

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. 2012020652

**PROPOSED DECISION**

This matter was heard by Vincent Nafarrete, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 2 and 3, 2012, in Long Beach.

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

Except for those 13 respondents who represented themselves, the remaining 98 respondents were represented by Marianne Reinhold and Kent Morizawa, Attorneys at Law, of the law firm Reich, Adell & Cvitan. The complete list of the 98 probationary and permanent certificated employees and temporary and categorical certificated employees represented by Reich, Adell & Cvitan is set forth in Exhibit A and is hereby incorporated into this Proposed Decision by this reference.

The following 13 respondents represented themselves: Therese Basta, Jeffrey J. Breuklander, Julie A. Butler, Amanda M. Butzen, David M. Echevarria, Mikel A. Edillon, Caroline N. Eskander, Claudia M. Hernandez, Daniel J. Ho-Ching, Janet L. Jones, Lisa A. Lauriano, Kenneth W. Owens, and Michael L. Proby. However, only respondents Therese Basta, David M. Echevarria, Mikel A. Edillon, and Kenneth W. Owens appeared at the hearing and presented testimonial or documentary evidence.

At the conclusion of the evidentiary hearing, the parties' request to file written argument was granted. On April 11, 2012, the school district's counsel filed a Closing Brief, which was marked as Exhibit 44. The District's Pre-Hearing Brief was marked as Exhibit 45. On April 11, 2012, counsel for the majority of respondents filed a Closing Brief of

Certain Respondents, which was marked as Exhibit F. No brief or written argument was received from any of the self-represented respondents. In addition, on April 5, 2012, the Notice of Defense of respondent Parakrama Karunatileka was received, marked as Exhibit G, and admitted into evidence. The Pre-Hearing Brief of Certain Respondents was marked as Exhibit H.

Oral and documentary evidence and oral and written arguments having been received, the Administrative Law Judge submitted this matter for decision on April 11, 2012, and finds as follows:

### FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on March 16, 2012, the Accusation, Case Number 2012020652, 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 contract 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. In conjunction with other districts, the District operates a math and science academy at California State University Dominguez Hills. The District also operates child development centers and a Head Start program. The District serves and educates pupils in preschool and kindergarten through twelfth grade who reside in the greater Long Beach area of Los Angeles County and employs approximately 3,800 certificated employees, ten percent of whom are assigned to categorically funded programs.

4. Due to 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 District has determined that the District's budget must be reduced by \$29 million for the 2012-2013 school year due to the Governor's Tax Initiative. On or about February 21, 2012, the Superintendent recommended to the Governing Board that particular kinds of services be reduced or discontinued no later than the beginning of the 2012-2013 school year.

5. (A) On February 21, 2012, in Resolution No. 022112-E, and pursuant to Education Code sections 44949 and 44955 and upon the recommendation of the Superintendent, the Governing Board determined that the District faces financial constraints resulting from revenue being insufficient to maintain the current levels of programs and it is necessary to implement program changes. 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 2012-2013 school year and to layoff or terminate 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. The Governing Board resolved that the layoff of probationary and permanent certificated employees shall be in addition to the release of all temporary categorical certificated employees of the District.

(B) On February 21, 2012, in adopting Resolution No. 022112-E, 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 308.76 full-time equivalent (FTE) positions and to release employees in Hourly Support Programs totaling 46 positions.

(C) On February 21, 2012, the Governing Board directed the Superintendent or his designee to send notices to all probationary and 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, inform them that their services will not be required for the next school year.

6. (A) On February 21, 2012, in Resolution No. 022112-E, and pursuant to Education Code sections 44949, 44954, and 44955 and upon the recommendation of the Superintendent, the Governing Board found that the District currently employs permanent, probationary, temporary leave replacement, temporary categorical, and substitute certificated employees. The Governing Board further determined that those employees previously employed as probationary or permanent certificated employees and laid off prior to the current 2011-2012 school year possess certain re-employment or re-appointment rights but that their employment during the 2011-2012 school year as substitute, temporary leave replacement, or temporary categorical employees did not constitute reinstatement of their employment.

(B) The Governing Board further found that there is no relative seniority among temporary certificated employees in categorical positions, that those employees currently classified as temporary categorical have no right to displace probationary and permanent certificated employees, and that all employees classified as temporary leave replacements or temporary categorical certificated employees shall be released by the end of the current 2011-2012 school year pursuant to Education Code sections 44949, 44954, and 44955.

(C) The Governing Board directed the Superintendent or his designee to send notices of release to all temporary categorical certificated employees possibly affected by the reduction or elimination of particular kinds of services that their services will not be required for the next school year. The Governing Board further directed the Superintendent or his

designee to notify all temporary and categorical certificated employees pursuant to Education Code sections 44954, 44949, and 44955, who claim to be probationary or certificated employees or believe they should participate in the certificated layoff hearing process, should not be released, or are entitled to a hearing, that they should request a hearing.

7. (A) On February 21, 2012, pursuant to Resolution No. 022112-E and its findings and as set forth in Exhibit A to the resolution, the Governing Board resolved and took action to reduce or discontinue certain particular kinds of services or programs offered by the District for the 2012-2013 school year and provided by certificated employees in kindergarten through 12th grade under special contracts in the following FTE positions:

<u>Elementary School Services</u>	<u>FTE</u>
Elementary Classroom Instruction (K-3)	15.00
Elementary Classroom Instruction (4-5)	6.00
Elementary Computer	1.00
Elementary Music	0.95
Subtotal--Elementary School Services	22.95
<u>Middle/K-8 School Services</u>	<u>FTE</u>
Middle/K-8 School English	3.00
Middle/K-8 School Foreign Language, Spanish	1.00
Middle/K-8 School Grade 6 Literacy	2.00
Middle/K-8 School History	1.00
Middle/K-8 School History/Language Arts	2.00
Middle/K-8 School Language Arts	0.20
Middle/K-8 School Language Arts/ELD	1.00
Middle/K-8 School Music	2.50
Middle/K-8 School Physical Education	1.00
Middle/K-8 School Physical Education/Art	1.00
Middle/K-8 School Self-Contained Core—6th Grade	11.00
Middle/K-8 School Self-Contained—8th Grade	2.00
Middle/K-8 School Spec Ed—Emotion Disturbed/Mild Mod	10.00
Middle/K-8 School Special Ed—Moderate Severe	2.00
Subtotal—Middle/K-8 School Services	39.70
<u>High School Services</u>	<u>FTE</u>
High School Art Instruction	3.60
High School Auto Shop	1.00
High School English	3.80
High School English/ELD	1.00
High School Foreign Language, Spanish	2.40
High School Graphic Art	1.00
High School Independent Study	5.00

High School Junior ROTC	1.00
High School Music	2.00
High School Nurse	0.50
High School Physical Education	0.60
High School Social Science/History	7.00
High School Work-Based Learning/Career Tech Ed	12.40
 Subtotal--High School Services	 41.30
 <u>Coordinated Student Services</u>	 <u>FTE</u>
Psychologists	1.80
 <u>EPHS</u>	 <u>FTE</u>
Independent Study	2.00
 <u>High School Office</u>	 <u>FTE</u>
Literacy Coach	1.00
 <u>Nursing Services</u>	 <u>FTE</u>
Nurse	0.50
 <u>OCIPD</u>	 <u>FTE</u>
Administration, Program Specialists	2.00
 <u>PALMS Office</u>	 <u>FTE</u>
Special Assignment, Foreign Language	1.00
 <u>Special Projects</u>	 <u>FTE</u>
Administration, Program Specialist	1.00

The reduction or discontinuance of the particular kinds of services set forth above and provided by certificated employees under K-12 special contracts constitutes a total of 113.25 FTE.

(B) On February 21, 2012, pursuant to Resolution No. 022112-E and its findings, the Governing Board also resolved and took action to reduce or discontinue certain particular kinds of services or programs offered by the District for the 2012-2013 school year provided by certificated employees in other programs in the following FTE positions:

<u>Head Start Special Contract</u>	<u>FTE</u>
Assistant Director, Child Services	1.00
Early Head Start Manager	1.00
Education Services Assistant	1.00

Education Specialists	6.93
Teachers	116.60
Subtotal-- Head Start	126.53
<u>Child Development Center</u>	<u>FTE</u>
Teachers	44.00
<u>K-12 Subject Areas</u>	<u>FTE</u>
Health	3.00
Home Economics	1.00
Industrial Arts/Wood Shop	1.00
Physical Education	3.00
Subtotal—K-12 Subject Areas	8.00
<u>Special Education</u>	<u>FTE</u>
Deaf and Hard of Hearing	2.00
<u>Adult Education</u>	<u>FTE</u>
Long Beach School for Adults	5.00
<u>District-Wide Programs</u>	<u>FTE</u>
Counseling Services	10.00

The reduction or discontinuance of the particular kinds of services provided by certificated employees in other programs constitutes 195.53 FTE. The total reduction or discontinuance of the particular kinds of services provided by certificated employees in kindergarten through grade 12 and in other programs constitutes 308.78 FTE.

(C) On February 21, 2012, pursuant to Resolution No. 022112-E and its findings, the Governing Board also resolved and took action to reduce or discontinue certain particular kinds of services or programs offered by the District for the 2012-2013 school year and provided by employees in Hourly Support Programs in the following positions:

<u>Hourly Support Programs</u>	<u>Positions</u>
After School Tutoring	7.00
CAHSEE Prep	2.00
Computer	1.00
Counselor	4.00
Career Tech Ed	4.00
ESL	13.00
Family Literacy	2.00
GED Preparation	2.00
GED Testing	1.00

Gifted Testing	1.00
Learning Center	5.00
Literacy Center	3.00
Spanish	1.00

The reduction or discontinuance of the particular kinds of services provided by employees in Hourly Support Programs constitutes 46 positions.

8. The services set forth in Findings 7(A) – (C) 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 is 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 at a minimum those services that are mandated by law or are considered essential.

9. On February 21, 2012, in Resolution No. 022112-E 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 highest tie-breaking priority to the possession of a clear or preliminary credential authorizing service as a speech therapist. The Governing Board found that the tie-breaking criteria were based solely on and met the needs of the District and its pupils at the present time.

#### Preliminary Notices and Notices of Release

10. Beginning on March 1, 2012, and pursuant to Resolution No. 022112-E and the provisions of Education Code sections 44949 and 44955, Ruth Perez Ashley in her capacity as the Assistant Superintendent, Human Resource Services, and as the designee of the Superintendent, gave written preliminary notices by personal service and certified mail to 32 probationary and permanent certificated employees, including counselors, that their services will not be required for the ensuing 2012-2013 school year. The written notices informed these 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. 022112-E 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.

11. Beginning on March 1, 2012, and pursuant to Resolution No. 022112-E and the provisions of Education Code sections 8366, 44949, 44955, and 44954, the Assistant Superintendent also gave written preliminary notices by personal service and certified mail to 45 probationary and permanent certificated employees in the Child Development Center (also CDC) preschool and school age care programs that the Governing Board had determined that their services will not be required for the ensuing 2012-2013 school year and that they will be terminated from their employment on the last day of the current 2011-2012 school year. The written notices informed these probationary and permanent certificated employees of the reasons for their termination 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. 022112-E with the list of particular kinds of services and the tie-breaking criteria, copies of Education Code sections 8366, 44949, and 44955 and a Request for Hearing Form.

12. Beginning on March 1, 2012, and pursuant to Resolution No. 022112-E and the provisions of Education Code sections 44949, 44955, and 44954, the Assistant Superintendent also gave written preliminary notices by personal service and certified mail to 17 temporary contract or categorical certificated employees, who are former probationary or permanent employees, that the Governing Board had determined that their services will not be required for the ensuing 2012-2013 school year and that they will be released from their temporary employment. The written notices informed the temporary contract or categorical certificated employees of the reasons for their termination, their "limited, precautionary right" to request a hearing and to participate in the hearing under Education Code section 44955, and their right to maintain re-employment rights under Education Code sections 44956 and 44957 if they were former probationary or permanent employees who had been laid off prior to the current school year. The written preliminary notices further informed these temporary certificated employees that the District, by providing them with the limited precautionary right to request a hearing, was not intending to convert any of their temporary employment to that of probationary or permanent employees. The written preliminary notices included a copy of Resolution No. 022112-E with the list of particular kinds of services and the tie-breaking criteria, copies of Education Code sections 8366, 44955, and 44949, and the Request for Hearing Form. [Ex. 6/7]

13. Beginning on March 1, 2012, and pursuant to Resolution No. 022112-E and the provisions of Education Code sections 44949, 44955, and 44954, the Assistant Superintendent also gave written preliminary notices by personal service and certified mail to 38 temporary contract or categorical certificated employees, who were not formerly probationary or permanent employees, that the Governing Board had determined that their services will not be required for the ensuing 2012-2013 school year and that they will be released from their temporary employment. The written notices informed these temporary certificated employees of the reasons for their termination, of their limited precautionary right to request a hearing and to participate in the layoff proceeding applicable to probationary and permanent certificated employees, and of their right to request a hearing under Education Code section 44955. The written preliminary notices further informed these temporary certificated employees that the District, by providing them with the limited

precautionary right to request a hearing, was not intending to convert any of their temporary employment to that of probationary or permanent employment. The written preliminary notices included a copy of Resolution No. 022112-E with the list of particular kinds of services and the tie-breaking criteria, copies of Education Code sections 44854, 44955, and 44949, and the Request for Hearing Form. [Ex. 8/9]

14. Beginning on March 1, 2012, and pursuant to Resolution No. 022112-E and the provisions of Education Code sections 8366, 44949, 44955, and 44954, the Assistant Superintendent also gave written release notices by personal service and certified mail to six temporary certificated employees in the CDC preschool and school age care programs that the Governing Board had determined that their services will not be required for the ensuing 2012-2013 school year and that they will be terminated from their employment on the last day of the current 2011-2012 school year. The written notices informed these temporary certificated employees of the reasons for their termination, of their limited precautionary right to request a hearing and to participate in a hearing to determine whether there was cause for not reemploying them for the ensuing school year under Education Code section 44955. The written preliminary notices further informed these temporary certificated employees that the District, by providing them with the limited precautionary right to request a hearing, was not intending to convert any of their temporary employment to that of probationary or permanent employment. The written notices included a copy of Resolution No. 022112-E with the list of particular kinds of services and the tie-breaking criteria, copies of Education Code sections 8366, 44949, and 44955 and a Request for Hearing Form.

15. Beginning on March 1, 2012, and pursuant to Resolution No. 022112-E and the provisions of Education Code sections 8366, 44949, 44955, and 44954, the Assistant Superintendent also gave written release notices by personal service and certified mail to 14 temporary certificated employees in the Head Start Program, who were formerly probationary or permanent certificated employees in the CDC program, that the Governing Board had determined that their services will not be required for the ensuing 2012-2013 school year and that they will be terminated from their employment on the last day of the current 2011-2012 school year. The written notices informed the temporary certificated employees of the reasons for their termination, their limited precautionary right to request a hearing and to participate in the layoff proceeding applicable to probationary and permanent certificated employees, and their right to maintain re-employment rights under Education Code sections 44956 and 44957 if they were formerly probationary or permanent employees who had been laid off prior to the current school year. The written release notices further informed these temporary certificated employees that the District, by providing them with the limited precautionary right to request a hearing, was not intending to convert their status as temporary employees to that of probationary or permanent employees. The written release notices included a copy of Resolution No. 022112-E with the list of particular kinds of services and the tie-breaking criteria, copies of Education Code sections 8366, 44949, and 44955 and a Request for Hearing Form.

16. Beginning on March 1, 2012, and pursuant to Resolution No. 022112-E and the provisions of Education Code sections 8366, 44949, 44955, and 44954, the Assistant

Superintendent also gave written release notices by personal service and certified mail to 117 temporary certificated employees in the categorically-funded Head Start Program, who were not formerly probationary or permanent certificate employees in the CDC program, that the Governing Board had determined that their services will not be required for the ensuing 2012-2013 school year and that they will be terminated from their employment on the last day of the current 2011-2012 school year. The written notices informed these temporary certificated employees of the reasons for their termination, their limited precautionary right to request a hearing and to participate in the layoff proceeding applicable to probationary and permanent certificated employees under Education Code section 44955. The written release notices further informed these temporary categorical certificated employees that the District, by providing them with the limited precautionary right to request a hearing, was not intending to convert their status as temporary employees to that of probationary or permanent employees. The written release notices included a copy of Resolution No. 022112-E with the list of particular kinds of services and the tie-breaking criteria, copies of Education Code sections 8366, 44949, and 44955 and a Request for Hearing Form.

17. Beginning on March 1, 2012, and pursuant to Resolution No. 022112-E and the provisions of Education Code sections 8366, 44949, 44955, and 44954, the Assistant Superintendent also gave written release notices by personal service and certified mail to 82 temporary certificated employees, who were formerly probationary or permanent certificate employees and are now working for the District under special contracts, that the Governing Board had determined to release them from their special contracts effective on the last day of the current 2011-2012 school year. The written notices did not invite these temporary certificated employees to participate in the layoff proceeding and informed them that, if they were formerly probationary or permanent employees who had been laid off prior to the current school year, they would retain their re-employment rights under Education Code sections 44956 and 44957. The release notices included copies of Education Code sections 44954, 44956, and 44957 and a form Response Letter on which the temporary certificated employees could indicate their interest to continue their employment with the District as a substitute teacher for the 2012-2013 school year. [Ex. 16/17]

18. Beginning on March 1, 2012, and pursuant to Resolution No. 022112-E and the provisions of Education Code sections 8366, 44949, 44955, and 44954, the Assistant Superintendent also gave written release notices by personal service and certified mail to 42 temporary certificated employees, who are not former probationary or permanent certificated employees and are now working for the District under special contracts, that the Governing Board had determined to release them from their special contracts on the last day of the current 2011-2012 school year. The release notices did not invite these temporary certificated employees to participate in the layoff proceeding and informed them that the District had not yet decided whether to rehire them for the next school year and, if they are not rehired as full-time special contract teachers, they will be considered for employment as substitute teachers. The release notices included a copy of Education Code section 44954 and a form Response Letter on which the temporary certificated employees could indicate their interest to continue their employment with the District as a substitute teacher for the 2012-2013 school year. [Ex. 18/19]

19. (A) The District directed principals and site and program administrators to obtain signatures of probationary and permanent certificated employees and temporary and categorical certificated employees on Proofs of Service to demonstrate that they had been served with the preliminary notices and release notices by either personal delivery or mail by March 15, 2012. Principals and site and program administrators then signed the Proofs of Service under penalty of perjury. In addition, the District compiled a Certified Mail Log to demonstrate which certificated employees were served with preliminary notices and release notices by certified mail.

(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 not releasing them for the ensuing school year. There are 112 certificated employees who have been served with preliminary notices or notices of release and then filed requests for hearing.

20. The District's preliminary notice of layoff dated March 1, 2012, 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. Except as set forth in Findings 50 – 54 below, 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 they will be released from their employment and/or contracts at the end of the current school year. Respondents were not prejudiced by errors in the preliminary 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 the contents thereof, were deficient in any respect.

21. On or about March 16, 2012, the District properly served respondents either by personal delivery or certified mail with an Accusation, Notice of Accusation and Acknowledgement of Request for Hearing, List of Respondents, 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, 112 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. All prehearing and jurisdictional requirements have been met by the parties.

22. (A) The District prepared a Certificated Seniority List (Exh. 22), 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, current work sites, basic subject area, credentials and authorizations, and tie-breaker rankings and credits.

(B) In addition, the Certificated Seniority List includes temporary special contract or categorical certificated employees who work at the District's CDC programs 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 or ranking.

(C) 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 to confirm, correct, or change information maintained by the District for purposes of its Certificated Seniority List.

(D) 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.

(E) The District also developed a Bumping Chart (Exh. 23), Lay-off Analysis sorted by particular kinds of services (Exh. 24), List of Employees on Leaves of Absence for the full school year (Exh. 25), List of Teachers on Special Assignments (TOSA) (Exh. 26), List of Program Facilitators (Exh. 27), List of Job Share Partners (Exh. 28), Certificated Seniority List of Principals, Vice Principals, and Assistant Principals (Ex. 29), List of Special Contract Leave Replacement teachers (Ex. 30), Certificated Seniority List of Child Development Center Probationary and Permanent Employees (Exh. 32), Certificated Seniority List of Child Development Center Special Contract Employees (Exh. 33), and Certificated Seniority List of Head Start Employees (Exh. 35), List of Categorically Funded Project Employees (Exh. 38), Certificated Re-Hire List (Exh. 40), and List of Categorically Funded Probationary and Permanent Employees (Exh. 41).

(F) 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 that entitled them to bump other less senior probationary and permanent certificated employees or to be skipped and retained.

23. Further, the District has obviated the need to reduce or discontinue all of the particular kinds of services described in Finding 7(A) – (C) above and to terminate the employment of all respondents given preliminary notice and the Accusation 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 2012-2013 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.

#### District's Skips

24. (A) 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, or exempting from layoff, certain certificated employees who currently teach or provide certificated services in the following programs or courses of study: administration, special education, head counseling, International Baccalaureate (IB) at Jordan High School, Male Academy, Advanced Placement courses at the high school level, and Advancement Via Individual Determination (AVID) courses at the middle and high school levels. It was not established that the District's need for certificated personnel to teach or provide services in these programs and courses of study or the District's determination which certificated employees have the requisite special training and experience to teach in these courses or provide these services and must be skipped was unreasonable or arbitrary and capricious. As such, the District's criteria and determination for skipping certain certificated employees was reasonable and based solely on the needs of the District and its pupils.

(B) During the hearing, the Assistant Superintendent testified and announced that the District does not plan to give a final layoff notice to the following certificated employees: AVID teacher Josh M. Freeman (312), AVID teacher Alina D. Vargas (440), dance teacher Keisha A. Clark-Booth (450), deaf and hard of hearing teacher Lisa K. Shapiro (548), health education teacher Jeannine R. Oxley (623), and physical education teacher Johanna M. Knox (638).<sup>1</sup>

#### Special Education--Deaf and Hard of Hearing

25. (A) Respondent Antonietta T. Nobles (547) is a full-time deaf and hard of hearing, special day class teacher at Marshall Middle School or Marshall Academy of Arts. She holds a clear single subject teaching credential in health science, a preliminary level 1 special education instruction credential in deaf and hard of hearing, and a CLAD certificate. Her seniority date is August 23, 2004. As a permanent certificated employee, Nobles received one of two preliminary notices served on special education teachers pursuant to the reduction or discontinuance of deaf and hard of hearing services by 2.00 FTE.

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<sup>1</sup> 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.

(B) Respondent Amanda M. Butzen (285) is also a deaf and hard of hearing teacher. She teaches special education students at a District site at Long Beach Community College. She holds a clear special education instructional credential in deaf and hard of hearing and a clear CLAD certificate. As a permanent certificated employee, Butzen was served with a preliminary notice. The District has determined that both Nobles and Butzen should be laid off pursuant to the reduction or discontinuance of deaf and hard of hearing teachers by 2.00 FTE.

26. (A) In this proceeding, Nobles contended that she is credentialed and competent to be able to bump or displace certificated employee Diane D. Gilman (227). Gilman is an itinerant high school teacher in the District's special education program. She holds a clear multiple subject teaching credential in general subjects, a clear special education instruction credential in communication for the handicapped, and a clear CLAD certificate. Gilman has less seniority with the District than Nobles and was not served with a preliminary notice.

(B) As a special day class teacher at a middle school, Nobles teaches special education students in a classroom. She teaches a range of subjects, including math, science, and history, in accordance with District's curriculum and provides supportive services to the students after they have been mainstreamed into a regular classroom and when they have their individualized education program planning meetings. In addition, while she has not been assigned to work as an itinerant special education teacher like Gilman, Nobles has worked alongside itinerant teachers and performed the same functions. Similar to an itinerant teacher, Nobles pulls out students from their classrooms and provides instruction and support to them. She has instructed students who have cochlear implants and taught students by using sign and oral language in a total communication approach. She meets with parents to advise them of their students' progress and educational programs. As described in the state quality standards for programs for deaf and hard of hearing students, the duties of a special day class teacher do not differ in any significant degree from the duties of an itinerant teacher. In addition to her credentials which are the same as those for Gilman, Nobles completed courses in audiology, speech development, and language acquisition in her undergraduate and graduate studies. The District did not present any evidence with respect to Gilman's competency or experience as an itinerant teacher for deaf and hard of hearing students.

27. In its Closing Brief, the District has possibly acceded to respondent Nobles' argument that she is credentialed and competent to perform the duties of an itinerant teacher in the deaf and hard of hearing program and should be able to bump the less senior Gilman, by withdrawing the Accusation against Nobles based on attrition. Due to the withdrawal of the Accusation against her, respondent Noel will be retained but respondent Butzen may be given a final layoff notice due to the reduction of the particular kinds of service in the deaf and hard of hearing program.

## Counseling

28. The Governing Board resolved to reduce or eliminate the particular kind of service of counseling services by 10.00 FTE. However, because two counselors are retiring, the District has mitigated the layoff of counselors by planning to layoff only eight instead of 10 counselors by the end of current school year. In this school district, counselors are considered management employees and are not represented by the teachers' association. Two of the self-represented certificated employees in this proceeding are counselors.

29. Respondent David M. Echevarria (470) is a full-time counselor at Tincher School, which has pupils in kindergarten through eighth grade. Echevarria holds a clear pupil personnel services credential with an authorization in school counseling. He has a seniority date of August 26, 2004, and is the most senior of the eight counselors subject to layoff in this proceeding. Echevarria requests rescission of his preliminary notice because he is a qualified counselor who has helped Tincher School to be a California Distinguished School and its pupils to achieve academic success. He also questions the District's determination to skip the high school counselor Lionel Gonzales (207), who has less seniority and holds the same credential and authorization. The District is skipping Gonzales not because he is a counselor but because he is the coordinator of the Male Academy at Jordan High School. The District's determination that it has a special need for a certificated employee to be the head of the Male Academy at Jordan High School and that Gonzalez has the special training and experience, that other certificated employees with more seniority do not possess, to fill that position, was not shown to be arbitrary and capricious or to be based on other than 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 Echevarria may be given a final layoff notice that his services will not be needed next year due to the reduction of particular kinds of services in counseling.

30. Respondent Kenneth W. Owens (418) is a counselor at Newcomb Academy, which serves pupils in kindergarten through eighth grade. Owens holds a clear pupil personnel services credential with an authorization in school counseling. He has a seniority date of October 29, 2004. Owens seeks rescission of his preliminary notice on the grounds that he serves special education students and those students will have a difficult time in making the transition when Newcomb Academy moves to a new location next year. His argument was not persuasive. Owens has a doctorate in psychology and was given tie-breaking credit for having attained a master's degree, but the District has determined not to skip or retain Owens but to lay him off as one of the more junior counselors pursuant to the reduction of the particular kind of service in counseling. The District's determination is reasonable and within its sound discretion. Respondent Owens may be given a final layoff notice.

31. In addition to respondents Echevarria and Owens, the District may give final layoff notices to respondents Janet L. Jones (397), Daniel J. Ho-Ching (399), Monica M. Frank (421), Catherine Salazar (437), Carissa-Marie T. Cueva (466), Nicole R.

Hammerschmidt (467), all of whom are counselors, to achieve the reduction of counseling services by 8.00 FTE.

#### K-12 Subject Area--Health Education

32. (A) Under Resolution Number 022112-E, the Governing Board has directed the District to reduce the particular kind of service of health education by 3.00 FTE. Respondent Mikel Edillon (841) is a full-time health education teacher at Jefferson Middle School. He holds a clear single subject teaching credential with an authorization in health science. Edillon is the most senior of the three health education teachers who received a preliminary notice and Accusation and requested a hearing.

(B) There are two less senior health teachers, Francesca L. Marchese (653) and Crystal Huynh (825), who are to be reassigned to different service areas based on their additional credentials or authorizations. Respondent Marchese has a seniority date of August 18, 2003, and teaches seventh grade health pursuant to her clear single subject credential in health science. Because Marchese also has a supplemental in biological science, the District plans to skip her and reassign her to teach science in a vacant teaching position. Respondent Huynh has a seniority date of June 6, 2002, and teaches health science at Stephens Middle School pursuant to her clear multiple subject credential in general subjects with a supplemental authorization in health science. She also holds a supplemental authorization in English and the District plans to skip and/or reassign her to an English teaching position. Respondent Edillon represented himself at the hearing but did not raise any issue with respect to his proposed layoff. As the only health education teacher who received a preliminary notice and Accusation and requested a hearing and who does not have any current additional authorization, Edillon may receive a final layoff notice pursuant to the reduction or discontinuance of health education in kindergarten through grade 12. There is no less senior health education teacher than respondent Edillon.

(C) During the hearing, Assistant Superintendent Perez Ashley testified that Britt G. Sexton (888) will also be laid off due to the reduction of health education teachers. Sexton has a seniority date of September 4, 2001, and teaches health science at Jordan High School under her clear single subject credential in health science with a CLAD emphasis. Sexton was given a preliminary notice but is not named on the list of respondents who requested a hearing or on the list of respondents represented by counsel. Sexton presumably did not file a notice of defense to request a hearing or to contest her layoff. Sexton may be given a final layoff notice due to the reduction of health education teachers.

#### K-12 Subject Area—Home Economics

33. Under Resolution Number 022112-E, the District must reduce the particular kind of service of the subject area of home economics by 1.00 FTE by the next school year. The District gave a preliminary notice to respondent Deborah L. Ingstadt (1159), who

teaches several periods of family and consumer studies to middle school pupils pursuant to a current board authorization that allows her to teach home economics from kindergarten through eighth grade this school year. Ingstadt also holds a clear multiple subjects credential in general subjects with a supplemental authorization in English. The District plans to reassign Ingstadt to teach English and does not plan to lay her off. The District's determination to reassign Ingstadt was not shown to be erroneous or an abuse of discretion. Respondent Ingstadt will not receive a final layoff notice.

#### K-12 Subject Area—Industrial Arts

34. As directed by the Governing Board, the District must reduce the particular kind of service of industrial arts or wood shop by 1.00 FTE. Respondent John E. Wood (573) teaches computer classes at Lindbergh Middle School and has seniority date of October 9, 2003. He holds a clear single subject credential in industrial and technology education. Wood is one of 32 probationary or permanent certificated employees who were given a preliminary notice. Respondent Gregory M. Stich (3097) is a drafting, industrial education, and wood shop teacher at Hughes Middle School. He likewise holds a clear single subject credential in industrial and technology education. The District plans to have Stich, who was not given a preliminary notice, bump or displace Wood who has less seniority. The District's determination to have Stich bump Wood or to be reassigned to Wood's teaching position pursuant to the reduction of industrial arts was not shown to be erroneous or an abuse of discretion. Respondent Wood may be given a final layoff notice.

#### K-12 Subject Area—Physical Education

35. (A) Under Resolution Number 022112-E, the District has been directed to reduce the particular kind of service of physical education by 3.00 FTE for the ensuing school year. The District has given preliminary notices and served Accusations upon respondents Joyce A. Ctvrtlik (1526), Deborah S. Martin (305), Brian J. Cleven (602), and Mario R. Morales (641), who are all probationary or permanent certificated employees and teach physical education or dance.

(B) Respondent Ctvrtlik is a dance teacher in a 0.67 FTE position at Wilson High School. She holds a clear single subject teaching credential in physical education with a CLAD emphasis and has seniority date of September 7, 1999. Ctvrtlik is a probationary certificated employee and is subject to layoff before any permanent certificated employee in physical education. Respondent Cleven is a full-time physical education teacher at Lindsey Middle School. His seniority date is September 2, 2003. He holds a clear single subject credential in physical education and health science, a clear CLAD certificate, and a board authorization to teach health science in kindergarten through grade 8. Respondents Ctvrtlik and Cleven may be given final layoff notices pursuant to the reduction of physical education services.

(C) During the hearing, Assistant Superintendent Perez Ashley announced that the District plans to reassign respondent Martin and to skip respondent Morales. Martin is physical education teacher in a 0.48 FTE position at the California Academy of Math and Science. She holds a clear single subject credential in physical education and has a supplemental authorization in introductory mathematics. Her seniority date is November 1, 2005. The District plans to reassign Martin to teach math in accordance with her supplemental authorization. Morales holds a clear single subject teaching credential in physical education and a CLAD certificate. He teaches kinesiology at Lakewood High School. Morales is also an intervention teacher and coordinator of the Male Academy at Lakewood High School. The District plans to skip Morales from the layoff process and retain him to provide services to the Male Academy. It was not shown that the District's determinations to reassign Martin and to skip Morales were unreasonable or arbitrary and capricious. The preliminary notices and Accusations issued to respondent Martin and Morales will be withdrawn and both certificated employees will be retained.

#### Head Start Program Teachers

36. (A) Under Resolution Number 022112-E, the Governing Board directed the District to reduce the particular kind of service of Head Start Program teachers, specialists, and administrators by 126.53 FTE for the next school year. While Education Code sections 44001-44006 provide that certificated employees are those with credentials or certificates issued by the Commission on Teacher Credentialing, the District elected to treat the Head Start teachers and administrators as certificated employees for purposes of this reduction in force proceeding.

(B) The Head Start Program is a federally-funded program meant to promote school-readiness of economically disadvantaged preschool-age children by providing them with educational, health, and social services. Parents of the children are encouraged to participate in the Head Start Program. The District employs 130 temporary certificated employees in its Head Start Program and listed them in alphabetical order on a List of Head Start Employees (Exh. 35). These temporary certificated employees hold child development teacher, child development site supervisor, child development program director, or regular children center instruction permits. Among the 130 temporary certificated employees in the Head Start Program are 14 temporary certificated employees who were formerly probationary or permanent certificated employees of the CDC Program, laid off last year, and then rehired under temporary contracts prior to the current school year. On or about March 1, 2012, the District served the 130 temporary certificated employees in the Head Start Program with notices of release, advising them that their services will not be required for the next school year and terminating their employment as temporary certificated employees.

37. (A) Respondent Maria G. Garcia is a preschool teacher for the District's Head Start program. She holds a child development permit and has worked for the District under special contracts since November 16, 1994. Currently, Garcia is a Head Start teacher at the

Plymouth site where she prepares three-year-old children for kindergarten. She prepares and implements lesson plans for the children and observes and evaluates their progress. She oversees their educational, socialization, and developmental goals and provides guidance to their parents on their children's goals and preferred activities at home. In addition, Garcia takes attendance and checks the children's health and immunization records.

(B) Respondent Brenda Lee Bullock is a preschool teacher in the District's Head Start program. She holds a child development permit and a child development site supervisor permit. She has worked for the District in the Head Start program under special contracts since November 6, 1990. For the last 10 to 12 years, Bullock has been a site supervisor or head teacher. Currently, she is a head teacher at the Carmelita site where she manages the Head Start program there on a daily basis. Among her duties, Bullock starts the operation of the program, supervises two Head Start teachers, greets and receives visitors and delivery persons, and teaches a morning class. She also makes home visits, arranges field trips for the children, and hires and supervises a community helper.

(C) Respondent Natividad M. Magallon is a preschool teacher for the District's Head Start program and holds a child development permit and child development site supervisor permit. She has worked for the Head Start program under special contracts since March 18, 2003. Currently, Magallon is assigned to the Head Start family literacy program at the District's adult school where she provides child care, training, and interaction opportunities for children while their parents attend the adult school.

(D) Respondents Garcia, Bullock, Magallon, and other Head Start preschool teachers provide important educational services and opportunities to prepare eligible children and their families for successful entry into kindergarten and have helped to build the District's Head Start program. After years of service under annual temporary contracts, the Head Start teachers believe that they deserve the status of permanent employees as a matter of fairness and for their peace of mind. Respondent Head Start teachers and employees impliedly disagree with the termination of their employment for the next school year

38. (A) Under Education Code section 44909, the District may employ persons, who possess the 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. The terms and conditions under which such persons are employed must be mutually agreed upon by the employees and the District and such agreement must be reduced to writing. Here, prior to the current school year, respondents who are preschool teachers and administrators in the Head Start Program entered into Special Contracts of Temporary Employment with the District, agreeing to serve and to be classified as temporary certificated employees for a contract program or categorical program under Education Code section 44909. The Head Start preschool teachers and administrators agreed that their temporary service would not qualify them for probationary status and that their services were for only the 2011-2012 school year and would cease at the end of the current school year. Further, it was not established that any of the respondent Head Start preschool teachers qualify or are eligible for permanent employment status for

having served as probationary employees under the provisions of Education Code sections 44909 or 44918.

(B) Under Education Code section 44090, temporary employees serving under agreements for contract or categorical programs may be terminated at the expiration of the contract or specially funded project. The District's Head Start Program is a contract or categorically funded program conducted under a contract with the U.S. Department of Health and Human Services, Office of Head Start. The Application for Federal Assistance, which was approved by the federal government, provides that the Head Start Program starts on July 1, 2011, and ends on June 30, 2012. As such, the Head Start Program is annual program that expires at the end of each school year. The District has applied for federal assistance to provide Head Start Program services for the 2012-2013 school year but the federal government has not yet approved the District's application and the District does not know what level of funding will be provided for the next school year. For budget balancing purposes, the District is concerned about the costs of the Head Start Program encroaching upon the general fund. For this school year, the District was required to expend \$250,000 from its general fund to help fund the Head Start Program.

39. Based on Findings 36 – 38 above, as temporary certificated employees serving under Special Contracts of Temporary Employment in a contract or categorically funded program, respondents Garcia, Bullock, Magallon, and the other Head Start preschool teachers and administrators who were served with release notices may be terminated from their temporary employment at the end of their contracts this school year.

#### Child Development Center Program Teachers

40. Under Resolution Number 022112-E, the Governing Board has directed the District to reduce the particular kind of service of Child Development Center teachers by 44.00 FTE before the next school year. While Education Code sections 44001 - 44006 provide that certificated employees are those with credentials or certificates issued by the Commission on Teacher Credentialing, the District has elected to treat the CDC Program teachers and administrators as certificated employees for purposes of this reduction in force proceeding.

41. The Child Development Center Program provides child development and child care services to school-age and pre-school age children. The District employs 70 probationary and permanent certificated employees, who hold child development teacher, child development site supervisor, child development program director, or regular children's center instruction permits. In addition, the District employs six temporary certificated employees who are child development teachers and supervisors and work part-time (0.437) under special temporary contracts.

42. (A) The District provides the child development and child care service under its CDC Program pursuant to a Local Agreement for Child Development Services with the

California Department of Education (CDE). The District entered into the Local Agreement with CDE on September 2, 2011, and received funding in the amount of \$3,355,253 to provide child development programs from July 1, 2011, through June 30, 2012. As such, the Local Agreement with the CDE is a yearly contract with a governmental agency that terminates at the end of the current 2011-2012 fiscal or school year.

(B) The District has submitted a contract proposal to CDE to receive funding for child development programs for the 2012-2013 school year but CDE has not approved the proposal or proffered a local agreement for child development programs for the ensuing school year. The District, however, anticipates a significant reduction in funding for the school-age care and pre-school age care programs.

43. (A) For this year's reduction in particular kinds of services, the District has proposed to release the six part-time temporary certificated employees in the CDC Program. All six of these temporary certificated employees signed Special Contracts of Temporary Employment on or about June 29, 2011, and before the current school, in which the District and the employees agreed that they would be temporary employees providing temporary services for a categorical or contract program under Education Code section 44909. The special temporary contracts provided that their services were for the 2011-2012 school year and would cease at the end of the current school year. Each of these six temporary certificated employees, who are named in Exhibit 33, may be released from their employment before the ensuing 2012-2013 school year pursuant to the reduction of particular kinds of services.

(B) In addition, as required by the Governing Board's resolution, the District must reduce particular kinds of services in the Child Development Center program by 44.00 FTE. The District gave preliminary notices to 45 probationary and permanent certificated employees in inverse order of seniority as set forth in the Certificated Seniority List of CDC Employees (Exh. 32). The District now proposes to give final layoff notices to 42 of the least senior probationary and permanent certificated employees in the CDC Program. When combined with the release of the six temporary certificated employees whose positions comprise 2.64 FTE, the layoff of 42 full-time probationary and permanent certificated employees will accomplish the reduction of 44.00 FTE of certificated services in the CDC program. Accordingly, the District may give final layoff notices to the first 42 probationary and permanent certificated employees on the CDC probationary and permanent certificated employee seniority list (Exh. 32) beginning with respondent Amy C. Payne (3831) and continuing through and ending with respondent Olga T. Diaz (3872).

44. (A) In its Closing Brief, the District states that the Accusation against the three remaining probationary and certificated CDC employees who received preliminary notices, Robbie L. Waddell (3874), Stephanie J. Crossman (3775), and Cristabel Rodriguez (3834), should be withdrawn. The District proposes to skip and retain Rodriguez because she is currently working as a CDC Program Coordinator.

(B) Respondent Rodriguez holds a child development program director permit and has a seniority date of January 6, 2003. However, as set forth in Exhibit 32, there are a number of respondents who not only hold child development director permits but also have more seniority, including Lorraine Fimbres (3841), Sybil A. Baldwin-Perry (3848), Nkiruka Fellici Okonkwo (3858), Therese Basta (3859), Barbara W. Jackson (3862), Kimberly A. Kelly (3864), Cheryl E. Ferris-Holton (3865), Natijesse Felipe-Guzman (3869), Sandra Daniels (3871), and Debora R. Taylor (3873). Respondents Jackson, Kelly, Ferris-Holton, Felipe-Guzman, and Daniels are also assigned to work as CDC coordinating teachers. There are also a number of respondents with more seniority than Rodriguez who hold child development site supervisor permits. Respondent Basta testified in the hearing and complained that the District rehired CDC employees as coordinating teachers who had less seniority than she although her specific claim was not established by the record.

(C) Here, the District did not present any evidence regarding the duties or services provided by a CDC program coordinator. Because the District likewise did not present any evidence to show that it has a specific need for Rodriguez to teach a specific course of study in its CDC programs or that Rodriguez has special training and experience necessary to teach that course of study or to provide services as CDC program coordinator, which other respondents with more seniority do not possess, the District may not skip the more junior CDC certificated employee Rodriguez under Education Code section 44955, subdivision (d). Accordingly, respondent Rodriguez should be given a final layoff notice and respondent Taylor (3873) who is the most senior of the CDC probationary and permanent certificated employees who received a preliminary notice may not be given a final layoff notice and should be retained for the CDC program

#### Temporary Certificated Employees

45. As set forth in Findings 4 - 7(A) – (C) above, the Governing Board resolved to reduce particular kinds of services of the District for the next school year by total of 308.78 FTE plus an additional 46 positions in Hourly Support Programs. The District seeks to accomplish the major part of this year's reduction of particular kinds of services by releasing temporary certificated employees who have been hired to replace certificated employees on leaves of absence pursuant to Education Code section 44920 and temporary certificated employees who have been hired in programs and projects to perform services conducted under contract with public or private agencies or categorically funded projects not required by federal or state statutes pursuant to Education Code section 44909. For example, the District has given preliminary notices of release to 19 elementary teachers, four high school art teachers, and two psychologists, who have been serving under temporary contracts to replace teachers on leaves of absence for the school year under Education Code section 44920. All of the Head Start and CDC teachers who were given preliminary notices of release are serving under temporary contracts to work in contract or categorically funded programs under Education Code section 44909. A good number of these temporary certificated employees are former probationary and permanent certificated employees who were laid off or released in previous reduction in force proceedings over the last two years.

46. Under Education Code section 44920, the governing board of a school district may employ any person holding the appropriate certification documentation as a teacher based on the need for additional certificated employees during a particular semester or year because a certificated employee has been granted leave for a semester or year. The District may classify such replacement leave teacher as a temporary employee. The number of persons hired to replace such certificated employees on leaves must be limited to that need as determined by the governing board. Here, the District has demonstrated that 56 certificated employees are on full-year leaves of absence for the 2011-2012 school year, including 31 certificated employees who are on re-employment or disability leaves of absence; and 23 pairs of teachers are job sharing partners, each of whom is considered to be on a leave of absence for generally 0.5 FTE. As set forth in Exhibit 30, the District has certificated employees totaling 105.99 FTE on leaves of absence. The District also compiled the List of Temporary Certificated Employees who are acting as leave replacement teachers under Education Code section 44920. Respondents have not raised any issue with respect to the District's determination to give notices of release to those respondents and temporary certificated employees serving as leave replacement teachers under Education Code section 44920. Those temporary certificated employees may be released from their employment.

47. (A) Under Education Code section 44909, the governing board of a school district may employ persons possessing appropriate credentials in programs and projects to perform services conducted under contract with public or private agencies or in categorically funded projects which are not required by federal or state law. The terms and conditions under which such persons are employed must be mutually agreed upon by the employees and the governing board and must be reduced to a written agreement. These persons may be employed for periods which are less than a full school year and may be terminated at the expiration of the contract or categorically funded project without regard to other requirements of the Education Code respecting the termination of probationary or permanent certificated employees.

(B) The District operates or manages a number of contract or categorically funded programs, including the Head Start and CDC Programs, and has probationary and permanent certificated employees totaling 337.764 FTE working in or assigned to these programs. The District has 118 teachers who are on special assignments (TOSA) and 19 certificated employees who are program facilitators. The TOSA and program facilitator programs are considered to be categorically funded programs. Furthermore, as established by the testimony of Assistant Superintendent Perez Ashley and Robert Williams, Director of special Project Services, the District files annually a Consolidated Application, Part I, with the California Department of Education (CDE) to receive categorical funds under Titles 1 – III of the Elementary and Secondary Education Act of 1965 (ESEA) and No Child Left Behind (NCLB). The District applies to receive categorical funds from such specific programs as the Economic Impact Aid, State Compensatory Education, school improvement, immigrant aid, and Limited English Proficiency. Categorical funds under the Consolidated Application are granted for the school year and may be expended on program costs such as certificated services, classified employees, school supplies, and professional development. The District uses a major share of funds received under the Consolidated Application to hire

and employ temporary certificated employees and probationary and permanent certificated employees for its categorically funded programs. For the current school year, the District received \$35 million in Title 1 funds. The District does not know what level of funding will be granted under the Consolidated Application for the next school year but funding levels change every year.

48. (A) In this layoff proceeding, counsels for certain respondents (counsels) made arguments against the propriety of the District's classification of certificated employees in categorically funded programs as temporary employees under Education Code section 44909 and the release of those certificated employees in categorically-funded programs under Education Code section 44949 and 44955. Counsels contend that the categorically funded employees hired under Education Code section 44909 should be classified as probationary employees during the term of the categorical contract or project. Respondents' counsels also argue that the certificated employees who were laid off in prior years and rehired in categorically funded positions under Education Code section 44909 were reappointed within the meaning of Education Code sections 44956 and 44957. Except as set forth in Findings 50 – 54 below, counsels' arguments were not persuasive.

(B) The classification of a certificated employee as temporary is narrowly defined by the Legislature and must be strictly construed (*Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 843), for a person who has been determined to be qualified to teach may be classified as a temporary employee only if the person occupies a position defined by law as temporary. (*Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1277.) As a general rule, probationary status is the default classification when the Education Code does not specify another classification. (*California Teachers Ass'n v. Vallejo City Unified School Dist.* (2007) 149 Cal.App.4th 135, 146; Ed. Code, § 44915.) In *Stockton Teachers Ass'n CTA/NEA v. Stockton Unified School Dist.* (2012) 204 Cal.App.4th 446, the Court of Appeal, Third District, held that, for certificated employees of a categorically funded program to be considered temporary employees under Education Code section 44909, the school district must strictly comply with the statute and prove the following: (1) show that the employees were hired to perform services conducted under a contract with public or private agencies or categorically funded projects which are not required by federal or state statutes; (2) identify the particular contract or project for which services were performed; (3) show that the particular contract or project expired; and (4) show that the employees were hired for the term of the contract or project. In the *Stockton* case, the Court of Appeal found that the school district did not prove all of these elements under Education Code section 44909 and, as a result, held that the employees must be treated as probationary employees. The court in *Stockton* court did not declare, however, that all certificated employees hired under Education Code section 44909 are probationary employees during the term of a contract program or categorically funded project. In the instant matter, except as set forth in Findings 50 – 54 below, the District showed by the preponderance of the evidence that respondents who are subject to release as temporary employees in contract or categorically funded programs were hired for the term of certain and specific contract or categorically funded programs and those programs are expiring at the end of the current school year. As such,

those respondents in the contract or categorically funded programs are temporary employees under Education Code section 44909 and may be released.

(C) Moreover, the *Stockton* case did not involve the rehiring of previously laid off certificated employees to work in a categorically funded program. The *Stockton* court did not find that certificated employees hired for contract or categorically funded programs under Education Code section 44909 are considered to have been reinstated to their former probationary or permanent status. In any case, Education Code section 44956, subdivision (a)(2), provides that terminated permanent employees may waive their right to reappointment for not more than one year. Here, the District's Special Contract of Temporary Employment signed by certificated employees of categorically funded programs states that their services as temporary employees will not qualify them for probationary status and constitutes a waiver of reinstatement rights.

(D) Finally, counsels for certain respondents take issue with the practice of the District in hiring laid off permanent certificated employees into categorically funded programs and classifying them as temporary employees under Education Code section 44909. Counsels argue that Education Code section 44909 does not apply to certificated employees who were previously employed as permanent employees in the District's regular programs. Counsels rely on the following pertinent language of section 44909:

“This section shall not be construed to apply to any regularly credentialed employee who has been employed in the regular educational programs of the school district as a probationary employee before being subsequently assigned to any one of these programs.” [Emphasis added.]

The use of the words “before being subsequently assigned” suggests, however, that this paragraph of section 44909 is referring to certificated employees who have been assigned to contract and categorically funded programs without any interruption in their employment and not to certificated employees who were previously laid off and then rehired into contract or categorically funded programs. Counsel's argument raises an interesting issue but it must be rejected due to the lack of supporting legal authority or case law.

#### Title I Basic Grant

49. (A) Respondent Wendy D. Ware is a part-time (0.40 FTE) finance and business teacher at Cabrillo High School. She holds a clear designated subjects vocational educational training credential in computer applications and office occupations. Ware is employed under Special Contracts of Temporary Employment for the fall and spring semesters that she signed on August 21, 2011, and January 11, 2012, respectively, and under which she agreed to work and to be classified a temporary employee in a contract or categorical program under Education Code section 44909. Under her contracts, she acknowledged that her services did not qualify her for probationary status and were for only the two semesters unless terminated earlier by the District. The special contracts state that

her employment as a temporary employee may be terminated at any time and would cease in any event at the end of the 2011-2012 school year. On or about March 1, 2012, Ware was served with a preliminary release notice (section 44909 notice) that her services will not be required for the ensuing school year and gave her the limited, precautionary right to request and participate in the layoff hearing. The District served the release notice on Ware as a non-former probationary or permanent employee and seeks to release her from her employment pursuant to the reduction or discontinuance of High School Services at the Work-Based Learning Center and career technical education by 12.40 FTE.

(B) In this proceeding, counsels for certain respondents contend that respondent Ware should be considered a probationary employee, rather than temporary one, because the District failed to make the showing under the *Stockton* case that the particular contract or categorical program for which she performed services will expire at the end of program/school term. The argument for respondent Ware is not persuasive. Ware is employed in a position that is funded by a Title I, Basic Grant, under the Elementary and Secondary Education Act and No Child Left Behind. The Title I grant is a one-year categorical funding grant for which the District applies on an annual basis through completion of the Consolidated Application. Inasmuch as she is employed under a contract to work in a vocational education position that is a Title I categorically-funded project that expires at the end of the current school year and she was hired for the term of the one-year project, respondent Ware is a temporary employee under Education Code section 44909 pursuant to *Stockton Teachers Ass'n CTA/NEA v. Stockton Unified School District, Ibid.* Respondent Ware may be released at the end of her current contract which is the end of the spring 2012 semester.

#### California Academy of Math and Science

50. Respondents Jeremy Bucko (Rehire Rank 346) and Davion White (Rehire Rank 430) are former probationary or permanent certificated employees of the District who currently teach at the California Academy of Math and Science (CAMS) under special contracts. Bucko and White have been classified by the District as temporary employees of a contract or categorically funded program under Education Code section 44909. On or about March 1, 2012, the District served notices of release upon them as former probationary or permanent certificated and temporary employees, notifying them that their services will not be required for the next school year.

51. (A) Respondent Bucko is currently a social studies teacher at CAMS. He is a former permanent certificated employee who was laid off last year and then recalled by the District in or about August 2011. He was offered and accepted temporary employment at CAMS.

(B) On August 15, 2011, Bucko signed a special contract of temporary employment for the fall 2011 semester under which he was classified as a temporary employee and long-term leave replacement under Education Code section 44920. On

January 9, 2012, Bucko signed a special contract of temporary employment for the spring 2012 semester under which he was classified as a temporary employee of a contract or categorical program under Education Code section 44909.

(C) Bucko holds a clear single subject teaching credential in social science and last taught as a permanent certificated employee at Hill Middle School. He has a certificated seniority date of February 6, 2006.

52. (A) Respondent White is currently a health occupations and medical terminology teacher at CAMS where he serves under a temporary contract. He is a former permanent certificated employee who was laid off from his teaching position last year and then recalled by the District in or about August 2011. He was offered and accepted temporary employment at CAMS.

(B) On August 15, 2011, White signed a special contract of temporary employment for the fall 2011 semester under which he was classified as a temporary employee and long-term leave replacement under Education Code section 44920. On January 9, 2012, White signed a special contract of temporary employment for the spring 2012 semester under which he was classified as a temporary employee of a contract or categorical program under Education Code section 44909. For the current school year, he has taught health occupations, which is part of the engineering and biotechnology core curriculum for ninth graders at CAMS. Davis asserts he can also teach biotechnology.

(C) White holds a clear single subject teaching credential in physical education and a preliminary full-time designated subjects career technical education teaching credential in health science and medical technology. He last taught as a permanent certificated employee at Polytechnic High School where he taught sports nutrition and fitness. He has a certificated seniority date of October 3, 2006.

53. (A) CAMS is a comprehensive four-year high school located on the campus of California State University, Dominguez Hills (CSUDH). Acclaimed as a college preparatory, magnet school for math and science, CAMS admits 175 freshmen every school year from 11 different school districts and has 21 full-time and 10 part-time teachers. Students may also take college courses on the CSUDH campus. CAMS is operated as a partnership or consortium comprised of CSUDH and 11 school districts, including the District which is the fiscal or managing school district.

(B) CAMS was opened and implemented in 1989 pursuant to a Joint Powers Agreement between and among the Trustees of the California State University on behalf of CSUDH, the Board of Trustees of the Compton Unified School District, and the Governing Board of the District. In January 2004, the District and the Trustees of California State University entered into an Operating Agreement to continue their contractual relationship to provide high school level programs at CAMS and to operate CAMS on the CSUDH campus. The District had constructed permanent facilities on the CSUDH campus and was leasing buildings on the university. Under the Operating Agreement, the District is the sponsoring

school district of CAMS and responsible for supervision of the students and for the magnet school's policies, regulations, budgets, and procedures. The Operating Agreement is of indefinite term and will continue until the use or lease agreements for the facilities and buildings on the CSUDH campus expire or terminate.

(C) Under the Joint Powers Agreement, the District was or is to receive a grant from the California Department of Education to operate CAMS and average daily attendance (ADA) funding attributable to student attendance at CAMS. The District, in turn, is to pay the CSUDH for any of its costs chargeable against the grant and ADA funding. Under the Operating Agreement, the District is required to reimburse and pay CSUDH for the use of campus facilities for CAMS. The District does not anticipate that the Operating Agreement with California State University will expire or terminate at the end of the current school year or in the foreseeable future. It was not established that the District is required to submit an annual application to or to enter into an annual contract with any governmental agency to receive contract or categorical funds to operate CAMS.

54. (A) Based on Findings 53(A) – (C) above, CAMS is not a program conducted under a contract with a public or private agency or a categorically funded project, which will expire at the end of this school year. CAMS is a magnet high school operated pursuant to agreements among CSUDH, the District, and other school districts. These agreements for CAMS' operation are indefinite in duration and do not expire at the end of this school year or any particular school year. The District is the managing school district for the high school but does not have to apply to or contract with a governmental agency for annual funding for CAMS. Rather, CAMS or the District receives ADA funding for the magnet school. For the next school year, the District expects to provide staffing for CAMS to continue at the same level and without reduction.

(B) Here, respondents Bucko and White were hired to teach at CAMS under Special Contracts of Temporary Employment. For the spring 2012 semester, they signed contracts that provided that they were temporary employees of a contract program or categorical program. However, Bucko and White were not hired or are not employed to perform services for a program conducted under a contract with a public or private agency or with a categorically funded project that will expire at the end of this school year. Nor were they hired or employed for the term of the contract program or categorically funded project at CAMS. As such, respondents Bucko and White must be considered and treated as probationary certificated employees under the holding of *Stockton Teachers Ass'n CTA/NEA v. Stockton Unified School District, Ibid.*

(C) Moreover, as probationary certificated employees then, respondents Bucko and White were not given proper or sufficient notice under Education Code sections 44959 and 449055 that their services will not be required for the ensuing school year. The District gave preliminary release notices to Bucko and White as temporary certificated employees. The preliminary release notices were deficient in that Bucko and White were told that they had a limited precautionary right to request a hearing and were not informed that they had right to hearing to determine whether there is cause for not re-employing them as

probationary certificated employees for the ensuing school year in accordance with Education Code sections 44949 and 44955. In addition, the District did not determine the seniority information for respondents Bucko and White or make any determination whether there is no probationary or permanent certificated employee with less seniority who is being retained to render services that these respondents are certificated and competent to render. Accordingly, respondents Bucko and White may not be given a final layoff notice.

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

\* \* \* \* \*

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 – 55 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 308.76 full-time equivalent positions plus 46 positions in Hourly Support Programs the concomitant number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services, based on Findings 1 – 55 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: Josh M. Freeman (312), Alina D. Vargas (440), Keisha A. Clark-Booth (450), Lisa K. Shapiro (548), Jeannine R. Oxley (623), Johanna M. Knox (638), Antonietta T. Nobles (547), Francesca L. Marchese (653), Crystal Huynh (825), Deborah L. Ingstadt (1159), Deborah S. Martin (305), Mario R. Morales (641), Deborah R. Taylor (3873), Jeremy Bucko (Rehire Rank 346), and Davion White (Rehire Rank 430), based on Findings 24, 25 – 27, 32, 33, 35, 40 – 44, and 50 – 54 above.

4. Cause exists under Education Code sections 44949 and 44955 for the District to serve final notices upon respondents informing them that their services will not be required for the ensuing 2012-2013 school year because of the reduction or discontinuance of particular kinds of services, as long as those respondents so served with preliminary notices were duly identified during the hearing or in hearing exhibits, documents, or briefs as being the subjects of a final layoff notice.

5. Based on Findings 1 – 55 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 contract or categorical certificated employee with less seniority than any one of respondents who is being retained by the District for the 2012-2013 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 24, 25 – 27, 32, 33, 34, 35, 40 – 44, and 50 – 54 above, must be dismissed, based on Conclusion of Law 3 above. These respondents may not be given final layoff notices that their services will not be required for the ensuing 2012-2013 school year.

2. The Accusation issued against all of the remaining respondents is sustained, based on Conclusions of Law 1, 2, 4, and 5 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 2012-2013 school year because of the present reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955.

3. The District may also give notice to any respondents or 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 2012-2013 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 2012-2013 school year.

5. The District may give notice to any respondents that their services will not be required for the ensuing 2012-2013 school year because of the present reduction or discontinuance of particular kinds of services as long as those respondents were served with a preliminary notice and previously identified in the hearing and/or hearing exhibits as being subject to receipt of a final layoff notice, based on Conclusion of Law 4 above.

Dated: May 4, 2012

Vincent Nafarrete  
Administrative Law Judge  
Office of Administrative Hearings