

**BEFORE THE  
GOVERNING BOARD OF THE  
COVINA-VALLEY UNIFIED SCHOOL DISTRICT**

In the Matter of the Layoffs of:

**THE CERTIFICATED EMPLOYEES  
LISTED IN ATTACHMENT 1,**

**Respondents.**

OAH No. L2008020284

**PROPOSED DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on April 21 and 30, 2008, in Covina. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Margaret A. Chidester, Esq., Margaret A. Chidester & Associates, represented the Covina-Valley Unified School District (District).

Glenn Rothner, Esq., Rothner, Segall & Greenstone, represented the Respondents listed in Attachment 2. On the second day of the hearing, Respondent Michael Rogers, who was previously represented by Mr. Rothner, decided to represent himself for the duration of the hearing.

Robert E. Lindquist, Staff Attorney, California Teachers Association, represented Respondents James Arellanes, Jr. and David Ho.<sup>1</sup>

Respondents Tara Chance, Janay Mc Kinney and Kellie Kurasz were present and represented themselves throughout the hearing.

**FACTUAL FINDINGS**

*Parties and Jurisdiction*

1. David Samuelson, the District's Assistant Superintendent, Personnel Services, made and filed the Accusations in his official capacity.

2. The Respondents listed in Attachment 1 were at all times mentioned certificated District employees. The District currently employs 804 certificated employees.

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<sup>1</sup> Mr. Lindquist stated that he may also represent Mark Ahlberg. However, Mr. Ahlberg did not submit a request for a hearing, a notice of defense, or make a request at the hearing for leave from his failure to do either. Therefore, Mr. Ahlberg waived his right to a hearing and is not a Respondent in this matter. (Ed. Code, § 44949, subd. (b).)

3. On March 11, 2008, the Governing Board of the District (Board) adopted Resolution No. 07-08-26, which proposed to reduce or discontinue the particular kinds of services encompassing 105.6 full-time equivalent (FTE) positions by the close of the 2007-2008 school year.

4. By no later than March 15, 2008, the Board and 246 certificated employees of the District, including the Respondents listed in Attachment 1, were given preliminary notice that those certificated employees' services would not be required for the following school year, pursuant to Education Code sections 44949 and 44955.

5. The District gave preliminary layoff notices to 246 certificated employees, even though the Board proposed to reduce or discontinue 105.6 FTEs, in order to maintain flexibility to enact Resolution No. 07-08-26 in the event that some of its decisions in effectuating the resolution (such as the application of seniority dates, tie-breaking criteria, "bumping" and "skipping") are not sustained in this matter.

6. Of the 246 certificated employees who received the above-described preliminary notices, 62 received a preliminary notice that was different from those received by the others. (The 62 employees who received the different notices are indicated by "Ex" on the far left column of exhibit 3A.) The preliminary notices received by the 62 certificated employees in question contained the additional statement "Because of your credential, expertise, and current assignments, the District will request the administrative law judge to exempt you from the order of layoff. You are being sent this notice as a precaution." (See exhibit A, an exemplar of those "precautionary notices.")

7. Of the 246 certificated employees who received the preliminary notices, the Respondents listed in Attachment 1 timely requested a hearing to determine if there is cause for terminating their services next school year. Each Respondent listed in Attachment 1 was thereafter served with an Accusation. The Respondents listed in Attachment 1 timely filed Notices of Defense, which requested the instant hearing, except for Respondent David Platt.<sup>2</sup>

8. Pursuant to Education Code section 44949, subdivision (e), the parties stipulated to continue all statutory deadlines of Education Code sections 44944 and 44955 by seven calendar days in order to accommodate a continuance of the second hearing day. The parties therefore stipulated that if a second day of hearing was necessary (which it was), the proposed decision of the ALJ was due to the parties on or before May 14, 2008, and that the Board shall give final notice of termination of services pursuant to Education Code section 44955, subdivision (c), no later than May 22, 2008.

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<sup>2</sup> No appearance was made by or on behalf of Respondent Platt at the hearing, but the District did not contend that Mr. Platt waived his right to a hearing by failing to file a Notice of Defense. In any event, during the hearing the District withdrew the Accusation against Respondent Platt (see factual finding 9).

9. During the hearing, the District withdrew the Accusations against the individuals listed in Attachment 3, including all of those who had received the precautionary notices described above in factual finding number 6 except for Respondent James Arellanes, Jr., Respondent Hilda Galeana, and Mr. Ahlberg.

*The Decision to Reduce or Eliminate Particular Kinds of Services*

10. Board Resolution No. 07-08-26 specifically provides for the reduction or elimination of the following particular kinds of services:

(1.1)	Director of Curriculum and Instruction	(2 F.T.E.)
(1.2)	Principal, K-5	(3 F.T.E.)
(1.3)	Dean 9-12	(2 F.T.E.)
(1.4)	Counselors 6-12	(15 F.T.E.)
(1.5)	Support Services Specialist, Health Care	(1 F.T.E.)
(1.6)	Classroom Teacher, K-6	(39 F.T.E.)
(1.7)	Classroom Teacher, Itinerant Music K-5	(4 F.T.E.)
(1.8)	Classroom Teacher, 7-12 Computers	(3 F.T.E.)
(1.9)	Classroom Teacher, 7-12 English	(6 F.T.E.)
(1.10)	Classroom Teacher, 7-12 Photography	(6 F.T.E.)
(1.11)	Classroom Teacher, 7-12 Physical Education	(4 F.T.E.)
(1.12)	Classroom Teacher, 7-12 Social Science	(6 F.T.E.)
(1.13)	Classroom Teacher, 7-12 Spanish	(2 F.T.E.)
(1.14)	Even Start Teacher	(3 F.T.E.)
(1.15)	Learning Specialists, Elementary Schools	(12 F.T.E.)
(1.16)	Teacher On Special Assignment (TOSA)	(3 F.T.E.)
TOTAL		105.6 FTEs

11. The decision to reduce or eliminate 105.6 FTEs was the result of financial difficulties being experienced by the District, caused by the current state budget crisis, revenue loss and a continuing decline in enrollment. The Board has determined that the proposed reduction or elimination of such services will allow it to maintain solvency and provide it with the financial flexibility needed to meet this problem.

12. After adoption of Resolution No. 07-08-26, the Board has continued to consider all known assured attrition, including an early retirement program that was offered to certificated employees.<sup>3</sup>

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<sup>3</sup> However, a school district is not required to account for circumstances that occur after March 15th when implementing layoff decisions. (*Lewin v. Board of Trustees* (1976) 62 Cal.App.3d 977, 982.)



13. During the hearing, the District announced the withdrawal of the proposed reductions of the 3 FTEs for Even Start Teachers (No. 1.14); the 4 FTEs for the itinerant music teachers in grades K-5 (No. 1.7); the 12 FTEs for the elementary school learning specialist positions (No. 1.15); and that only 21 of the 39 FTEs for the K-6 classroom teachers will be reduced (No. 1.6). Thus, the District now requests the reduction or elimination of 68.6 total FTEs.

*"Skipping"*

14. Pursuant to Board Resolution No. 07-08-26 (exhibit "A" to the resolution), the Board identified seven different types of positions to be exempted from the order of certificated layoff, due to "special training, experience, or credentialing that others with more seniority do not possess," and on that basis, intended to deviate from the usual order of terminating certificated employees on the basis of seniority (known as "skipping").<sup>4</sup>

15. Only the following position the District sought to skip was the subject of dispute in this matter:

"7. Certificated personnel who possess a credential authorizing service in physical education, who will be placed in a high school head football coach assignment, and who, if serving in school year 2008-09 will be placed in a head coach assignment."

16. The District contends the above-described position should be skipped because of the unique experience and expertise of the high school varsity head football coach position. The District also contends that this position should be skipped because of the tremendous impact varsity football has on a high school, in terms of morale, school spirit and revenue. Moreover, the sport of football at the high school level has evolved to such an extent that it is now a year-long activity. During the off-season, the players participate in weight-training and conditioning. The players also have football as one period of their school curriculum. The players' physical and academic progress is monitored by the coaches throughout the year. The head coach supervises all three levels of football played at the high school, coaches over 140 athletes, and supervises ten staff members and coaches. During the season, the head coach works long hours, including the evenings and weekends. The head coach is also responsible for various fund-raising activities, including interaction with the Booster Club. This is a very difficult and time-consuming position, which few are qualified and competent to perform.

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<sup>4</sup> Education Code section 44955, subdivision (d)(1), permits a school district to deviate from the order of seniority in teacher layoffs when "the district demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the employee [who is retained] has special training and experience necessary to teach that course or course of study . . . which others with more seniority do not possess." (See also, *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399.)



17. For the above reasons, the varsity head football coach at Northview High School holds a position that is combined with a certificated teaching position. According to a job opportunity announcement, the position is entitled "Teacher/Head Varsity Football Coach." The person holding this position is expected to perform a certificated teaching position and be the varsity head football coach. The job opportunity announcement states that the successful applicant must have a valid credential in physical education, social science (or a combination thereof), plus demonstrated competence and experience coaching; "[v]arsity head coaching experience is desirable."

18. Respondent James Arellanes, Jr. was the only person proven to be the subject of the above-described position sought to be skipped. As noted above, he was also given a preliminary layoff notice, in case the skipping decision is not sustained. He is the varsity head football coach of Northview High School. He holds a single subject credential in physical education. He currently holds a certificated position as a guidance studies teacher at the high school. Any person with a credential allowing them to teach at a high school allows them to perform the guidance studies position. Mr. Arellanes has tremendous skill and experience coaching football. For example, he was a star quarterback in high school, junior college and at a major college football program. In 1997 he was on the developmental squad of an NFL team and in 1998 he was invited to their training camp. From 1998-2001, Mr. Arellanes played on professional football teams in NFL Europe, the Arena Football League and the XFL. Mr. Arellanes also has many years of significant experience coaching various levels of high school football. He has enjoyed success as the head coach of the Northview High School varsity football team, in that last season the team won their first league football championship in 17 years, and made it to the C.I.F. playoffs. More importantly, only two students have had to leave the football program because of academic problems while Mr. Arellanes has been the varsity head coach.

19. (A) Nonetheless, it was not established that the position held by Respondent Arellanes, Jr. is properly subject to skipping. It is true that the position of teacher/head varsity football coach requires special training and experience; Mr. Arellanes certainly has both. However, it was not established that others with more seniority in the District do not possess the same special training and experience to also perform this position.<sup>5</sup>

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<sup>5</sup> As noted above, Education Code section 44955, subdivision (d)(1), requires that in order to skip, it must be shown that the position involves such special training and experience "which others with more seniority do not possess." In *Alexander v. Board of Trustees of the Delano Joint Union High School District* (1983) 139 Cal.App.3d 567, the selective retention of bilingual speaking teachers over monolingual teachers was prohibited where it was not shown that senior employees were unable to perform the duties of those to be "skipped." In a law review article cited by the District regarding this issue, which was also the subject of discussion in the *Alexander* case, the commentator notes that "skipping because of special skills may not be permitted, such as when a skill is very narrowly defined and is not the actual academic subject in question." (See, Ozsogomonyan, *Teacher Layoffs in California*, (July 1979) 30 Hastings L.J. 1727, 1749.)



(B) There is no dispute that many of the Respondents with greater seniority are credentialed and competent to teach guidance studies at the high school level. Next, there was no evidence presented indicating that there were no other senior certificated employees within the District who do not have the requisite training, experience and credentialing to be a varsity head football coach and teach guidance studies. To the contrary, there was an abundance of evidence indicating that there are such persons. For example, there are two other high schools within the District that have successful varsity football programs. Each of those teams has assistant coaches. Mr. Arellanes testified that six of his assistant coaches are certificated employees; some teach physical education, and two teach guidance studies. Four of his assistant coaches were on the coaching staff before Mr. Arellanes took the position. It must be remembered that the job announcement for Mr. Arellanes' position stated that only past coaching experience was required; head coaching experience was "desirable." Finally, some of the Respondents who testified in this matter also have high school football coaching experience.

(C) The skipping protocol developed by the Board for this position is narrowly drawn. The District's evidence supporting this skip focused exclusively on the special experience possessed by Mr. Arellanes, as opposed to the certificated position attached to his head coaching duties. These are signs that the Board has considered only the experience and expertise of the person performing the position in question, as opposed to the credentials and competence of others who may do so. Finally, it was not established that any of the District's concerns regarding losing Mr. Arellanes will come to fruition, which is further evidence that this position is not subject to skipping. For example, the District's other high school football programs are successful, even though those coaches do not have the same kind of football experience as Mr. Arellanes. Even assuming the Northview High School team is less successful next season, that still does not mean that school spirit or revenues generated by the football program will disappear. Even great coaches have losing seasons. In sum, it is apparent that the decision to skip over Mr. Arellanes' position was due to the quality of his experience and not because he is the only certificated employee in the District who can perform this function.

#### *Tie-Breaking Criteria*

20. Board Resolution No. 07-08-26 also established tie-breaking criteria to determine the relative seniority of certificated employees who first rendered paid service on the same date (exhibit "B" to the resolution). The tie-breaking criteria were used in this matter to resolve ties in seniority amongst certificated personnel. The validity or application of the tie-breaking process is not subject to dispute in this matter, except as follows.

21. Respondent Michael Rogers challenged the validity of tie-breaking criterion G, which provided one point for assignment as a BTSA Support Provider within the last five years in the District. The basis for that criterion is that certificated employees who help new teachers themselves receive extensive training and gain valuable experience. The fact that the number of new teachers will be reduced next year because of the proposed layoffs does not take away from the past experience and training already obtained by those who participated in the BTSA program. Therefore, it was established that this tie-breaking criterion is solely related to the welfare of the District and its students.

22. Respondent Rogers also challenged the validity of tie-breaking criterion E, which provided two points for each earned master's degree. The basis for this criterion was that a person with a master's degree has additional training that enriches his/her ability to teach students. In applying this criterion, the District also gave 2 points to those with a doctorate. Mr. Rogers' contention is unpersuasive that those with a doctorate should be given more credit than those with a master's degree, in that it was not shown that the different degrees necessarily result in a greater degree of teaching enrichment. For example, Mr. Rogers has a Juris Doctorate degree. It is not apparent from the evidence that his J.D. is more beneficial to a school environment than a person with a master's in an educational discipline. Therefore, it was established that this tie-breaking criterion is solely related to the welfare of the District and its students.

23. Respondent Rogers also challenged the tie-breaking process because no credit was given to those with athletic coaching experience. Mr. Rogers points to the fact that the District "skipped" over the position held by the Northview High School varsity head football coach as demonstrating such an error. That skipping decision relates only to whether a position requires special training, experience, or credentialing that others with more seniority do not possess, which is a different inquiry from how to rank those with the same seniority date. In any event, school districts are given wide discretion in determining tie-breaking criteria.<sup>6</sup> In this case, the District reasonably exercised its discretion by giving credit for tie-breaking purposes to those with additional educational-related experience. It cannot be concluded that the failure to include athletic coaching experience in the tie-breaking criteria was an abuse of discretion or otherwise rendered the tie-breaking process not solely related to the welfare of the District and its students.

24. Based on the above, it was established that the District's tie-breaking criteria is valid, was fairly applied and related solely to the welfare of the District and its students.

### *Overall Findings*

25. The reduction or elimination of the FTE positions in question will not reduce services below mandated levels.

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<sup>6</sup> Education Code section 44955, subdivision (b), provides only that such criteria be "solely on the basis of needs of the District and the students thereof."



26. The District maintains a seniority list containing employees' seniority dates, current assignments and locations, credentials and authorizations. Mr. Samuelson and other District administrators were responsible for compiling the seniority list. To assure the accuracy of the seniority list, certificated employees were twice notified in writing of the District's records regarding their information, in order to allow them to confirm or challenge the accuracy of that information. The seniority list was updated based on new information obtained from certificated employees that was verified. The initial seniority list presented at the hearing (exhibit 3) was updated during the course of the hearing to account for the various changes caused by the withdrawn Accusations and the FTE positions the District decided to no longer reduce or eliminate (exhibit 3A). It was established that the information on the seniority list is accurate.

27. The District used the seniority list to implement and determine the proposed layoffs. The District then determined whether the least senior employees held other credentials entitling them to "bump" other employees or be "skipped." In determining who would be subject to layoff for each kind of particular service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority.

28. The Board's decision to reduce or discontinue the above-described particular kinds of services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

29. The cause for reducing and/or eliminating the above-described particular kinds of services relates solely to the welfare of the schools in the District and its pupils.

30. No permanent certificated employee with less seniority will be retained to render a service that the Respondents are certificated and competent to render.

#### *The Coaches*

31. By virtue of the District seeking to skip Mr. Arellanes' position as teacher/varsity head football coach, a number of other certificated employees subject to layoff who also have coaching experience testified in this matter.

32. The Respondents with coaching experience who testified were Christine Costello (junior varsity softball), Mae Wong (jumping events for track and field), John Williams (basketball), Ryan Williams (freshman, junior varsity and varsity football; throwing events for track and field), Albert Lorello (softball, volleyball, and soccer), Matthew Froid (middle school football, track and field, basketball, soccer, and high school basketball and baseball), and Michael Rogers (freshman, junior varsity and varsity football, junior varsity baseball). Each has a distinguished record of success in their respective coaching capacities and their efforts have been appreciated by the District.



33. These Respondents essentially contend that if Mr. Arellanes' position is skipped, so should their certificated positions so they may also continue their coaching duties. As discussed above, Mr. Arellanes' position is not the proper subject of skipping, so he is subject to receiving a final layoff notice. Therefore, the contention of these Respondents is not determinative of the outcome of this matter as to them.

*William Selak*

34. The initial seniority list (exhibit 3) showed that Respondent William Selak, who is credentialed to teach music for grades nine and below, bumped Respondent Andrew Henken, who teaches music at various elementary schools but has less seniority. The updated seniority list (exhibit 3A) indicates that Respondent Selak is no longer subject to layoff due to the changes that occurred during the hearing. Respondent Selak should therefore not receive a final layoff notice.

*Michael Rogers*

35. (A) Respondent Michael Rogers is a high school history teacher. He contends the tie-breaking criteria were not correctly applied to him, which resulted in his receiving a lower seniority ranking, subjecting him to the jeopardy of layoff.

(B) Respondent Rogers' seniority date is August 26, 2005, which placed him in a tie with several other certificated employees. After application of the tie-breaking criteria, Respondent Rogers was given a seniority number of 661, which placed him a few spots below Respondent Jason Van Duyne (seniority number 654), who also teaches high school history classes. Mr. Van Duyne was given five tie-breaking points; Mr. Rogers just four points. Both were given two points for having a master's degree (Mr. Rogers was given credit for his J.D.) The difference between the two was that only Mr. Van Duyne was given one point credit for his experience in the BTSA program. Mr. Rogers has no such experience.

(C) The tie-breaking criteria were properly applied to Respondent Rogers. As found above, the credit Mr. Van Duyne received for his experience in the BTSA program was valid. Respondent Rogers did not establish that he was entitled to additional credits because he received a doctorate degree as opposed to a master's degree, or because he had past athletic coaching experience. There is no basis to change his seniority number.

36. Respondent Yemina Arellanes is a high school social studies teacher. She contends her seniority date of August 30, 2006 is five days later than approximately 40 others who, like her, began teaching with the District at the start of the 2006-2007 school year. However, Ms. Arellanes agrees that her first date of paid service with the District was August 30, 2006. Her seniority date is the same as three others, indicating that she is not being singled out or treated differently than everybody else. It was not established that the seniority date of August 25, 2006, assigned to the 40 other employees, is incorrect. Under these circumstances, there is no basis to change Ms. Arellanes' seniority date.

### LEGAL CONCLUSIONS

1. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) For example, in administrative hearings dealing with personnel matters, the burden of proof is ordinarily on the agency prosecuting the charges (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113); in personnel matters concerning the dismissal of a teacher for cause, the burden of proof is similarly on the discharging school district (*Gardner v. Commission on Prof. Competence* (1985) 164 Cal.App.3d 1035). As no other law or statute requires otherwise, the standard of proof in this case requires proof to a preponderance of the evidence. (Evid. Code, § 115.) In this case, the District has the burden of establishing by a preponderance of the evidence cause to give a final layoff notices to certificated employees given notice of this proceeding.

2. (A) Respondents argue the District's layoff decision is invalid because part of the decision-making included the anticipated reduced revenue from declining enrollment. Respondents' argument is unconvincing. As stated in *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under Education Code section 44955, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." Such a decision may be overruled if proven to be arbitrary or capricious, but a motivation to maintain flexibility in light of financial uncertainty is neither. (*Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

(B) In this case, the District met its burden of establishing by a preponderance of the evidence that it proposes the reduction of particular kinds of services pursuant to Education Code section 44955. The instant layoff decision was caused by overall budget concerns and not a simple reduction in average daily attendance (ADA). Thus, the reason for the layoff, i.e. the reduction or elimination of particular kinds of services (PKS), was correctly stated in the pertinent notices. There is nothing in Education Code section 44955 prohibiting an expected decline in student attendance from being one factor of many in the overall decision to reduce or eliminate particular kinds of services. (Factual Findings 1-13.)



3. (A) Respondents contend that by serving preliminary notices on 246 certificated employees for only 105.6 FTEs, the District essentially deprived all involved certificated employees of the requisite notice that they would in all probability be subject to layoff, thus depriving them of due process. Respondents therefore contend that all the layoff notices should be rescinded.

(B) There are no known cases directly on point. However, Respondents cite to *Karbach v. Board of Education* (1974) 39 Cal.App.3d 355. In *Karbach*, the court noted that because the March 15th notice date is intended to insure that the affected employees are informed of the facts upon which they can reasonably assess the probability they will not be reemployed, the preliminary notice must state the reasons for the recommendation. (*Id.*, at 361-363.) If the notice specifies only one of the two statutory reasons for dismissal (ADA or PKS), the district may not later at the hearing attempt to justify dismissal on the other ground not stated in the preliminary layoff notice. (*Id.*)

In *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App3d 831, 841 (*Santa Clara*), the court found that the March 15th notice is "only the first step in the termination process, and that the *Karbach* decision does not require that the preliminary notice specify the precise number of teachers to be terminated or the specific positions to be eliminated; those details emerge as the administrative hearing process progresses. It is enough that the Board specify in the March 15th notice the statutory grounds set forth in section 13447 (now section 44955) for staff reduction." (*Id.*)

In *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, the court similarly recognized the statutory necessity of giving more notices than the number of teachers who may actually be laid off. The *Allen* court observed that the present statutory timetable is unrealistic, and that although a teacher who is terminated has preferential rights to reemployment should the district decide fewer reductions are necessary, "this provides little solace to the understandably upset teacher who is given a needless preliminary (and perhaps final) notice because the school district cannot accurately ascertain its financial circumstances for the ensuing school year until the chaptering of the state budget." (*Id.*, at pp. 632-633.) Therefore, the *Allen* court followed *Santa Clara*. "The preliminary notice is sufficient if it specifies the statutory grounds set forth in section 44955." (*Id.*)

(C) The above authorities indicate that for purposes of notice to certificated employees in a layoff proceeding, the preliminary layoff notice must only specify which of the two statutory grounds (or both) are being relied upon. Pursuant to the *Santa Clara* and *Allen* cases, the District is legally permitted to issue preliminary notices to a greater number of certificated employees than FTEs sought to be reduced or eliminated, so long as the notices state the proper basis for the proposed layoffs. In this case, it was not established that the District deprived Respondents of the notice required by the Education Code by giving preliminary notices to 246 certificated employees for a reduction of 105.6 FTEs. The preliminary notices Respondents received stated the basis for the layoff, i.e. PKS. Thus, the *Karbach* case is not applicable. There was also no showing that any Respondent was prejudiced by the District proceeding in this way. (Factual Findings 1-9.)

4. All notice and jurisdictional requirements of Education Code sections 44944 and 44945 were met. (Factual Findings 1-9.)

5. The services identified in Board Resolution No. 07-08-26 are particular kinds of services that can be reduced or discontinued pursuant to Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Services will not be reduced below mandated levels. Cause for the reduction or discontinuation of those particular services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949. (Factual Findings 1-36.)

6. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. (Factual Findings 1-36.)

7. Considering that the proposed skip of the position held by Mr. Arellanes is not sustained, no junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-36.)

#### ORDER

1. The Accusations against the Respondents listed in Attachment 3 are dismissed. None of those Respondents shall be given notice that their services will not be required for the next school year.

2. The Accusation against Respondent William Selak is dismissed. He shall not be given notice that his services will not be required for the next school year.

3. The Accusations are sustained as against the remaining Respondents listed in Attachment 1. The Board may give a final notice of layoff to those Respondents correlating to a maximum of the 68.6 FTEs that have not yet been withdrawn from reduction and/or elimination. Notice shall be given to those Respondents that their services will not be required for the 2008-2009 school year, and such notice shall be given in inverse order of seniority.

Dated: May 12, 2008

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ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings