Burg ostensibly contended that the District should be collaterally estopped from changing their seniority dates because July 1, 2001, was the date that they were assigned for last year’s layoff proceeding. Their claim was not persuasive, for it was not established that their seniority dates were actually litigated last year. As such, it was not established the doctrine of collateral estoppel should apply. (See *City of Long Beach v. Mansell* (1970) 76 Cal. App. 3d 796, 814-815.) Moreover, the District

has determined that their prior date of July 1, 2001, was a mistake and changed it to correct the mistake.

(B) Respondent Leonard also argued that her seniority date should be earlier in August 2001 because she taught pupils for three weeks that month after being contracted to complete the assignment of a teacher who moved out-of-state. Her alternative argument was likewise unpersuasive. Leonard's contract service beginning in early August 2001 was comparable to a substitute teaching assignment which cannot be included in the calculation of her service or seniority under Education Code section 44918.

(C) Respondent Burg is a fifth grade GATE (Gifted and Talented Education) teacher. He further contended that his seniority date should be June 19, 2001, because he attended a GATE training session during the summer on the "request" of his new principal. Burg admitted, however, that he was not paid by the District to attend this training. At the time, he was working for another school district and took a leave from that job to attend the GATE training. Burg's first date of paid service as a probationary employee with the District was September 4, 2001. However, if the District corroborates that Burg attended the New Teacher Institute in August 2001, his participation was mandatory, and he was paid for his participation in this training, then the District shall adjust Burg's seniority date in accordance with the Stipulation set forth in Exhibit 20.

28. Respondent Georgia Gegenworth (1281) is another certificated employee whose seniority date was changed from July 1, 2001. The District determined that her seniority date is August 20, 2001. Gegenworth asserted that her seniority should be changed back to July 1, 2001, because she was hired at a year-round elementary school on or about that date and then taught pupils during an intersession that month. Her principal advised her that teachers were needed for the intersession and Gegenworth volunteered to teach intersession and was paid for her work. However, Gegenworth's argument must fail, for teaching during an intersession, like during a summer session, does not operate to accrue service or seniority credit for a certificated employee under Education Code section 44913.

29. (A) Respondents Torrie Baker (1057) and Alina Herrera-Gonzales (1129) contended that their seniority dates should be changed by one month to on or about July 8, 2002, because that was when they both started a three-week curriculum and classroom training program under the Bilingual Intern/District Intern Program for completion of their student teaching. Respondents' seniority dates will not be changed inasmuch as they were not paid during their training stints as student interns that month of July 2002. Baker's date of first paid service as a probationary employee with the District was August 19, 2002, and Herrera-Gonzales' date was, in fact, August 2, 2002.

(B) Respondent Erin Boeglin (1071) asserts that her seniority date should be updated by three months to June 24, 2002, since she worked as an intern during a summer session before being hired as a full-time teacher. Boeglin was paid for her service as a summer intern. Her argument was not persuasive inasmuch as Education Code section 44913 provides that service in a summer session cannot be included in the acquisition of

permanent status or in the computation of service required for permanent status. In addition, it was not established that Boeglin served in a probationary position during that summer session. Boeglin's first date of paid service as a probationary employee with the District shall remain August 19, 2002.

30. Respondent Pamela Crissman (1200) is a school nurse and has a seniority date of September 4, 2001. She contends that her seniority date should be backdated one year because she worked as a substitute school nurse for the prior school year. Even if she was hired as a probationary certificated employee for the 2001-2002 school year, Crissman's service as a substitute school nurse in the prior school year did not constitute service as a probationary employee under Education Code section 44918 because she did not work for at least 75 percent of the school days. She worked for the District for approximately 94 school days, which was not 75 percent of the District's school days for 2000-2001. Crissman's seniority date shall remain as September 4, 2001.

31. Respondent Griselda Rodriguez (1422) has been assigned a new seniority date of August 20, 2001, and a new seniority ranking of 1323A. She contended that her seniority date should be changed to July 9, 2001, for having attended the Module A session of the Essential Elements of Effective Instruction (EEEI) training provided by the District's Professional Development Program. Rodriguez's principal advised her to attend the training and she was paid an hourly wage for her attendance. Rodriguez's argument is well taken, for, as was established by the redirect or rebuttal testimony of the Assistant Superintendent, the District has determined that the EEEI training was mandatory and will adjust the seniority dates of respondents and certificated employees who attended this training. Accordingly, Rodriguez's seniority date shall be July 9, 2001.

32. Respondent Linda Gant is a temporary employee working under a special contract. As a temporary certificated employee, she does not have a seniority list ranking. Last year, her employment was terminated following that year's layoff proceeding and she then was hired to work this school year under a special contract. Gant contended that her seniority date should be revised but, as a temporary employee, she is subject to release under Education Code section 44954. As such, jurisdiction does not exist to review her challenge of any purported seniority date.

33. Respondent Angela Boone (1310), a kindergarten teacher, has a seniority date of August 20, 2001. She claimed that her seniority date should be August 14, 2001, because she attended a three-day orientation at her new school site on direction of her principal. During the orientation, Boone participated in the assessments of pre-kindergarten pupils and was introduced to other staff. She was paid for her attendance at the orientation. Inasmuch as the orientation was mandatory and she was paid for her attendance, Boone demonstrated that her first date of paid service with the District must be advanced by six days to August 14, 2001.

Individual Respondents' Tie-Breaking Arguments

34. Respondent Christina Cancino (1413) is a first grade teacher whom the District proposes to be bumped by another certificated employee. Currently, she has been assigned a seniority date of July 1, 2001. Cancino asserted that she should receive additional tie-breaker credit under criteria TB-8 for possessing an English Learner Certification with a BCLAD component. She claimed that she applied for a BCLAD in 2001 after completing her university studies and passing a national CLAD/BCLAD examination. While she has been given tie-breaking credit for having a CLAD, the District's records do not show that she had a BCLAD by March 15, 2011. In the absence of any evidence that she has been granted the bilingual certificate, Cancino cannot be awarded additional tie-breaking credit for possessing a BCLAD.

35. Several respondents, including Geoffrey Barbe (275), Bernadette Wheeler (1217), and Jose Ramirez (1286), have claimed that they deserve tie-breaking credit for having specialized training in AVID (TB-17D). As established by the testimony of the Assistant Superintendent, the District has determined that certificated employees will receive tie-breaking credit under 17D as long as they have completed some or a portion of the three-level training to teach the AVID curriculum. On August 16, 2007, Ramirez attended a six-hour or "Day 2" AVID training session for which he received recognition at his school. From July 28 through August 1, 2008, Barbe attended the AVID Summer Institute in San Diego where he received training in the Implementation portion of the AVID program. On August 3 – 7, 2009, Wheeler attended the AVID Summer Institute in San Diego where she received training in the Implementation portion of the AVID program. Respondents Barbe, Wheeler, and Ramirez will each receive tie-breaking credit for completing some or a portion of the AVID training.

36. Respondent Brenda Ornelas (629) contended that she should receive additional tie-breaking credit for possessing a Master's degree (TB-11). However, Ornelas completed the last required class for her Master's degree on March 4, 2011, and thereafter provided the District with the transcript of her coursework. Because it was not established that Ornelas filed the coursework transcript for her Master's degree with the District or the county office of education by March 15, 2011, Ornelas is not entitled to receive tie-breaking credit for having attained a Master's degree. (See Ed. Code § 44949; *Campbell v. Abbott* (1978) 76 Cal. App. 3d 796, 814-815.)

37. Respondent Megan Shihady (753) asserted that she should receive tie-breaking credit (TB-17D) for attending the 2009 AVID Summer Institute where, she testified, that she received training in Implementation. In the absence of any documentary evidence corroborating her claim, Shihady's request for tie-breaking credit under criteria 17-D must be denied at this time. The District may award the tie-breaking credit on its own motion if it determines that Shihady's claim is substantiated and awarding the credit is appropriate.

38. (A) Respondent Carlin Stein (462) holds a clear single subject credential in English. Stein is an English teacher at Wilson High School who is on maternity leave. In the

2009-2010 school year, she taught English 1-2 and accelerated English 1-2. Stein was served with a preliminary layoff notice but was not identified for layoff until the end of the hearing when the District presented its latest Bumping Chart. Stein is now subject to being bumped by a more senior middle school teacher Melissa Mann (665), who possesses a clear single subject credential in Spanish and English. Mann, in turn, is subject to being bumped by another more senior certificated employee.

(B) In her written Response, Stein ostensibly argued that her seniority ranking should be higher because the District failed to give her tie-breaking credit for having attained a Master's degree (TB-11). For the last two years, Stein attended classes through Concordia University for a Master's degree in education and successfully completed the coursework in March 2011. The degree did not post to the Website of Concordia University until April 1, 2011. Because it was not established that she filed her Master's coursework transcript with the District and/or county office of education by March 15, 2011, however, Stein is not entitled to receive tie-breaking credit for having obtained a Master's degree. (See Ed. Code, § 44949; *Campbell v. Abbott* (1978) 76 Cal.App.3d 796, 814-815.) As such, Stein's seniority ranking will remain the same and she may be laid off pursuant to the present reduction of particular kinds of services.

International Baccalaureate Program

39. Exercising its discretion under Education Code section 44955, subdivision (d), the District has determined to deviate from the order of seniority in this layoff proceeding by skipping one teacher, Tiffaney Mocsary (542), in the International Baccalaureate (IB) program at Jordan High School. The District also has IB programs at one elementary school and two middle schools but has determined to skip only the one certificated employee at the high school program because the high school IB program is a diploma program that implements a global curriculum and supports the District's mission to prepare its pupils for college and successful careers. Specifically, the District has determined to skip Mochsary, a high school art teacher with IB training and certification, because she has the special training and experience to teach in the high school IB program. As such, the District has properly demonstrated that it has a specific need for personnel to teach in the specific course of study of IB and that Mocsary has the special training and experience necessary to teach that course of study. Mocsary may be skipped pursuant to Education Code section 44955, subdivision (d).

40. Respondents Carol Hardy (888) and Kimberly Kittleson (1150) each contended that they should be skipped as an IB teacher because each has completed IB training. Kittleson has also attended training in elementary writing and ELL facilitation. Hardy and Kittleson teach fifth and first grade, respectively, at Dooley Elementary School, which has an elementary-level IB program. Hardy has introduced IB concepts to her students in her fifth grade curriculum. Both teachers hold multiple subject credentials. Kittleson also has a clear special instruction credential in reading. It was not established, however, that either Hardy or Kittleson has any experience in teaching in a high school IB

program. As such, Hardy and Kittleson are not certificated and competent to teach in the high school IB program. The District's decision not to select them to be skipped for the high school IB program was reasonable and not arbitrary or capricious. Nor was it established that Hardy or Kittleson is certificated and competent to bump into Mochsary's art and IB position at the high school.

Advanced Placement

41. For this year's reduction in particular kinds of services, the District has also determined to deviate from the order of seniority of certificated employees and to skip, and exempt from layoff, those certificated employees who are currently teaching an Advanced Placement (AP) course at the high school level. The District's AP program is comprised of academically rigorous courses in specific content areas for which its pupils can earn college credits. To be able to teach an AP course, a teacher is required to undergo intensive training and to prepare and submit a course syllabus to the College Board for its approval. As such, a certificated employee currently teaching an AP course would necessarily have the required AP training and course syllabus approved by the College Board. The District has shown a need for certificated employees to teach in its AP program and reasonably determined what special training and experience is necessary for certificated employees to teach the AP program and to be skipped from the layoff process. Further, the District determined that a certificated employee must have the same qualifications to be able to bump into an AP teaching position. The District's criteria for skipping and bumping teachers in the AP area were reasonable and based solely on the needs of the District and its pupils.

42. (A) Respondent Krystal Ortiz (425) is an English teacher at Wilson High School and teaches Rhetoric and Composition and English 5-6. She holds a single subject credential in English. She was served with a preliminary layoff notice. In the its latest Bumping Chart, the District initially determined that Ortiz could bump Michael Humphries (285) but that she, in turn, would be bumped by Leslie Theobald (619). Near the conclusion of the hearing, the District announced that it was withdrawing the preliminary notice issued to Humphries and he would be retained. Humphries is a high school English teacher who teaches AP English Language and Composition. Theobald is a middle school English teacher who likewise holds a single subject credential in English. The District reasonably determined, and did not abuse its discretion, to skip Humphries and to have Ortiz bumped by Theobald.

(B) During the hearing, Ortiz argued that she should be able to bump two less senior high school English teachers, Diana Carbonara (336) and Macy Jelinowicz (374). However, both of these teachers are being skipped. Carbonara teaches an AP course and Ortiz may not bump into an AP position because she is not currently teaching an AP course. She has completed AP training but has not been assigned to teach an AP course yet. The other teacher, Jelinowicz, is apparently being skipped because she teaches three periods of Reading Intervention Literacy Workshops. It was not established that the District's decision

to layoff Ortiz from her employment was arbitrary or an abuse of its discretion. Ortiz may receive a final layoff notice.

43. Respondent Ann Sourn (655) teaches history at the middle school level under her clear single subject credential in social science. She is subject to being bumped and argued that she should be able to bump several less senior certificated employees who teach high school history and hold single subject social science credentials. Her arguments were not persuasive. Each of these certificated employees, however, teaches at least one AP history class and are eligible to be skipped under the District's AP skipping criteria. Sourn does not teach an AP class and may not bump into their positions. On the other hand, the District is proposing to have Sourn bumped by the more senior certificated employee Gabriella Belayachi (1097). Belayachi is subject to layoff based on her position as a fourth grade intensive structured English teacher. She can bump into Sourn's middle school position by virtue of having a supplemental authorization in social science along with her multiple subject credential. Sourn may receive a final layoff notice.

AVID

44. The District has determined to skip, and exempt from layoff, those certificated employees who are currently teaching one or more AVID classes at the middle school and high school levels. AVID is a college-readiness program designed to increase the number of mid-academic pupils who enter college and have careers. The District considers the AVID program to be an important component of its educational mission to help pupils who are less prepared or have received lesser amounts of services. In general, in order to be certified or qualified to teach an AVID course, a teacher is required to complete three levels of specialized training. However, the District plans to skip certificated employees currently teaching at least one AVID course even though they have not completed the three levels of specialized training. On the other hand, to be eligible to bump a junior certificated employee who is currently assigned to teach in the AVID program, the District has determined that the more senior certificated employee must have completed the three levels of AVID training in Implementation, Tutorology, and Refining. The District has shown a need for certificated employees to teach in its AVID programs and reasonably determined what special training and experience is required for skipping and bumping those certificated employees in the AVID programs. The District's determination was based solely on the needs of the District and its pupils.

45. Respondent Julie Sparks (829) teaches accelerated Humanities core classes at a middle school and holds a multiple subject credential. She is not teaching an AVID class this year but has completed the three levels of AVID training and introduces AVID skills to sixth grade pupils by rotating into two periods of self-contained sixth grade classes three to four times per week. In doing so, Sparks teaches and supports goal-setting skills, note-taking, reading, and organizational skills. While she was not skipped for AVID because she is not teaching an AVID class, Sparks insists she can bump Cindy Pitts (719), a middle school language arts teacher, and Lori Primrose (698), a seventh grade language arts and

academic success teacher, but neither Pitts nor Primrose teach an AVID course or received a preliminary layoff notice. Sparks also argued that she can bump Stacey Collins (447), an eighth grade English teacher, who has one AVID course in her course load, but Collins did not receive a preliminary notice and is not subject to layoff, and Sparks did not show that she has certification or competency to teach English. As such, Sparks may not bump into these teachers' positions.

46. Respondent Brenda Ornelas (629) is an eighth grade history teacher who received tie-breaking credit for having completed two levels of AVID training. Ornelas was not skipped as an AVID teacher because she is not teaching an AVID class this school year. She did coordinate an AVID program two years ago. However, Ornelas may not bump a less senior certificated employee who has an AVID course load because it was not established that she has completed the three levels of training necessary to receive AVID certification.

47. Respondent Anna Weber (136) is an eighth grade science teacher with a multiple subject credential in general subjects and introductory science. Weber argued that she should be able to bump Dustin Shade (32) or Jagesh Patel (39). Patel is a middle school science teacher who teaches math, engineering, and science achievement (MESA), which Weber has previously taught, but Patel is already subject to being bumped by another certificated employee more senior than Weber. The District does not plan to layoff Shade, an intermediate science and GATE teacher, because he teaches an eighth grade AVID class. While Weber completed a two-day AVID science training program in 2009, it was not established that she has completed the required three levels of AVID training to bump into an AVID position. Weber does not have tie-breaking credit for AVID training and does not teach an AVID class. According to the latest Bumping Chart, the District has determined to have Billy Hong (1322) bump into Weber's position. Hong is more senior and is certificated to teach middle school science based on his supplemental authorization in science. Weber may receive a final layoff notice.

48. Respondent Grace Beisel (539) is a sixth grade teacher at Stephens Middle School whom the District has proposed to be bumped by the more senior certificated employee Thyjuan Harris (2679). Beisel holds a clear single subject credential in social science and a clear multiple subject credential. She has argued that she should be able to bump respondents Elizabeth Duty (272) and Santiago Camarena (318), who are also middle school teachers. However, Duty and Camarena each teach an AVID course and it was not established that Beisel has ever taught AVID or undergone the requisite three-levels of AVID training to be eligible to bump them. In any case, the District plans to have Duty bumped by respondent Tracie Gallagher (400), a middle school Humanities core and current AVID teacher, and does not plan to issue a final layoff notice to Camarena. Beisel's argument was not persuasive and she may receive a final layoff notice.

49. Respondent Alexandria Moreland (156) is a middle school science and GATE teacher with clear credentials in biological science and general subjects. Initially, the District planned to have Moreland bumped by the more senior Carol Clanton (1208). Moreland then argued that, with her single science biology credential, she should be able to bump the

following less senior high school science teachers: Dustin Shade (32), Jagesh Patel (39), Anne Maben (83), and Matthew Michelin (94). The District re-examined Moreland's credentials and assignment and determined that she should bump Patel but that she, in turn, should still be bumped by Clanton. Shade teaches an AVID course and is being skipped. It was not shown that the District's redetermination was incorrect or unreasonable. Moreland may receive a final layoff notice.

AVID and Social Science

50. Respondent Michael Carroll (316) holds a clear single subject credential in social studies and teaches United States history at Poly Academy of Achievers and Leaders (PAAL). The District has determined that he should be laid off pursuant to the reduction of high school social science instruction and that he is not eligible to bump any certificated employee. Carroll argued that he should be able to bump several certificated employees who have less seniority but these other certificated employees all teach AP or AVID courses. Because it was not established that he teaches an AP course or has completed any AVID training, Carroll may not bump into these positions. Carroll may receive a final layoff notice.

51. Respondent Megan Shihady (753) is a middle school history teacher with a clear multiple subject credential, a supplemental authorization in social science, and current board authorization for teaching social science from kindergarten through twelfth grade. The District proposes to have her bumped by Kelley Hoisington (1051), a second grade teacher with more seniority who can assume Shihady's position by virtue of having a supplemental authorization in social science. Because she is subject to being bumped, Shihady argued that she should be able to bump one high school and three middle school social science teachers, all of whom teach an AVID course. Shihady argued that she can teach AVID because she received AVID training in history and social science in 2009, provides support for AVID teachers and participates in AVID activities at her school, and implements AVID strategies in her classes. However, because it was not established that she has completed the three levels of AVID training, Shihady may not bump into a position that includes teaching an AVID course. Shihady may be given a final layoff notice.

52. (A) Respondent Gail Hamilton (580) possesses a clear single subject credential in social science and teaches history, including accelerated medieval world history, and GATE at a middle school. She received a preliminary layoff notice. Hamilton has completed an undetermined number of levels of AVID training for which she received tiebreaking credit. She is not eligible to be skipped as an AVID teacher since she is not teaching an AVID course this year but, in prior school years, she did teach AVID elective courses and was an AVID elective coordinator at her site. During the hearing, Hamilton argued that she should be able to bump three less senior certificated employees, including Stephanie Manion (140). The District now plans to allow Hamilton to bump Manion but also plans to have Hamilton be bumped by the more senior Kathy George (1285).

(B) Respondent Stephanie Manion (140) has a clear single subject credential in social science and teaches medieval world history and one or two periods of AVID at a middle school. She did not receive tiebreaking credit for completing AVID training. Nevertheless, because she is currently teaching an AVID course, Manion should be eligible to be skipped for AVID. It was not established why the District did not skip Manion for AVID. While Manion is junior to Hamilton, it was not established that Hamilton has completed the three levels of AVID training required to bump into the AVID position held by Manion.

(C) Respondent Kathy George (1285) is a kindergarten teacher and has a life standard elementary credential in sociology. George is more senior than Hamilton but it was not established whether George with her elementary credential is certificated and competent to teach Hamilton's course load of social science, history, and medieval history.

(D) Based on Findings 52(A) – (C) above, respondent Manion should be skipped pursuant to the District's criteria for skipping certificated employees currently teaching AVID at the middle or high school level. Moreover, because it was not established that George should be able to bump Hamilton, Hamilton should not be served with a final layoff notice either.

Elementary Teaching

53. (A) Respondent Elizabeth Gladinus (1429) is a kindergarten teacher who holds a multiple subject credential. She is assigned to a 0.50 FTE position because she is sharing a job with another certificated employee. Gladinus is entitled to return to a full-time teaching position. However, the District has proposed to terminate her employment due the reduction of particular kinds of services. The District plans to reassign Terri Mostert (1610) and have her bump into Gladinus' kindergarten position. Mostert is on special assignment in a special education position. Mostert is certificated to teach kindergarten based on her clear multiple subject credential.

(B) For her part, Gladinus argued that she should be able to bump into positions held by Griselda Rodriguez (1323A), Cindy Pitts (719), Annemarie Lander (1223), and Grant Robinson (1220). Rodriguez holds a multiple subject credential and teaches second grade Excel but is subject to being bumped by a certificated employee more senior than Gladinus. Pitts is a middle school language arts teacher and Lander teaches eighth grade history and seventh grade language arts. Gladinus argued that she is eligible to receive board authorization in language arts and social studies. However, since she does not currently hold a credential or board authorization to teach middle school language arts or social studies for the ensuing school year, Gladinus may not bump into the positions held by Pitts and Lander. Pitts and Lander were not served with preliminary layoff notices. Finally, Robinson teaches accelerated science and math in a self-contained sixth grade classroom under a multiple subject credential. He is now subject to being bumped himself by a certificated employee more senior than Gladinus. Accordingly, it was not established that

the District erred or was arbitrary in these bumping determinations. Gladinus may receive a final layoff notice.

Math

54. Respondent Wendy Tunncliff (184) is a middle school math teacher who possesses a clear multiple subject credential and a clear single subject credential in foundational math not including trigonometry or calculus. At the outset of this proceeding, the District planned to have Tunncliff bumped by the more senior Mary Steward (929), a first grade teacher with a clear multiple subject credential and a supplemental authorization in math. Tunncliff then testified and argued that she should be able to bump several less senior high school math teachers, including Rebeka Luu (123). The District then re-examined the credentials and assignments of Tunncliff and other math teachers and determined that Tunncliff should, in fact, bump Luu but that she should still be bumped by Stewart. It was not established that the District's bumping redetermination was incorrect or unreasonable or that Tunncliff should be able to bump any other less senior certificated employee in math. Tunncliff may receive a final layoff notice.

55. Respondent Jeffrey Jackson (2347) is a computer teacher at Reid High School and holds a single subject credential in industrial and technology education. Originally, the District determined Jackson was subject to layoff due to the reduction of computer applications instruction at the high school level. After Jackson contended that he should bump a less senior certificated employee, the District determined that he should bump Gary Romano (177), a teacher who teaches several core subjects at Cabrillo High School with a single subject credential in art. Jackson is not identified as a respondent who will be receiving a final layoff notice.

56. Respondent Lea Ward (1449) is a Humanities core teacher at a middle school and possesses a multiple subject credential. Under its preliminary layoff or bumping analysis, Ward was subject to being bumped by Rosemary Sissons (2415), a teacher on special assignment, pursuant to the reduction of learning directors. During the hearing, Ward argued for additional tiebreaker credit and that she was credentialed and competent to bump less senior certificated employees. After the District agreed to grant additional tiebreaker credit to her, Ward did not appear on the most recent Bumping Chart (Exh. 22). Examination of the Certificated Seniority List also revealed that Sissons was not served with a preliminary layoff notice but the District plans to reassign her and noted her to be bumping Raina Southwell (913) on the most recent Bumping Chart. Ward is not identified as a respondent who will be receiving a final layoff notice.

57. Respondent Lina Martinez (721) is an English Language Learner (ELL) coach for the District. She holds a clear multiple subject credential and a supplemental authorization in math. Martinez received a preliminary layoff notice due to the reduction of TOSA ELL teacher coaches by 11.00 FTE. After she testified in the hearing and upon re-examination of respondents' credentials and assignments, the District has now determined

that Martinez should bump Ling Bensie (309). Bensie is math teacher and math department chair at a school serving pupils from kindergarten through eighth grade. She possesses a multiple subject credential and a supplemental authorization in introductory mathematics. She teaches Algebra 1-2, seventh grade math and accelerated math, and seventh grade mathematics development. Bensie received a preliminary layoff notice. The District's determination that Martinez is certificated and competent to bump Bensie and teach her classes was not shown to be erroneous or an abuse of discretion. Bensie, but not Martinez, may receive a final layoff notice.

58. Respondent Anna Marie Olvera Estrada (567) possesses a multiple subject credential in general subjects and supplemental authorizations in history, introductory English, and introductory social science. She teaches English at the middle school level and received a preliminary layoff notice due to the reduction in elementary classroom instruction. Estrada argued that she should be able to bump less senior teachers in social science or history but she has no prior experience teaching history or social science above the elementary level. Her claim that she can bump a less senior math teacher because she is eligible to receive board authorization to teach math was not persuasive inasmuch as she does not hold any current board authorization to teach math for the next school year. Since the outset of the hearing in this matter, the District determined that Estrada may bump Karla Sorensen (398) but, in turn, she will be bumped by Jacqueline Hernandez (1224). Sorensen is a less senior middle school teacher who holds a clear single subject credential in English. Hernandez is a more senior elementary school teacher with a multiple subject credential. It was not established that the District's bumping redetermination was incorrect or an abuse of discretion or that Estrada should be able to bump any other less senior certificated employee in English or social science. Estrada may receive a final layoff notice.

Spanish

59. Respondent Gildenia Carvajal (276) possesses a clear single subject credential in Spanish and is assigned to teach Spanish at the Poly Academy of Achievers and Leaders (PAAL). Carvajal was initially subject to being bumped and argued that she should be able to bump the less senior high school Spanish teacher Kristina Kim (130). The District thereupon re-examined the credentials and assignments of Carvajal and Kim and determined that Carvajal could, in fact, bump Kim. However, the District further found that Carvajal should still be bumped and laid off. It was not established that the District's bumping redetermination was incorrect or unreasonable or that Carvajal should be able to bump any other less senior certificated employee in Spanish. Carvajal may receive a final layoff notice.

60. Respondent Janice Johnson-Lichfield (243) is a high school Spanish teacher with a clear standard secondary credential in Spanish and a supplemental authorization in music. The District has determined that Johnson-Lichfield should be bumped by Lupe Garcia (579) and Garcia, in turn, should be bumped by Dinna Un-Maciel (1088) due to the reduction of Spanish instruction. Respondent Garcia teaches Spanish at a middle school while holding a clear single subject credential in Spanish. As such, Garcia may bump

Johnson-Lichfield. However, respondent Un-Maciel, an elementary school teacher with a multiple subject credential and a supplemental authorization in Spanish, has been released or dismissed from the layoff process, as set forth in Exhibit 21. Accordingly, Garcia may bump into Johnson-Lichfield's high school position and Johnson-Lichfield may receive a final layoff notice.

Science

61. Respondent Christie Endres (263) teaches eighth grade science at Marshall Middle School and has a preliminary single subject credential in biological sciences. The District has proposed to have Endres bumped by a more senior certificated employee, Jacklyn Schulte (1109), who teaches kindergarten but holds a clear single subject credential in life science. Due to the prospect of being bumped, Endres contended that she should be able to bump several certificated employees with less seniority. However, three of them teach either at least one AVID or an AP course and Endres does not teach AVID or AP and has not completed the required AVID or AP training to bump into those positions. She only attended a level one AVID training a few summers ago. It was not established that the District's determination to reassign Schulte and to bump Endres was erroneous or an abuse of its discretion. Endres may be given a final layoff notice.

English Learner and English

62. Respondent Allison Arzuman (1418) is a second grade, English only, teacher with a clear multiple subject credential. She has a non-bilingual EL certificate and a CLAD and teaches pupils who are English learners. The District proposes to have Arzuman bumped by the more senior certificated employee, Deborah Avila (2017), who teaches eighth grade economics and holds a clear multiple subject credential and a board authorization for the current school year to teach social science. Avila also received tie-breaker credit for having a non-bilingual EL certification and a CLAD. It was established that Avila is certificated and competent to be reassigned to Arzuman's elementary teaching position. For her part, Arzuman contended that she should be able to bump the less senior Osvaldo Ocampo (1221), an English Language Learner coach who has a clear multiple subject credential and a clear CLAD certificate. She added that she currently teaches EL pupils and has received SDAIE training to teach ELL pupils. Unfortunately, the District plans to bump Ocampo by reassigning Athena Alfaro (2926) to that ELL coach position. Alfaro has more seniority than Arzuman and holds a multiple subject credential with an EL certificate and a BCLAD certificate. The District's determination to bump Arzuman and to reassign Alfaro to Ocampo's position was not shown to be erroneous or an abuse of discretion. Arzuman may receive a final layoff notice.

63. (A) Respondent Mireya Valenzuela (446) is a middle school English teacher. She possesses a multiple subject credential in general subjects and a supplemental authorization in English. The District served Valenzuela with a preliminary layoff notice and

proposes to have her bumped by the more senior Sheila Lee (1321) due to the reduction of special education intervention and progress specialists. Like Valenzuela, Lee possesses a multiple subject credential and a supplemental authorization in English. Here, Valenzuela contended that she should be able to bump the less senior Kimberlie Smith (371), a sixth grade English teacher. Smith also has a multiple subject credential and a supplemental authorization in introductory English. Valenzuela should be able to bump Smith, but, Smith is already slated to be bumped by the more senior Terrence Hegamin.

(B) Respondent Hegamin (1053) is a fifth grade English teacher who holds a clear multiple subject credential in general subjects and special preparation for teaching middle-level students as well as a supplemental authorization in English. With his credential and supplemental authorization, Hegamin is able to bump Smith and to teach her course load. It was not established that the District's determination to have Hegamin bump Smith and to have Lee bump Valenzuela was erroneous or arbitrary and capricious. Both Valenzuela and Smith may receive final layoff notices.

64. Respondent Julianne Beebe (335) is a high school English teacher at PAAL and holds a clear single subject credential in English. The District plans to have Beebe bumped by reassigning the more senior Paula Libby (1365) to her position due to the reduction of the particular kind of service for AVID and AP coordinator by 1.0 FTE. Libby has four periods of "AVID Peer Tutor" at Cabrillo High School and is noted to be a department head. Although Libby was not served with a preliminary layoff notice to indicate that her position is being eliminated in this layoff proceeding, the District may reassign Libby and have her bump Beebe due to the reduction of AVID and AP coordinator. It was not established that the District's determination to reassign Libby and to have her bump Beebe was arbitrary or an abuse of its discretion. Beebe may be given a final layoff notice.

65. (A) Respondent Jack Murry (422) is a high school English teacher who possesses a life standard secondary teaching credential in sociology and social science and supplemental authorizations in English and physical education. He teaches five periods of English, including one period of accelerated English, and coaches the boys' tennis teams at the high school. He is subject to being bumped by the more senior certificated employee, Alissa Gamboa (1110), a fourth grade teacher who received a preliminary layoff notice pursuant to the reduction of the particular kind of service in elementary instruction. Gamboa is more senior than Murry and holds a clear single subject credential in English which authorizes her to assume the teaching of Murry's English classes.

(B) First, Murry contended that Gamboa cannot bump into his position because she does not possess a physical education credential and cannot teach his physical education class in the fall. However, the Certificated Seniority List does not show that Murry teaches any period of physical education. In addition, he is not assigned to the physical education department. The evidence demonstrated that he coaches the boys' tennis teams in eighth period which would be considered an after school program. Second, Murry argued that he cannot be laid off because of the protections afforded to him as a U.S. Army veteran by the federal Veterans' Preference Act of 1944 (Act). However, Murry did not

establish by his submittals of the synopsis of the Act and the article by Minnesota law firm that the Act bars his layoff from employment in this state under Education Code sections 44949 and 44955. Third, Murry's bumping arguments were not persuasive. As such, Murry may be given a final layoff notice.

Health Science and Business Education

66. Respondent Shannon Brizendine (576) teaches health education at a middle school pursuant to her clear single subject credential in health sciences. She also teaches one period of seventh grade accelerated science pursuant to a Governing Board authorization for biological science for kindergarten through grade 8. Initially, Brizendine was subject to being bumped and then argued that she should be able to bump the less senior middle school science teachers, Helen Ahn (570) and Sonia McMichael (537). However, neither Ahn nor McMichael was served with a preliminary notice and are not subject to layoff. Subsequently, the District determined that Brizendine should be bumped by a more senior high school health education teacher, Stephen Heavin (323), pursuant to the reduction of high school health science services. It was not established that the District's bumping redetermination was incorrect or unreasonable or that Brizendine should be able to bump any other less senior certificated employee in science. Brizendine may receive a final layoff notice.

67. Respondent Mark Jonas (450) is a health science teacher and health department head at a school for kindergartners through eighth graders. He holds a clear multiple subject credential and a supplemental authorization in health science. He received a preliminary layoff notice and is subject to being bumped by the more senior Cheryl Deaton (3798). Deaton is a health education and computer teacher at Renaissance High School. She holds a clear single subject credential in health science and industrial and technology education and a supplemental authorization in biology. Deaton did not receive a preliminary layoff notice but the District has determined to reassign her to Jonas' position or assignment. Jonas has argued that Deaton cannot teach all of his classes. He teaches health and science to seventh graders but also science for eighth graders. Jonas contended that eighth grade science includes chemistry, astronomy, and physical science and Deaton is not competent to teach those subjects while holding a supplemental authorization for biology. Jonas' argument was not persuasive, for if he can teach eighth grade science with his multiple subject credential and a supplemental authorization in health science then Deaton should be able to do so with her single subject health science credential. Deaton may bump Jonas and Jonas may receive a final layoff notice.

68. Respondent Michael Carr (1902) holds a clear single subject credential in business and is a high school business education teacher. He teaches several periods of computer applications and was given a preliminary layoff notice due to the reduction of instruction of high school computer applications. Carr argued that he should be able to bump less senior respondents at the high school level since he has a single subject business credential and is authorized to teach their business courses. According to the most recent Bumping Chart, the District plans to have Carr bump into a position held by a less senior

certificated employee after conducting a series of bumps, including Carlin Stein (462). As such, the District does not plan to give a final layoff notice to Carr. It was not established that the District's bumping redetermination was incorrect or arbitrary and capricious.

Music

69. Respondent Grant Robinson (1220) is a sixth grade GATE and self-contained classroom teacher who teaches accelerated science and math. He possesses a clear multiple subject credential. He claims to have a supplemental authorization in music. According to the latest Bumping Chart, the District plans to have Robinson bumped by Christine Montemer (2996), who is subject to layoff due to the reduction in special education intervention and progress specialists by 43.0 FTE. Montemer has a clear multiple subject credential, a supplemental authorization in music, and a certificate of eligibility for an administrative services credential; she is on special assignment at an elementary school. Montemer was not served with a preliminary layoff notice and the District was not planning to terminate her employment. However, the District now seeks to reassign Montemer to Robinson's position. In any case, Robinson claims that he can assume the assignments of any of three less senior middle school music teachers, each of whom possesses a single subject credential in music. Inasmuch as the Certificated Seniority List does not demonstrate that he holds any credential or authorization to teach music, Robinson's bumping claims must be rejected at this time.

70. (A) Respondent Drew Holt (151) holds a preliminary single subject credential in music and teaches music at Renaissance High School, the District's performing arts high school. He teaches freshman, intermediate, and advance concert choir and international choir. In connection with his choir duties, Holt prepares students for choir festivals. He also teaches beginning, intermediate, and advance guitar, which involve instruction in note reading and classical and jazz performance. Aside from his credential, Holt has a master's degree in choral conducting, engaged in vocal performances, taught voice, and directed musicals. Holt received a preliminary layoff notice but, initially, was not slated for layoff. Upon re-analysis of credentials and assignments, the District has now determined that Holt may be bumped by respondent Stacy Burcham and should be laid off.

(B) Respondent Stacy Burcham (224A) has a single subject credential in music and is a music teacher at Lakewood High School where she teaches jazz band, exploring music, orchestra, drill team, band, symphonic winds, and physical education with a marching band emphasis. She arranges vocal and instrumental music for her high school's shows and helps to produce musical performances each year. She has previous experience in teaching choir and guitar for different school districts and as a student-teacher. She also teaches singing and choir at a summer music camp and has performed vocally and given vocal lessons. Burcham was served with a preliminary layoff notice and initially was not slated for layoff. Upon redetermination of credentials and assignments, the District has determined that Burcham is certificated and competent to bump the less senior Holt from his high school music position but that she, in turn, is subject to being bumped by respondent

Geoffrey Barbe. In this proceeding, Burcham argued that Barbe may not bump her because she has successfully completed sign language classes and uses sign language to teach deaf and hard-of-hearing pupils in band and music classes in the absence of an interpreter and Barbe does not possess the ability to use sign language. It was not established, however, that Burcham's sign language skills are an essential or required component of her teaching duties or that she is assigned to teach music to a class comprised solely or largely of deaf and hard-of-hearing pupils. Burcham's argument that Barbe may not bump her was not persuasive.

(C) Respondent Geoffrey Barbe (275) possesses a single subject credential in music and teaches beginning and advanced orchestra, steel drum band, and beginning and advanced band at Stephens Middle School. He does not teach an AVID class this year for purposes of skipping. He has not completed the three levels of AVID training to qualify to bump into an AVID position. Upon re-examination of credentials and assignments, the District has determined that Barbe may bump Burcham but that he, in turn, is subject to being bumped by Timothy Borgerding. Barbe has experience in supervising school color guards, drill teams, and jazz bands while he previously taught at three different high schools in other school districts.

(D) Respondent Timothy Borgerding (1052) is a fifth grade teacher who holds a multiple subject credential. He was served with a preliminary layoff notice due to the reduction in elementary school services. However, because he also possesses a supplemental authorization in music, Borgerding may bump into a music position. The District has determined that Borgerding may bump Barbe at the middle school level.

(E) Based on Findings 70(A) – (D) above, it was not established that the District's determinations to bump respondents Holt, Burcham, and Barbe were incorrect or arbitrary and capricious. Nor was it established that Holt, Burcham, and Barbe are able to bump any other less senior certificated employee in music. Respondents Holt, Burcham, and Barbe may receive final layoff notices.

71. Respondent Anne Yoon (533) is an itinerant music teacher for the District. She possesses a clear single subject credential in music. Yoon was served with a preliminary layoff notice but the District has now determined that she should bump Karina Ivey (313). Ivey is a music teacher for kindergarten through eighth grade and holds a single subject credential in music and art. It was not established that the District's determination to have Yoon bump Ivey was an incorrect analysis of the certificated employees' credentials and assignments or an abuse of its discretion to reassign certificated employees to facilitate the reduction of particular kinds of services. Yoon was not identified as a respondent who will receive a final layoff notice.

72. Respondent Megan Carungcong (179A) is an itinerant music teacher who holds a clear single subject credential to teach music. She received a preliminary layoff notice and the District has determined that she is not certificated and competent to bump any less senior certificated employee. Carungcong argued that she should be able to bump either respondent Holt or respondent Burcham but the District has determined that Burcham may

bump Holt and that Burcham is subject to being bumped herself. It was not established that the District's bumping redeterminations or that the District's determination that Carungcong cannot bump any other less senior certificated employee in music was incorrect or an abuse of its discretion. Carungcong may receive a final layoff notice.

Art

73. Respondent Alison Rockwood (478) is an art teacher at Lakewood High School where she teaches four periods of drawing and painting and one period of ceramics. She possesses a clear single subject credential in art, a master's degree, and AP training. Rockwood was served with a preliminary layoff notice and the District proposes to terminate her employment pursuant to the reduction of high school art instruction. In this proceeding, while she admits that she has not taught AP art or prepared an AP syllabus for approval by the College Board, Rockwood contended that she should be able to bump certificated employee Catherine Jones (146), who teaches drawing and painting at another high school. Jones, however, is being skipped because she has AP training but, more importantly, currently teaches one period of AP art history. The District's decision not to allow Rockwood to bump Jones was reasonable and not an abuse of discretion inasmuch as Rockwood has not taught AP art or prepared an AP syllabus to teach AP art. Rockwood may be given a final notice of layoff.

Physical Education and Dance

74. (A) Respondent Warren Smitheran (997) is a high school physical education and computer applications teacher who possesses a clear single subject credential in physical education and a supplemental authorization in computer concepts and applications. He was served with a preliminary layoff notice due to the reduction in high school computer applications instruction. At the hearing, Smitheran contended that he can teach the physical education classes as well as the dance classes of fellow high school physical education teachers who are junior to him in seniority and that he should be able to bump to their positions. Subsequently, the District determined that Smitheran should bump respondent Mario Morales (845).

(B) Respondent Tito Ortiz (987) is a physical education teacher at Hughes Middle School. He possesses a single subject credential in physical education and teaches several periods of physical education to eighth grade pupils. Ortiz argued that he can bump Morales inasmuch as he has the credential and experience in providing instruction in weight training and advanced kinesiology to high school pupils. He previously taught ninth grade physical education at Reid High School. In addition, Ortiz contended that he can bump several high school dance teachers. His physical education credential allows him to teach dance and he has experience in teaching dance. The physical education curriculum for eighth grade includes square dancing. Ortiz also took classes in college in dance and is proficient in line dancing, salsa, and cowboy boogie.

(C) Respondent Mario Morales (845) is a physical education teacher at Wilson High School. He holds a clear single subject credential in physical education. He teaches two periods of weight training, two periods of advanced kinesiology, and two periods of team football. Pupils receive physical education credit for taking the team football classes where Morales instructs the students on weight training and the fundamentals, techniques, and safety requirements to play football. After school, Morales coaches the high school football team during team practices and games. His position as football coach requires him to attend football clinics and to confer with college and professional football coaches. Morales has less seniority than Smitheran.

(D) Based on Findings 74 (A) – (C) above, while Smitheran and Ortiz do possess the same credential as Morales and are therefore certificated to teach Morales' courses in weight training and advanced kinesiology, it was not established that Smitheran or Ortiz possesses the competency to teach his courses in team football. Neither Smitheran nor Ortiz demonstrated that he has previously taught team football or has the skills, qualifications, or experience to assume the teaching of the two periods of team football. As such, neither Smitheran nor Ortiz is competent to bump into Morales' position. Morales may not be given a final layoff notice.

75. (A) Respondent Johanna Knox (846) is a high school physical education teacher with a single subject credential in physical education. She teaches tenth grade advanced kinesiology as well as two periods of ninth grade physical education with a dance emphasis. The latter course involves the instruction of the art and techniques of dance, including timing and choreography.

(B) Respondent Jennifer Waters (741) is a dance teacher at Millikan High School and holds a single subject credential in English and a supplemental authorization in dance. Her supplemental authorization permits Waters to teach dance in grades 12 and below. She teaches at least four periods of physical education with a dance emphasis and two periods of dance. In her course load, Waters teaches beginning, intermediate, and advanced dance for grades nine through 12. The curriculum that she teaches includes the history and art of dance, body awareness, choreography, and various forms of dance, such as modern, jazz, Latin, and hip hop. In addition, Waters produces, manages, and choreographs student dance performances and productions. Pupils can earn both physical education and performing arts credits for taking her dance classes.

(C) Respondent Keisha Clark-Booth (577) is a dance and cheer teacher at Cabrillo High School and holds a single subject credential in physical education. She teaches physical education with a dance emphasis and dance, including advanced dance. While pupils may take her beginning dance class for physical education credit, pupils are required to audition for the upper level classes for which they may receive fine art credit. After school, Clark-Booth oversees dance team activities. In her classes, she teaches the art of dance and several forms of dance, such as jazz and folk dance. She has also trained and performed with the professional dance company Alvin Ailey and coordinated dance at a community college and a high school for performing arts.

76. (A) Based on Findings 74(A) – (C) and 75(A) – (C) above, it was not established that respondents Smitheran, Ortiz, and Morales are competent to teach the dance assignments and classes of respondents Knox, Waters, and Clark-Booth. The latter dance instructors have specialized knowledge and experience in various forms of dance, the art of dance, choreography, and dance production which Smitheran, Ortiz, and Morales do not possess. While their physical education credentials allow them to teach dance, Smitheran, Ortiz, and Morales can only teach social forms of dancing and not the high levels of dance and choreography required for dance at the high school level. Smitheran, Ortiz, and Morales may not bump into the dance assignments or teaching positions of Knox, Waters, and Clark-Booth.

(B) Respondents Knox, Waters, and Clark-Booth were served with preliminary layoff notices, but the District did not indicate having any plans to terminate their employment.

(C) Based on Findings 74(A) – (D), 75(A) – (C), and 76(A) above, respondent Smitheran may be laid off pursuant to the reduction of high school computer applications instruction. According to the latest bumping chart, the District plans to reassign the more senior certificated employee Samuel Thompson (3346), a high school health education teacher with a life single subject credential in physical education and a current board authorization for health science, and to have Thompson bump Ortiz. The District's determinations to terminate Smitheran and to bump Ortiz were not shown to be unreasonable or an abuse of discretion. Smitheran and Ortiz may receive final layoff notices.

Counseling

77. The Governing Board resolved to reduce or eliminate the particular kind of service of counseling services by 35.0 FTE. In this District, counselors are considered management employees and are not represented by the teachers' association. As such, the majority of self-represented certificated employees in this proceeding (Exh. 24) were counselors.

78. Respondents Spencer Barber (366) and Lashonda Bogin (271) are both counselors at Cabrillo High School. Each holds a clear pupil personnel services credential. Bogin also has a preliminary multiple subject credential. Each is subject to layoff due to the reduction of counseling services. During the hearing, respondents separately complained about the District's determination to skip the less senior certificated employee, Lionel Gonzalez (250), who is a counselor at Jordan High School and holds a clear pupil personnel services credential. Gonzalez was served with a preliminary notice. Respondents characterized Gonzalez's position as head counselor of the Male Academy at that high school and contend that no special training or experience is needed to fill the position of head counselor at the Male Academy. Respondents asserted that they have the credentials and competency to be head counselor of the Male Academy. Barber has acted as a liaison to the Male Academy at his site and Bogin has been the leader of an AVID program and counsels

at-risk pupils. Here, however, the District determined to skip Gonzalez not as or to be head counselor of the Male Academy, but because he has developed programs for at-risk pupils and training models for counselors and teachers to work with at-risk pupils. As such, the District demonstrated that it has a special need for personnel to be a counselor for the Male Academy at Jordan High School and determined that Gonzalez has special training and experience to fill that position, which special training and experience other certificated employees and/or respondents with more seniority do not possess. It was not established that the District's determination was arbitrary and capricious and not based solely on the needs of the District and its pupils. As such, Gonzalez may be skipped from the District's layoff process pursuant to Education Code section 44495, subdivision (d), and Barber and Bogin may be given final layoff notices that their services will not be needed next year due to the reduction of particular kinds of services in counseling.

79. Respondent Erika Medina (216A) is a counselor at Lakewood High School and holds a clear pupil personnel services credential. Medina contends that her seniority date should be updated by four days because she worked as a senior office assistant for the District during pre-registration. Medina was given tie-breaking credit that improved her seniority but her four days of work as a classified employee will not count towards her first date of paid service as a certificated employee. Medina also complained that she should be retained or skipped because she is fluent in Spanish. The District's determination not to retain or skip Medina was not shown to be arbitrary or capricious. Medina may be given a final layoff notice.

80. Respondent Carol Takagi (220) is a counselor at Lakewood High School. She holds a life standard designated subjects credential in public safety education, a clear single subject credential in art, a life standard pupil personnel services credential in pupil counseling and psychology, and a life standard elementary credential in art and anthropology, and a professional administrative services credential. Takagi contends that she should be skipped and retained because she has extensive experience in several areas including data analysis, special education, and administration. She has presented at conferences and published articles. However, the determination of the District not to skip Takagi is within its sound discretion and not arbitrary or capricious. Takagi may be given a final layoff notice due to the reduction of counseling services.

81. Respondent Rosalin Bender (2089) is an elementary school counselor and possesses a clear pupil personnel services credential in school counseling. She is employed in a 0.60 FTE position and considered to be a first year probationary employee. In this proceeding, Bender contested her status as a probationary employee, stating that she has worked for the District since October 1998 and should be re-classified as a permanent employee because she worked for three or more days each week in the past school years. It was not established, however, that Bender served or worked for at least 75 percent of the District's school days in any two complete consecutive school years to qualify for permanent status within the meaning of Education Code sections 44908 and 44929.21. As such, Bender may be given a final notice and laid off prior to any permanent counselor.

Head Start

82. Respondent Natividad Magallon has been a preschool teacher for the District's Head Start program for 10 years and holds a child development permit and child development site supervisor permit. In this proceeding, Magallon asserted that she cannot be laid off from her preschool job because the Head Start program is not part of the District's regular educational program. Under Education Code section 44909, the District may employ persons possessing an appropriate credential as certificated employees in programs and projects to perform services conducted under contract with public or private agencies or categorically funded projects which are not required by federal or state statutes as long as the terms and conditions under which such persons are employed are mutually agreed upon and reduced to writing. Here, Magallon, like other temporary employees and employees in categorically funded programs, signed a special contract every year for temporary employment in a categorically funded or contract program. It was not established that Magallon at any time was employed as a probationary employee. As a temporary certificated employee in the Head Start or child development program, Magallon was entitled to notice under Education Code sections 8366, 44949, and 44954 before she can be dismissed from her job. On March 1, 2011, the District provided notice to Magallon and other temporary certificated employees in the Head Start program that their services will not be required for the next school year. As a temporary certificated employee, Magallon may be released from her employment.

83. Any claims and contentions made by the parties at the hearing or in written argument for which there are no specific findings in this Proposed Decision were deemed unproven or were considered irrelevant or surplussage.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Jurisdiction exists for the subject proceedings pursuant to Education Code sections 44949 and 44955, based on Findings 1 – 25 above. All notices, the Accusation, and other related papers and reports required by these Education Code sections have been provided in a timely manner and, as such, the parties have complied with the statutory requirements.

2. Cause exists pursuant to Education Code sections 44949 and 44955 to reduce or discontinue by 773.50 full-time equivalent positions the concomitant number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services, based on Findings 1 – 83 above. With respect to those respondents whose employment have been found to be terminable by the District and any other certificated employees who received notices but did not request a hearing, if any, the causes set forth in the Accusations relate solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. Cause does not exist pursuant to Education Code sections 44949 and 44955 to terminate the employment of the following respondents and/or certificated employees: Ryan Burns (122), Debra Davis-Garriott (1259), Barbara Gilmore (2810), Lidia Santana (147), Mikel Edillon (1175), Dalis La (1438), Helen Magana (1444), Michael Humphries (285), Dawn Lucchese (659), Rita Aslan (928), Maria Yopez (2175), Stephen Heavin (3230), Sheryl McGushion (2771), Lisa Boese (1705), Rachel Peters (2377), Dinna Un-Maciel (1088), Ruby Gaytan (2494), Samuel Thompson (3346), Jessica Parker (3070), Kay Whitman (760), Sonja Brown (1089), Sharon Chavez (3026), Kristy Freund-McFeggan (808), Stacy Copp (2661), Joan Russell (2350), Heather Mills (1654), Adara Newidouski (2178), Paul Lavecchio (3239), Paula Swiercz (1091), Tracy Fideler (1488), Patricia Grote (3960), Carla Castro (1397), Martin Axelson (3162), Shannon Mulvaney (2956), Ana Laura Frausto (889), Stephanie Bassard-Jones (3021), Wanda Selby (2436), Adriana Wright (3179), Victoria Bahr (1495), Julie Bates (1508), Timothy Branda (1492), Willette Clark (1586), Margaret Devine (1505), Heidi-Lynn Doon-Samaniego (1501), Michelle Franco (1509), Jessica Ghareeb (1489), James Goodrich (1498), Denise Grantham (1499), Leonard Hawkins, Jr. (1500), Phillip Higgins (1494), Marvin Holm (2976), Jennifer Kolb (1502), Linda Lofstrom (1491), Amy Love (1507), Mary McDonald (1506), Kathryn Meacham-Shirley (1533), Glenda Mutz (1496), Annette Paluska (1503), Christy Pravednikov (1504), Elizabeth Robles (1487), Robb Rugeroni (2980), Terry Spencer (1493), Susan Temple (1690), Laura Wilcox (1490), and Justin Gaschen (1087), inasmuch as the District withdrew or dismissed the Accusation against these respondents and each of them, as set forth in Findings 18(A) and 18(B) above.

4. Cause does not exist pursuant to Education Code sections 44949 and 44955 to terminate the employment of the following additional respondents and/or certificated employees: Tiffany Mocsary (542), Jeffrey Jackson (2347), Lea Ward (1449), Lina Martinez (721), Anne Yoon (533), Mario Morales (533), Johanna Knox (846), Jennifer Waters (741), Keisha Clark-Booth (577), and Lionel Gonzalez (250), based on Findings 39, 55, 56, 57, 71, 74(A) – (D), 75, 76, and 78 above.

5. Cause exists to change the seniority dates and/or seniority list rankings of respondents Meghan Carungcong (179A), Blanca Pacheco-Jones (263A), Griselda Rodriguez (1323A), Arcelia Salazar (1338A), Jennifer Ito (1445A), Marnelle Leonard (1300A), Alicia Huizar (796A), Michelle Twogood (801A), Holly Camarillo (809A), Karen Hardy (838A), Anna Lim (928A), Beverly Wiegand (1145A), Elida Rangel (1277A), Daniel Yaeger (1301A), Erika Medina (216A), Dustin Shade (32), Obiorah Ebo (81), Stacy Burcham

(224A), Geoffrey Barbe (275), Toiya Smith (757), Melinda Clare (968), David Noyes (1145), Heidi-Lynn Doon-Samaniego (1501), Rosio Dominguez (891), and Anselm Feliciano (1392A), based on Findings 19(A) – 19(F), 20, and 25(A) and (B) above.

6. Cause exists to change the seniority dates and/or seniority list rankings of respondents Diane Gagnon (1040), Patricia De Koekkoek (1215), Bernadette Wheeler (1217), Jacqueline Hernandez (1224), Griselda Rodriguez (1323A), and Angela Boone (1310), based on Findings 25, 31, and 33 above.

7. Cause exists to change the application of the tie-breaking criteria for computing the seniority ranking of respondents Geoffrey Barbe (275), Bernadette Wheeler (1217), and Jose Ramirez (1286), based on Findings 11 and 35 above.

8. Cause exists under Education Code sections 44949 and 44955 for the District to serve upon respondents, notices that their services will not be required for the ensuing 2011-2012 school year because of the reduction or discontinuance of particular kinds of services, as long as those respondents so served were previously identified in bumping charts and during the hearing as being the subjects of a final layoff notice. During the hearing, the District presented an initial Bumping Chart (Exh. 10) and subsequent amended Bumping Charts (Exh. 22) that showed whether respondents were subject to a final layoff notice because they were to be bumped by another more senior certificated employee and/or unable to bump any other less senior certificated employee. In addition, the Assistant Superintendent reviewed respondents individually and rank-by-rank on the Certificated Seniority List and identified those respondents who were still subject to receipt of a final layoff notice. As evidence was presented and respondents testified, the District made changes and corrections to the bumping chart as well as to individual respondent's credentials, training, and assignments. By issuance of amended bumping charts and testimonial evidence, the District thus represented, directly or indirectly, that those respondents who were not so identified for layoff during the hearing would not receive final layoff notices. As such, those respondents may reasonably have relied upon the District's representations and elected not to testify or present evidence during the layoff hearing.³ As a matter of due process and fairness then, the District shall serve final layoff notices only upon those respondents who were previously identified during the hearing in the bumping charts or other documentary or testimonial evidence of the District as being subject to the receipt of a final layoff notice. To serve final layoff notices upon any respondents who were not previously identified for layoff during the hearing would, despite service of a preliminary notice, mean that such respondents would be denied their due process rights to have a

³ For example, respondent Carlin Stein (462) was not identified in the initial Bumping Chart or the testimony of the Assistant Superintendent as a certificated employee who was subject to being bumped or laid off. The District did not identify Stein as a layoff candidate until it presented the latest Bumping Chart on the last day of the hearing. Carlin was not present on the last hearing day to present any testimony or evidence. Accordingly, the Administrative Law Judge admitted Stein's declaration and section list into evidence.

meaningful and complete hearing and opportunity to be heard under Education Code section 44949 and 44955 and applicable sections of the Government Code.

9. Based on Findings 1 – 83 above, except as provided in this Proposed Decision and/or due to determinations by the District in reasonable exercise of its discretion, there is no certificated probationary or permanent employee or temporary or categorical certificated employee with less seniority than any one of respondents who is being retained by the District for the 2011-2012 school year to render services which any one of respondents is certificated and competent to render.

* * * * *

WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

1. The Accusation issued against respondents named or identified in Findings 18(A), 18(B), 39, 55, 56, 57, 71, and 74(A) – (D) above, must be dismissed, based on Conclusion of Law 3 and 4 above. These respondents may not be given final layoff notices that their services will not be required for the 2011-2012 school year.

2. The Accusation issued against all of the remaining respondents is sustained, based on Conclusions of Law 1, 2, 8, and 9 above. The District may give notice to these respondents, and each of them, in inverse order of seniority that their services will not be required for the ensuing 2011-2012 school year because of the present reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955.

3. The District may give notice to any respondents and certificated employees, who were served with notices and/or the Accusation that their services will not be needed next year but did not file requests for hearing or did not appear at the hearing, that their services will not be required for the ensuing 2011-2012 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code sections 44949 and 44955.

4. Before giving notice to respondents, the District shall further determine and take into account any additional positively assured attrition among certificated employees in deciding how many and which respondents should be terminated before the ensuing 2011-2012 school year.

5. The District may give notice to any respondents that their services will not be required for the ensuing 2011-2012 school year because of the reduction or discontinuance of particular kinds of services as long as those respondents were previously identified as being subject to receipt of a final layoff notice, based on Conclusions of Law 8 above.

Dated: May 6, 2011

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings