BEFORE THE
BOARD OF EDUCATION
LOS ANGELES UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against: **2230 Full Time Equivalent Certificated Employees,** Respondents.	OAH No. 2010031441

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on April 26-30, May 3-6, May 10, May 12-13, and June 3, 2010, in Los Angeles, California.

The Los Angeles Unified School District (District) was represented by Kathleen E. Collins, Associate General Counsel II, and Marcos F. Hernandez, Assistant General Counsel.

Respondents Nieves Rascon, Susan Acuff, Claudia Perkins and Liza Scruggs appeared on the first day of hearing and represented themselves, but did not appear on any other day or otherwise participate in the hearing.

The remaining Respondents, who are identified in exhibit M, were represented by Lawrence B. Trygstad, Esq., Richard J. Schwab, Esq., and Lillian Kae, Esq., of Trygstad, Schwab & Trygstad.[1]

After the final day of testimony on May 13, 2010, the matter was continued for oral argument to June 3, 2010. In the interim, the parties submitted closing briefs on May 26, 2010 (the District's was marked as exhibit P, Respondents' as exhibit Q). The ALJ issued an order requesting the parties to discuss certain issues during oral argument (marked as exhibit R). The record was closed and the matter was submitted for decision at the close of oral argument on June 3, 2010.

The hearing of this matter was continued various times for various reasons, as described in more detail on the record and in the written orders granting the continuances. Pursuant to Education Code sections 44949, subdivision (c), and 44955, subdivision (c), the continuances extended the deadline for submission of the proposed decision to June 9, 2010.

[1] Respondents' counsel also presented a list of those they identified as their clients in this matter (exhibit J).

FACTUAL FINDINGS

Parties and Jurisdiction

1. Vivian K. Ekchian, the District's Chief Human Resources Officer, made and filed the Accusations in her official capacity.

2. Respondents at all times relevant were certificated District employees.

3. The District is the largest school district in the state of California, and the second largest in the nation. The District serves approximately 600,000 students and employs approximately 40,000 certificated employees.

4. For economic reasons described in more detail below, the District decided to recommend staff reductions to its Board of Education (Board), including positions held by certificated employees.

5. On March 2, 2010, Ms. Ekchian, on behalf of the District, recommended to the Board that notice be given to non-permanent (probationary) certificated employees in various teaching and support services positions that they would be laid off effective June 30, 2010, in accordance with provisions of their collective bargaining agreement (CBA). On March 2, 2010, the Board adopted the recommendation.

6. On March 2, 2010, Ms. Ekchian, on behalf of the District, also recommended to the Board that notice be given to all certificated administrators, supervisory employees, confidential employees and staff counsel that they may be released and/or reassigned due to reasons in accordance with Education Code section 44951. On March 2, 2010, the Board adopted the recommendation.

7. On March 2, 2010, Ms. Ekchian, in Board Report Number 220-09/10, recommended to the Board that notice be given to a number of certificated permanent employees in various teaching and support services positions, pursuant to Education Code sections 44949 and 44955, that because it was necessary to reduce or discontinue particular kinds of services, their services would not be required for the 2010-2011 school year.

8. On March 2, 2010, the Board adopted Board Report Number 220-09/10 (Resolution), which authorized the reduction in the number of certificated permanent employees in various teaching and support services positions, because of a reduction or discontinuation of particular kinds of services, and directed the District's Human Resources Division to send notices to all certificated permanent employees whose positions may be affected.[2]

[2] Respondents argue all of the Accusations must be dismissed because the District failed to put into evidence the Board's Resolution adopting Board Report Number 220-09/10. While the Resolution itself was not submitted, the preponderance of the evidence,

9. On or before March 15, 2010, a number of individuals, including Respondents, were given written notice pursuant to Education Code sections 44949 and 44955 that their services would not be required for the 2010-2011 school year (layoff notice).

10. Some of the Respondents had been laid off after the previous school year but were rehired and classified for employment during the current school year as substitute employees. Substitute certificated employees are not subject to the provisions of Education Code sections 44949 and 44955. However, the District provided those Respondents classified as substitute employees with layoff notices as a matter of precaution, in the event that it is determined in this proceeding that they have permanent or probationary status. The Respondents who received these "precautionary" layoff notices are identified in exhibit 17.

11. A total of 2,165 individuals who timely submitted a request for hearing upon receipt of the written layoff notices described above, including Respondents, were timely served with an Accusation, a Notice of Defense, and copies of pertinent provisions of the Government and Education Codes.

12. In late March of 2010, the District and the union representing various certificated employees reached a Tentative Agreement, whereby the parties agreed to implement a reduced instructional year and related furlough days, restore certain class-size ratios, and restore certain staffing levels. The Board ratified the Tentative Agreement. As a result, the Board authorized the District to rescind a number of the layoff notices described above. Throughout April of 2010, the District sent out new letters rescinding the previous layoff notices to 1,280 permanent elementary teachers, 85 permanent counselors, and 56 permanent nurses. The District also sent out new letters rescinding the previous layoff notices to five individuals who became compliant with the provisions of the No Child Left Behind Act (NCLB) by or before March 15th, 32 individuals who had received incorrect layoff notices, and 133 individuals who were being reassigned from the Arts Education Branch to different positions consistent with their credentials.

13. There are 704 Respondents in this matter. They did not receive a rescission letter described above. Of the Respondents, 590 timely submitted a Notice of Defense, which contained a request for the hearing that ensued. The remaining Respondents did not timely submit Notices of Defense, but were deemed to be Respondents in this matter either by stipulation between the parties or by ruling of the ALJ.

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including the testimony of Ms. Ekchian and the various March 15th layoff notices issued to Respondents, established that the Board adopted in its Resolution all of the recommendations contained in Board Report Number 220-09/10. There was no evidence presented indicating that the Board failed to adopt that Board Report in its entirety. Interestingly, Respondents throughout their brief frequently refer to "the School Board's adoption of the recommendation by [Ms. Ekchian]." Thus, Respondents' argument here fails to establish a basis to dismiss the Accusations.

Reduction or Elimination of Particular Kinds of Services

14. The Board's Resolution specifically provides for the reduction or elimination of the following particular kinds of services:

Particular Kinds of Services (PKS)	Full-Time Equivalent (FTE) Positions
Permanent Elementary Teachers	1,868
Permanent Support Services Personnel Psychiatric Social Worker (26) PSA Counselor (39) Secondary Counselor (155) Nurse (80) School Psychologist (52) Elementary Counselor (10)	362
TOTAL	2,230 FTE Positions

15. The services identified in the Board's Resolution are particular kinds of services as described in Education Code section 44955.

16. Prior to adoption of Board Report Number 220-09/10, the District considered known positively assured attrition. In fact, to generate attrition earlier than normal, the District offered a $1,000 payment to those willing to tender their resignations or retirement before the adoption of Board Report Number 220-09/10. According to Ms. Ekchian, the District continued to consider positively assured attrition through March 15th, has continued to consider it as it has occurred thereafter, and will continue to do so through June 30, 2010.[3]

17. The decision to reduce the above-described particular kinds of services was based on a fiscal solvency problem related to the current state budget crisis, in which the District has an operating deficit in the hundreds of millions of dollars. The Board has determined to reduce its budget next year, in part, by reducing the above-described particular kinds of services.

18. The reduction or elimination of the 2,230 FTE positions will not reduce services below mandated levels. 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. The reduction and/or elimination of the above-described particular kinds of services relates solely to the welfare of the schools in the District and its students.

[3] In a PKS layoff such as this, a governing board need only consider positively assured attrition that occurred prior to the March 15th layoff notice deadline, not thereafter. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 635.)

The Seniority List

19. The District developed a Seniority List containing certificated employees' "RIF" dates (defined in Factual Finding 20 below), current assignments and locations, credentials and authorizations, and other pertinent information. The Seniority List was developed using information the District stores in its data system, which contains official District personnel records. The District took a number of steps to verify the accuracy of the Seniority List. For example, certificated employees were requested to review the information and suggest corrections or changes where appropriate. The District also sent rosters to school sites and had supervisors meet with certificated employees to verify the accuracy of the information and indicate any corrections. District staff also met with employees at meetings facilitated by their union to explain RIF dates and the process. District staff investigated claims made by employees during these information meetings or sent to the District in writing. For the past two years, Ms. Ekchian's staff has verified and audited the Seniority List for accuracy, including staff members who cross-checked individual categories and cross-referenced individual employees.

20. The CBA defines an employee's seniority date as the "day on which the employee began probationary employment." The District's policy guideline defines the seniority date as the first day "on which an employee first rendered paid service in probationary status." However, in developing the Seniority List, the District used the so-called "RIF" date, which it defines as the first date of service under a contract of employment. Ms. Ekchian explained the procedure for reducing non-permanent employees required by the CBA, which was bargained for pursuant to Education Code section 44959.5. Such probationary employees are laid off according to their "seniority date" in accordance with the procedure set forth in the CBA. Permanent employees are laid off in accordance with Education Code section 44955 and case law. For example, the recent decision in *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260 required the District to re-evaluate and, in many cases, recalculate seniority dates for reduction in force purposes for some permanent employees, such as those initially working for the District under less than full credentials, such as university internships or provisional credentials. Because the traditional "seniority date" would continue to be utilized for other purposes under the CBA (e.g., transfer rights and matrix rights), the District came up with a new name for the date utilized for reduction in force purposes only. The District refers to this new date as the "RIF date."

21. Respondents contend the use of the RIF date, as opposed to the traditional seniority date, creates a lack of specificity, coupled with a misapplication of the law relating to various types of classifications of status in employment, which they contend renders the Seniority List fatally defective. Respondents argue that this problem makes it virtually impossible for any of them to be able to determine his or her actual seniority with any degree of accuracy. Respondents conclude that this situation constitutes a denial of due process.[4]

[4] The key question of due process in the context of an administrative proceeding is whether a respondent is provided with reasonable notice of the contentions supporting the

However, in many cases, particularly for employees initially working under full credentials, there is no difference between their RIF dates and seniority dates. The great majority of witnesses who testified simply sought an adjustment of mere days (sometimes just one day) of their RIF date. In fact, after reviewing the Seniority List, several Respondents admitted that their RIF dates were correct. Only a small percentage of the total number of Respondents contested their RIF dates. It also was apparent that the Respondents who testified had a full understanding of the District's position as to their RIF dates as well as their own position about what their RIF dates should be. Thus, it cannot be concluded that the Seniority List was rendered defective or inaccurate through the District's use of the RIF date, that Respondents were not provided notice of the issues before them in this matter, or that their ability to litigate those issues in this forum was impeded. With some exceptions noted below, the information on the Seniority List is accurate.

22. Sara Shippy is a permanent secondary counselor with a seniority date of September 4, 2007. She was inadvertently provided with a layoff notice intended for a non-permanent counselor, when she should have received a layoff notice in her position as a permanent counselor. The District acknowledges that this error will result in her being retained for the next school year.

23. The layoff notice previously issued to Gabriela Morales, employee number 719388, with a seniority date of September 2, 2008, was rescinded by the District, because although she is a non-permanent employee, she received a layoff notice intended for permanent employees. Ms. Morales is still employed by the District.[5]

24. There are several secondary counselors senior to Ms. Shippy and Ms. Morales who are Respondents in this matter but have not had their layoff notices rescinded. The parties agree that Sagrario Gonzalez, with a seniority date of August 1, 2007, is the most senior secondary counselor Respondent subject to layoff, and that Esperanza Ramirez, with a seniority date of August 17, 2007, is the next most senior secondary counselor Respondent subject to layoff.

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requested action, given notice of the time and place of hearing, and afforded a fair hearing. (*Gray v. Medical Board of California* (2005) 125 Cal.App.4th 629, 637.) In *Krausen v. Solano County Junior College Dist.* (1974) 42 Cal.App.3d 394, the court held that due process in this context only requires a certificated employee be given a hearing and allowed to present evidence and argument concerning his/her employment rights based on their qualifications and seniority. (*Id.*, at 403-404.) Respondents cited no legal authority supporting their contention that they were deprived of due process by the manner in which the Seniority List was prepared.

[5] During oral argument, the District indicated that it intended to recommend Ms. Morales' termination during the Board meeting in which this Proposed Decision will be reviewed.

25. During the hearing, the parties stipulated that Thea Douglas, who has a seniority date of October 1, 2009, was not provided with a layoff notice, although she should have received one given her low seniority. In addition, during oral argument the District disclosed that 54 psychologists were given layoff notices even though the Board's Resolution provided for the reduction or elimination of only 52 such positions. This means the District noticed two psychologists for layoff without authority to do so.

26. There are several psychologists senior to Ms. Douglas who are Respondents in this matter but have not had their layoff notices rescinded. The parties agree that Alga Verrett, with a seniority date of September 7, 1999, is the most senior psychologist on the District's Seniority List.

27. The District used the Seniority List to determine which employees were to be laid off and which were eligible to "bump" less senior employees currently assigned in the various services being reduced. 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.

Tie-Breaking Criterion

28. The Board's Resolution also established a tie-breaking criterion to determine the relative seniority of certificated employees who first rendered paid service on the same date, in which case "the order of layoff will be based on District seniority number as determined by Article XI, Section 6.2 of the [CBA], as determined at the time of hire."

29. Pursuant to the CBA, the last five digits of an employee's seniority number is computed by a formula involving the last four numbers of his/her Social Security Number. The lower the resulting number, the greater the person's seniority.[6]

30. Although the tie-breaking criterion, i.e. the last five digits of employees' seniority numbers, was placed on the Seniority List, the tie-breaking criterion was not used in this matter to resolve ties in seniority amongst certificated personnel. Thus, as among those employees with the same RIF dates, they were listed in no particular order. The District did not use the tie-breaking criterion to resolve ties in seniority because it had determined that doing so was unnecessary, because the determination of who was to be laid off was not dependent on breaking any ties. In other words, no Respondent was included in this layoff due to the application of the tie-breaking criterion.[7]

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[6] Education Code section 44955, subdivision (b), provides that tie-breaking criteria must be "solely on the basis of needs of the District and the students thereof."

[7] Appellate courts have not required school districts to apply tie-breaking criteria prior to issuing layoff notices. (*Zalac v. Ferndale Unified School District* (2002) 98 Cal.App.4th 838, 855.) One court approved the process of applying the tie-breaking criteria

Bumping and Competency

31. The Board's Resolution also established a definition of competency for purposes of allowing an employee currently assigned in a position subject to layoff to bump a less senior employee holding another position not subject to layoff. For this purpose, competency was defined as:

A. The employee possesses an appropriate credential, and

B. (1) For employees moving from elementary education including middle school core to a departmentalized 7-12 setting, such employees must have taught at least one semester (full-time equivalent) in a 7-12 departmentalized setting for the District in the last three years and (2) for employees moving from a 7-12 departmentalized setting to elementary education including middle school core, such employees must have taught at least one semester (full-time equivalent) in elementary education including middle school core for the District in the last three years. The restrictions set forth in (1) and (2) above shall not apply to employees moving into special education instruction. Such employees may move between elementary education including middle school core and a 7-12 departmentalized setting without restriction due to the special skills designated by a special education credential and District need in this area.

32. Ms. Ekchian testified that the period of one semester of teaching within the past six semesters (recency clause) was modeled after Article XI, section 6.0 of the CBA (pp. 79-80) regarding displacements of teachers in "over-teachered schools." The CBA defines an over-teachered school as one in which there are more qualified teachers than positions at a school or within a program or subject field. In such a situation, section 6.0 allows the District to "displace" the least senior employee, subject to some discretion by the school site administrator. For a secondary school or program, the least senior employee subject to displacement in turn can request to change subject fields and cause the displacement of another teacher in the chosen subject field, provided that the employee in question "has at least ten years of District seniority," and has taught "in the subject field the equivalent of at least six periods during the most recent six semesters. . . ." According to Ms. Ekchian, the displacement situation is analogous to bumping in a layoff proceeding, and section 6.0 of the CBA signals the employees' acceptance (through their bargaining unit) of three years as a valid measuring period for purposes of recency.

33. For purposes of calculating the "most recent six semesters," the District includes the current school year. Such a calculation essentially limits the recency period to only the prior two school years, as it is assumed that an employee currently subject to layoff and seeking to bump another employee in another position is usually not holding a position into which he or she seeks to bump. The recency clause as written does not apply to pupil

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during the hearing when doing so became necessary. (*Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, 143-44.)

services personnel subject to layoff, i.e. counselors, nurses, etc. Thus, although an elementary school teacher would need to establish recency in order to bump into a secondary position, a pupil services employee would not; such an employee would simply need to have a credential allowing him or her to teach in the position into which he or she seeks to bump. Ms. Ekchian testified that the recency clause is not applied to pupil services personnel because so few of them actually have other credentials that their situations would not impact the layoff process. However, she provided no further details.[8]

34. The District's competency definition is unreasonable and therefore invalid.[9] The practical application of the recency clause is too narrow. Although appellate decisions indicate a five-to-ten year window of prior experience is reasonable, no published decision has upheld a period of only two prior school years. Such a limited period is so narrow that it essentially excludes most Respondents who received layoff notices from exercising bumping rights and impermissibly impedes into their statutory rights to bump. Of greater concern is

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[8] A definition of competency as being one year experience teaching the subject in question within the last ten years was approved by the court in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565-567. Interestingly, the *Duax* court approved the "one year in ten" standard by contrasting it to a "one in the last two or three (years)," which the court deemed "too narrowly defines competency." (*Id*.) More recently, the court in *Bledsoe v. Biggs Unified School Dist., supra,* 170 Cal.App.4th at 142, suggested, without directly addressing the point, that one year experience within the past five years was a valid definition for defining a teacher's competency. The ALJ is aware of no published appellate decision, or a prior layoff decision rendered by a proceeding before the Office of Administrative Hearings (OAH), in which a two or three year period for defining competency has been approved or upheld.

[9] School districts have broad discretion to establish competency standards for purposes of exercising bumping rights. (*Duax v. Kern Community College District, supra,* 196 Cal.App.3d at 564-65.) This broad discretion is limited only by a reasonableness standard. The District's decisions must not be fraudulent, arbitrary, or capricious. The courts have held this standard permits "a difference of opinion on the same subject." (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 808.) It is well established that competence is a threshold inquiry regarding bumping rights. If a permanent teacher is certificated and competent to render a service provided by a more junior employee, the senior teacher is statutorily entitled to bump into the position and cannot be laid off. (Ed. Code, § 44955). Thus, there is a tension between a school district's ability to craft a definition of competency, on the one hand, and a senior employee's right to bump, on the other hand. While a school district has discretion to define competency to meet its needs, where that definition is unreasonable, and therefore an arbitrary and capricious exercise of discretion, the senior employee's right to bump must prevail. Otherwise, a school district could hand-craft such narrow and restrictive standards that would essentially eviscerate any bumping rights and defeat the statutory protection of seniority.

the inconsistent, and therefore arbitrary, application of the competency definition. As pointed out by Respondents, elementary teachers would be barred from bumping because of the recency clause, but non-classroom personnel who had never taught would be allowed to bump into a position if they held the appropriate credential. The fact that the CBA contains a similar recency clause for purposes of transfers does not warrant a different conclusion. The bargained for right of a more senior teacher to displace a less senior teacher during an over-teachered situation is different from the instant situation where the recency clause is being used to impede an employee's statutory right to bump a less senior employee. In many cases, displacement is a matter of reassignment or reclassification; here, bumping is a matter of whether one retains employment.

35. It was established that the following Respondents would be able to bump into other positions, and therefore not be subject to layoff, but for the recency clause of the Board's competency definition, as they are credentialed and competent to teach in the following areas:

a) Sara Line, art/English, Employee No. 794859;
b) Oscar Ochoa, computers, Employee No. 719520;
c) Stephanie Garza, health science, Employee No. 799713;
d) Richard Metzler, music, Employee No. 749989;
e) Kyung Sung, Employee No. 767511, intro to math;
f) Deborah Swanson, Employee No. 932286, single subject English;
g) Lauren Tovar, Employee No. 804538, single subject Spanish;
h) Laura Ramirez, reading/language, Employee No. 799732;
i) Michelle Pan, social science, Employee No. 794960;
j) Araceli Garcia, English/Spanish, Employee No. 703828;
k) Stacy Rivas, history, Employee No. 799791;
l) Tina Curtis, music, Employee No. 801015;
m) Terra Windbering, civic/government, Employee No. 799845;
n) Julia Rodriguez, English, Employee No. 702951;
o) Hector Hernandez, Employee No. 706764, single subject math;
p) Jesus Salvador Landazuri, clear multiple subject credential with a math authorization; and
q) Richard Morse, authorization to teach history in the middle school and ninth grade history.

Skipping

36. Pursuant to the Board's Resolution, the Board determined that it was necessary to retain the services of certificated employees in the 2010-2011 school year regardless of seniority (also known as skipping)[10] who are NCLB compliant, which is a federal and state

[10] 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

requirement of all teachers in core academic subjects. According to the Board's Resolution, if sufficient reductions were not realized after the release of all non-NCLB compliant employees in the affected particular kinds of services, the District would then release employees in the affected particular kinds of services by seniority. To be skipped, employees had to demonstrate to the District that they were NCLB compliant by or before March 15th. Those who did so were not given layoff notices, or if they were given layoff notices erroneously, their layoff notices were rescinded after proving their NCLB compliance by the deadline. In total, there were 187 employees identified as being non-NCLB compliant by the March 15th deadline. They all were given layoff notices.

37. Pursuant to the NCLB, all students in core academic subjects must be taught by "highly qualified" teachers. To be rated as "highly qualified," a teacher must possess a bachelor's degree, a teaching credential, and demonstrate subject matter competence by passing an examination or obtaining a waiver depending on academic coursework.

38. The NCLB was enacted in 2001. The deadline for the District to have only NCLB compliant employees teaching core academic subjects was the 2005-2006 school year. The District advised its certificated staff of this requirement beginning in 2002. However, the District missed the initial deadline and has been found by the California Department of Education (DOE) to be out-of-compliance with NCLB. The District remains out-of-compliance with the NCLB, in that not all those teaching core academic subjects have become highly qualified. The DOE has mandated that the District become NCLB-compliant by a new deadline of June 30, 2011, i.e. the end of the next school year. One possible penalty for remaining out-of-compliance by the time of the new deadline is the loss of federal funding, which would have adverse consequences given the District's current budget deficit. So far, neither the federal government nor the DOE has assessed the District with any penalty for being out-of-compliance, other than requiring principals to advise their students' parents that they are being taught by teachers who are not "highly qualified" for purposes of NCLB.

39. The District will use the special training and experience of its NCLB-compliant teachers in the following school years. First, it must do so for teachers who will teach in academic core subjects in order to avoid the sanctions described above. The District will improve its chances of complying with NCLB and avoiding sanctions by skipping those who will teach core academic subjects and are NCLB-compliant. Second, becoming NCLB-compliant is the result of passing the three-part CSET examination process and being deemed "highly qualified" to teach, which itself is indicative of special training and experience. Thus, the District demonstrated a specific need for personnel to be NCLB-compliant.

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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.)

40. Respondents contend the skipping decision is arbitrary and capricious because it is only applied to multiple subject credential holders, as opposed to other secondary credential holders and non-classroom educators. Respondents contend that demonstrates a disparity of treatment and discriminatory design. The contention is without merit because it is only those who teach core academic subjects who need to be NCLB-compliant. Those who teach at the secondary level or who are not in the classroom do not teach core academic subjects and need not be NCLB-compliant. Further, the statute permits the District to specify a course or course of study, which the District has done.

41. In an effort to allow certificated staff to become highly qualified, the District has provided some internal resources for teachers who need to pass the CSET examination. The District also periodically notified teachers, who were still not highly qualified, of examination preparation courses available to them, and requested them to report their passing examination scores to the District. The District sent those written notices in December 2008, February 2009, and April 2009. Some also received similar written notices in September 2009, October 2009, December 2009, and February 2010.

42. Wendy Gutierrez. Respondent Gutierrez took and passed all three parts of the CSET examination and became NCLB-compliant by 2005. She reported to the District her passing examination scores sometime in late 2005 or early 2006. She was not given a certificate from the District demonstrating her NCLB compliance when she reported her scores to the District. Nonetheless, Respondent Gutierrez established that she notified the District of her NCLB compliance well before the requisite deadline of March 15, 2010. She established the same by her persuasive testimony and corroboration from her colleague Sandra Gutierrez. Respondent Gutierrez established that she should have been skipped along with the other certificated employees who were NCLB-compliant by the requisite deadline.

43. Maura Castillo. Respondent Castillo took and passed all three parts of the CSET examination and became NCLB-compliant by July 2009. She reported to the District her passing examination scores sometime in 2009. She was not given a certificate from the District demonstrating her NCLB compliance when she reported her scores. After learning that District staff still believed she had not submitted proof of her compliance, Respondent Castillo and her principal faxed her passing CSET score sheet to the District on March 16, 2010. Nonetheless, Respondent Gutierrez established that she had initially notified the District of her NCLB compliance in 2009, long before the requisite deadline of March 15, 2010. She established the same by her persuasive testimony. The District presented no evidence concerning when it had received materials from this Respondent, other than the simple assertion that it had not received them by March 15, 2010. Under these circumstances, Respondent Castillo established that she should have been skipped along with the other certificated employees who were NCLB-compliant by the requisite deadline.

44. Veronica Cortez. Respondent Cortez took and passed all three parts of the CSET examination by March 17, 2007. She reported to the District her passing examination scores sometime in 2007. She was not given a certificate from the District demonstrating her NCLB compliance when she turned in her scores. After learning that District staff still

believed she had not submitted proof of her compliance, Respondent Cortez resubmitted her CSET scores to the District on March 16, 2010. Nonetheless, Respondent Cortez established that she had initially notified the District of her NCLB compliance in 2007, well before the requisite deadline of March 15, 2010. She established the same by her persuasive testimony. The District presented no evidence concerning when it had received materials from this Respondent, other than the simple assertion that it had not received them by March 15, 2010. Under these circumstances, Respondent Cortez established that she should have been skipped along with the other certificated employees who were NCLB-compliant by the requisite deadline.

45. Ailee Dembo. This Respondent was actually NCLB-compliant as of 2002, but she did not know it because she had moved here from New York. She presented no evidence establishing that she had demonstrated her compliance to the District by or before March 15th, or that her failure to demonstrate the same was related to any communication received from the District. Once she became aware, in April of 2010, that she had not demonstrated her compliance to the District, she promptly took action. The District now acknowledges that she is NCLB-compliant. However, the District cannot be held accountable for knowing that this employee had qualified by March 15, 2010, when she did not know herself.

46. By a letter dated February 22, 2010, the District notified all of its certificated employees that NCLB compliance would be required for continued employment with the District after June 30, 2010. The letter contained a reminder of the resources available to assist them prepare for the upcoming CSET examinations.

47. The following Respondents received the District's February 22, 2010 letter: Wendy Gutierrez, Cecilia Aguilar, Lisette Barajas, Daisy Barreto, Yolanda Bernal, Nancy Campos, Maura Castillo, Veronica Cortez, Delia Gonzalez, Arlene Gutierrez, Jeanette Gutierrez, Quentin Hall, Marisela Islas, Alejandra Jaramillo, Karen Kim, Ann De Mendoza, Brenda Mosely, Samuel Pasquin, Marlene Ramirez, Lorena Rodriguez, Thomas Runyon, Brooke Sadler Ramirez, Rita Shevlin, Laura Tovar Jimenez, Anabel Zahler, Lilia Navarro, Rosario Chacon, Erica Cohen, Marjon Webster, Hector Martinez, Ailee Dembo, Bianca Sanchez, and Mario Torres (NCLB Respondents).

48. The NCLB Respondents, upon receiving the February 22, 2010 letter from the District, believed that as long as they became NCLB-compliant by June 30, 2010, their employment with the District would continue. Each of these Respondents, however, also received the letters sent in December 2008, February 2009, and April 2009, described above.

49. In 2010, the CSET so far has been offered in January, March and May. March was the first CSET test offered after the District mailed its letter of February 22, 2010, advising employees of the need to be NCLB-compliant by June 30, 2010. Many of the NCLB Respondents took and passed requisite portions of the CSET test offered on March

13, 2010, to become fully NCLB-compliant, but got the results later and weren't able to report their passing scores to the District until well after the March 15th deadline.[11]

50. The NCLB Respondents contend that the District should be estopped from laying them off in this proceeding. They contend estoppel is necessary because they relied on the District's statement in February 2010 that their employment would be continued if they were NCLB-compliant by June 30, 2010. They argue that they relied on that statement and were injured by such reliance because they have been subjected to this layoff proceeding and fear the loss of their employment.[12] However, Respondents have failed to establish at least one element of estoppel, i.e. they relied on the District's letter to their detriment or injury. This is because it was not established that receipt of the February 22, 2010 letter led any of the Respondents to not take and pass CSET exams, or notify the District of the same, prior to the March 15th deadline. Thus, by the time any elementary teacher had received the February 22, 2010 letter, he or she would already have failed to take the CSET exam in time to pass, receive results, and report compliance to the District in time to be skipped. These teachers did not detrimentally rely on the February 22, 2010 letter because no action or inaction occurred on or after that date that could have changed the outcome of their cases.

Bumping & Skipping Applied to Particular Respondents

51. Veronica Ramirez-Pellegrini. This Respondent contends she should be retained because she is the only half-time math coach in the District, and therefore there is no one available to perform her duties half-time. However, she does not have a math credential and therefore could not bump into math. The Board has not decided to skip her position, and an individual employee cannot force the District to make such a decision (see Factual Findings 54-55 below). This Respondent failed to establish either skipping or bumping as a basis to be retained next school year.

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[11] The Respondents in this situation cannot be skipped, because they did not meet the skipping criteria by the March 15th layoff notice deadline. 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.) For example, a school district need not consider credentials obtained after that deadline for purposes of its layoff decisions. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 815.) In this case, these Respondents are in a situation similar to that of an employee who has been issued a credential but has failed to file it with his/her employing school district before the March 15th deadline.

[12] Estoppel may be invoked when a party establishes the following elements: (1) the party to be estopped must be apprised of the facts; (2) she must intend that her conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) the other party must rely upon the conduct to her injury. (*Crumpler v. Board of Administrators* (1973) 32 Cal.App.3d 567, 581.)

52. Cary Dolan, Gabriela Mendoza (Cerda), Rosalva Ochoa DeSantos, and Warren Ho. These four Respondents are assigned to the Arts Education Branch of the District. They hold multiple subject credentials with authorizations in dance. Their contracts are for "elementary teaching." They are assigned as itinerant dance teachers who travel to various elementary school sites to teach dance.

53. The four dance teachers complain that they have been bumped by junior teachers who hold physical education (P.E.) credentials but do not have dance authorizations. Although the evidence is vague, in actuality the junior teachers are being retained because they are able to bump into P.E. assignments next school year; they are not bumping into these four Respondents' positions as elementary dance instructors. The four dance teachers cannot similarly bump into P.E. positions because they do not hold P.E. credentials.[13]

The Superior Court's Injunction

54. On May 13, 2010, and just as the evidentiary phase of this hearing was being completed, Judge William F. Highberger of the Superior Court of the State of California, County of Los Angeles, in case number BC 432420, issued a preliminary injunction against the District, enjoining the District from "budget-based layoffs of classroom teachers" at three middle schools within the District. There are 75 certificated employees subject to that order. The court ordered that those individuals must be skipped by the District, pursuant to Education Code section 44955, subdivision (d) (2), and may not be subject to bumping. The injunctive relief was based on findings that the layoff of the certificated staff in question would deprive particular students of their constitutional right to a fair education. The court was also clear, however, that nothing in the order granting injunctive relief precludes the District from either rescinding layoff notices previously served or from otherwise proceeding with the instant layoff matter.

55. In light of Judge Highberger's order, the Respondents argue in their closing brief that they should be allowed to testify in this matter in order to establish that the reduction or elimination of their particular positions will similarly cause a constitutional deprivation to their students. During the hearing, the ALJ denied a similar request, for lack of jurisdiction to decide for the District what types of services or positions it should skip pursuant to Education Code section 44955, subdivision (d).[14] While the Superior Court has determined that it has jurisdiction to force the District to make certain skipping decisions, the case before the Superior Court is a different proceeding brought under different laws. The

[13] Since they are contracted as "elementary teachers" and are assigned to elementary school sites, the four dance teachers fall within the Board's Resolution reducing or eliminating the particular kinds of services of "Permanent Elementary Teachers" and are thus subject to layoff.

[14] Education Code section 44955, subdivision (d), provides that "a school district *may* deviate from terminating a certificated employee in order of seniority . . . ." (Emphasis added.)

ALJ declines to expand the reach of the injunctive relief and apply it beyond its scope. While the certificated staff subject to the Superior Court action have had those issues litigated and decided in another forum that apparently has jurisdiction to decide such issues, the remaining Respondents in this case did not, despite having had an opportunity to do so. Respondents have raised no new matter in the closing brief that would warrant a reversal of the prior ruling.

Rescinded Layoff Notices

56. During the hearing, the parties stipulated that the District would rescind the layoff notice provided to Respondent Elizabeth Castillo Salas.

57. During the hearing, the parties stipulated that Respondents Maria Finnerty, Jeeda Gabriel, Eesha Chabria, Chevon Griffith and Susan O'Malley were appropriately noticed for layoff in the positions they now occupy, but that they are credentialed and competent to teach in special education positions next school year. Each Respondent has agreed that their employment with the District next year will be in a special education position. The District has therefore rescinded the layoff notices provided to them.

58. During the hearing, the parties stipulated that Respondent Isabelle Ramirez was appropriately noticed for layoff in the position she now occupies, but that she has the credentials and competence to teach math, that she is currently teaching math on a full-time basis, that she will complete the current semester as a full-time math teacher, and that next year she will be reemployed as a math teacher. The District has therefore rescinded the layoff notice provided to her.

The Precautionary Respondents

59. The precautionary notices described in Factual Finding 10 above were sent to those who are currently substitute teachers. The Respondents who received those notices (precautionary Respondents) were formerly probationary employees who were laid off last year.[15] There was no evidence presented that these employees were not properly classified as non-permanent last year, or that they were not properly laid off last year.

[15] These individuals were laid off pursuant to Article 13 of the CBA. The District and the employees' union negotiated this layoff procedure in accordance with Education Code section 44959.5, subdivision (d), which permits school districts with an average daily attendance (ADA) over 400,000 to negotiate an alternate layoff procedure for probationary certificated employees.

60. Pursuant to the Education Code and the CBA, the precautionary Respondents were provided priority rights to substitute assignments for the current school year.[16] The District assigned some of those Respondents as substitutes to cover for employees temporarily absent from duty (assigned to the day-to-day substitute pool), and others were assigned to cover for employees granted a leave of absence (long-term substitutes).

61. Respondents Ilana Kornblum, Lizbeth Leon, and Leslie Miller are some of the Respondents who received the precautionary notices. During the 2008-2009 school year they were probationary employees. After being laid off last school year, all three were rehired as substitutes and returned to their same positions, which were held vacant at Woodland Hills Academy. Although they signed substitute contracts, in every other respect they performed the same services which they previously performed. These Respondents contend these facts demonstrate that they were not filling in for absent employees but rather were serving in their former positions. Accordingly, these Respondents contend that when they were reinstated they were still probationary, and when they served one day this school year they became permanent employees under the Education Code.

62. Respondents' argument is unconvincing, in that they did not establish that they were improperly assigned to substitute service. The District was not required to establish that any precautionary Respondent was assigned to a particular school site from which any particular employee was on leave.[17] A school district the size of the District can be presumed to have a constant percentage of teachers on short-term or long-term leaves of absence, and a large number at that.[18] Exhibit 17 shows that a large number of the precautionary Respondents were reassigned to the daily substitute pool. And of the 412 precautionary Respondents, only the three in question were shown to have been reassigned to their prior positions. Since school districts are allowed to hire temporary teachers in an amount not to exceed the aggregate of probationary and permanent teachers on leave at any one time, and are not required to match rehired substitutes exactly to the same positions on leave status, it is not unusual to see that a few, or several, of the precautionary Respondents

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[16] Education Code section 44957, subdivision (d), provides for preferential substitute rights to laid off probationary employees who shall "be offered prior opportunity for substitute service during the absence of any other employee who has been granted leave of absence or who is temporarily absent from duty." The Education Code also permits the District to negotiate alternative post-layoff rights customarily set forth in section 44957. (Ed. Code, § 44959.5, subd. (a).)

[17] See *Santa Barbara Federation of Teachers v. Santa Barbara High School District* (1977) 76 Cal.App.3d 223, 229-233. In *Santa Barbara*, the court adopted the school district's argument that "the statute requires only that the total number of temporary teachers not exceed the aggregate of probationary and permanent teachers on leave at any one time."

[18] *Santa Barbara Federation of Teachers v. Santa Barbara High School District, supra,* 76 Cal.App.3d 223, 229-233.

were reassigned to their former positions. It would be a wasteful exercise to require school districts to purposely rehire formerly laid off teachers but place them in completely different schools or unfamiliar assignments just for appearances. But that is essentially the result of what Respondents argue. Respondents offered no evidence showing that the District hired more temporary employees than the aggregate of certificated staff on leave or any evidence suggesting that the District's practices regarding the precautionary Respondents were a ruse. Further, pursuant to the Education Code and the CBA, the District was required to rehire the precautionary Respondents as substitute teachers.

63. Norma Leticia Felix. This precautionary Respondent also requested an adjustment to her RIF date. However, as a precautionary Respondent, she is not entitled to a RIF date.

Respondents Seeking to Change Their Seniority Dates

A. Stipulations Regarding RIF dates

64. Diana Ginns. The parties stipulated that this Respondent's RIF date is September 10, 2007.

65. Lara Calgiocioglu. The parties stipulated that this Respondent's RIF date is April 16, 2007.

66. Steve Tokeshi. The parties stipulated that this Respondent's attendance at a pupil-free day on September 1, 2006, was his correct RIF date.

B. Early Report for Buy Back Days

67. Seniority is measured from the first date on which an employee renders paid service in a probationary position.[19] Often times, and for various reasons, probationary teachers report to their school sites before the date specified as the beginning of the school year in their collective bargaining agreements. The parties agree that there are no statutes or cases that provide guidance as to whether those earlier dates should be viewed as a probationary employee's first date of paid probationary service.

68. There are many factors that can go into determining whether those early report dates constitute the first date of paid probationary service. Those factors include whether or not the early report dates are recognized as part of the negotiated school year in a collective bargaining agreement; whether attending an early report date was mandatory or voluntary; and whether the employee received regular pay for the early report day, a stipend, or other form of special payment. The treatment of early report days as part of the negotiated school year, the fact that attendance is mandated by the district in question, and the receipt of regular pay for such attendance are all facts that tend to demonstrate the early report date is

[19] Education Code sections 44845 and 87414.

included in service rendered as a probationary employee. The lack of recognition of early report days as part of the negotiated school year, voluntary attendance, and special payments other than regular salary tend to demonstrate the opposite.

69. The consistent application of these factors is important, because otherwise great mischief can be done to the seniority system. For example, allowing an employee to randomly establish their own seniority date by simply visiting their classroom before classes begin would be unfair to other employees who only reported when required. The same can be said of allowing employees to increase their seniority because they attended training that was either not mandatory or was subject to extra compensation due to the fact that it occurred outside of the negotiated school year. An unfair situation may arise when two probationary teachers have the same start date, but one is required to attend an earlier day of new teacher orientation but the other is not so required based on his/her prior experience elsewhere as a teacher. It is indeed an inequitable situation to deem the former more senior to the later simply because of his or her inexperience. Annualized pay presents a similar problem. A teacher who receives his or her pay spread out through the year (annualized) can receive a paycheck on the first of the month, but not commence work until the end of the month. The date on which a paycheck is issued in that situation does not demonstrate the date on which paid service actually commences.

70. On the other hand, it is unfair to allow the collective bargaining agreement to dictate an employee's seniority when he or she is mandated to begin their contracted services by their immediate supervisor and is paid regular salary for such service. Thus, it is hard to establish a bright-line test that could fairly decide any particular situation. It is the evaluation of all these factors that is most helpful, until either the Legislature or the appellate courts provide more guidance.

71. In this case, many of the Respondents reported to their school sites before classes began for the school year for what were known as "buy back" days. Those were essentially days of training or professional development provided to teachers during off track, vacation periods or weekends. The buy back days were not part of the school year negotiated in the CBA and therefore were voluntary. In 2006, the District attempted to make attendance at buy back days mandatory, but ultimately failed to do so. Buy back days were eliminated as of the 2008-2009 school year. The teachers who attended the buy back days were paid for their attendance by the District, but the pay stubs submitted by the Respondents in question uniformly show that the buy back day payments were separate and distinct from their regular salary. For example, the buy back pay was accounted for separately from regular salary on the pay stubs, had a different code, and had different pay rates.

72. The following Respondents testified that their RIF dates should be deemed earlier than as stated in the District's Seniority List because they were required to attend buy back days before the beginning of their inaugural school years with the District: Andrea

Deatrick; Moshira Attala[20]; Lizbeth Leon; Lynn Mejia; Nicole Nigosian; Daniel Pattison; Keith Shimazaki; Yura Tamaki; Bruce Wright; Meredith Young; Consuelo Lopez; Christina Polay; Sheryl Rachmel, Christina Venegas, Araceli DePraect, Jennifer Preuss, and Claudia Perez. As discussed above, buy back days were not part of the negotiated school year pursuant to the CBA. It was also not established that these Respondents' attendance at the buy back days was mandatory. Some of their principals strongly encouraged them to attend, but did not demand their attendance at the risk of discipline. A few other Respondents submitted letters from their principals attesting to the mandatory nature of their attendance, but failed to establish that they received regular compensation for their attendance or that all of their colleagues also attended the training (which suggested that attendance was not mandatory). Overall, while these Respondents were paid for attending buy back days, they received a special form of payment by the District that was separate and apart from their regular salary. The fact that the payment was different from their regular salary corroborates the District's view that attendance was not part of the negotiated school year. Therefore, these Respondents failed to establish a basis for adjusting their seniority dates by virtue of attending earlier buy back days.

C. Early Reporting for Training

73. The District also provided in-service training for teachers on various particular topics. The CBA does not provide that the in-service training is part of the contracted school year.

74. Alma Melgar. She submitted exhibits showing, and testified, that she was not paid her regular salary for attending the subject professional development days, but instead was paid a stipend in the amount of $102 per day.

75. Margarita Wang testified that she was paid by stipend for attending DRW training. Although she testified that her principal required her to attend, her testimony overall was equivocal regarding whether that in-service training was mandatory.

76. Regina Ramos sought to have her RIF date adjusted from August 17, 2006, to July 17, 2006, which was the first day of mandatory training. She testified that she attended OCR and math training. She failed to establish that her attendance was mandatory. It is also not clear whether she was paid her regular salary for attending that training, or simply received an annualized paycheck at the beginning of the month in which she began teaching.

77. Conseulo Lopez sought to have her RIF date adjusted from September 1, 2006, to August 10, 2006. Respondent Lopez testified that she attended the "ten schools program" staff development. However, the sign in sheets she submitted establish that less than half of

[20] Respondent Attala was also unpersuasive in her testimony that September 4, 2006, was her first date of paid service. That day was a school holiday, Labor Day.

the staff attended that professional development. She admitted that not everyone attended the training and does not know if anyone was disciplined. The lack of attendance suggests that the training was not mandatory.

78. Mahbanoo Sabet-Peyman sought to have her RIF date adjusted from September 1, 2006, to June 1, 2006. Respondent Sabet-Peyman admits that she was paid by stipend for attending OCR, math, and science workshops. It was not established that her attendance was mandatory.

79. Keith Shimazaki sought to have his RIF date adjusted from September 1, 2006, to August 21, 2006, because he attended OCR training that date. However, Respondent Shimazaki could not state that his attendance was mandatory, only that it was his understanding that it was a mandatory training.

80. Janice Reid. This Respondent failed to establish that she attended mandatory training on July 17, 2006, or that she was paid her regular salary for such training if she had.

81. Based on the above, the preponderance of the evidence established that those who attended special training were paid stipends at a much higher rate of pay that was not part of their regular salary. It was not established that the CBA included early training as part of the negotiated school year. Under these circumstances, these Respondents failed to establish a basis for adjusting their RIF dates.

D. Early Reporting for Work

82. Some of the Respondents contend that they should have earlier RIF dates because they began to actually perform services as probationary employees and were compensated for the same before their RIF dates assigned by the District.

83. Regina Ramos. This Respondent failed to establish that she was paid for service on July 5, 2006. She presented no pay stubs for that period and admitted that she was not in the classroom or otherwise working on that date. She established no basis to adjust her RIF date.

84. Mariam Adamian. This Respondent failed to establish that her RIF date should be adjusted to November 8, 2005. At that time, she was teaching in a long-term substitute capacity. Her probationary contract was effective when she began teaching in her regular assignment, which was January 4, 2006. She testified that she reported to work early for the regular assignment in November of 2005, but her pay stubs show she was paid for service that month as a long-term substitute, not as a probationary employee. She knew her work in November was as a long-term substitute, not as a probationary employee, which is supported by the contracts she signed at the relevant times. This Respondent failed to establish a basis to adjust her RIF date.

85. Tina Choi. She signed a probationary contract effective August 20, 2007. Her principal required her to begin registering and enrolling students on that date, as established by Respondent's testimony, a time sheet from school, and as corroborated by a note from her principal. This Respondent was paid for her service on that date. Therefore, Respondent Choi established that her RIF date should be adjusted to August 20, 2007.

86. Zarmanee Helwani. This Respondent signed a probationary contract effective August 22, 2007. Her principal required her to begin registering and enrolling students as a counselor on that date, as established by Respondent's testimony and her probationary contract. This Respondent was paid for her service on that date. Therefore, Respondent Helwani established that her RIF date should be adjusted to August 22, 2007.

87. Margarita Wang. The District's RIF date for this Respondent is August 17, 2006. Respondent contends her correct RIF date is July 7, 2006, when she signed her early entry contract. This Respondent's testimony was equivocal regarding whether she performed any duties on July 7, 2006. Under these circumstances, this Respondent did not establish a basis to adjust her RIF date.

88. Meredith Young. The District's RIF date for this Respondent is September 4, 2007. She was hired on August 1, 2007, which she contends is her correct RIF date. Although she admits no students were in her classroom until September, this Respondent submitted a pay stub showing she received her regular salary for the time period of August 1, 2007, through August 31, 2007. She concedes that she provided no service on August 1st, but only that the District paid her (due to annualization) as of August 1st. She testified that she periodically visited her classroom in August to prepare for the upcoming school year, but failed to establish that those visits were mandatory. Under these circumstances, this Respondent did not establish a basis to adjust her RIF date.

89. Alba Correa. This Respondent testified that her RIF date should be adjusted from September 4, 2007, to a new date of August 8, 2007, because she began performing her services as a counselor at that time. While Respondent accepted a probationary contract on August 8, 2007, and testified that she undertook some activity during August, it was not clear whether she was compensated for that time as a counselor or was paid a special "z" payment used to pay staff for working during the summer period. Respondent Correa offered no other corroboration, such as information from her principal or a pay stub. Under these circumstances, it was not established that there is a basis for adjusting her RIF date.

90. Cheryl Kono. The District's RIF date for this Respondent is September 20, 2007. The District issued a document verifying that her first date of paid service in that capacity was September 19, 2007. Respondent was persuasive in her testimony that she actually rendered services as a PSA counselor on September 19, 2007, and that she received regular salary for her services on that date. The District was unable to controvert the evidence submitted by this Respondent. Under these circumstances, this Respondent established that her RIF date should be adjusted to a new date of September 19, 2007.

E. Provisional Contracts

91. Yamila Estrada. This Respondent contends her RIF date should be adjusted from July 5, 2006, to November 5, 2001. After first working for the District as a substitute teacher, the District issued her a "provisional contract" on November 1, 2002. A provisional contract refers to the type of credential held by the employee, not the status or classification of the teacher. Specifically, it does not state whether the teacher is a substitute, temporary or permanent employee. At that time, Respondent Estrada had an emergency permit, which is less than a full credential. By default, Respondent Estrada is presumed to have been serving as a probationary employee at that time.[21] However, effective July 1, 2003, Respondent Estrada was notified of her transfer to the day-to-day substitute unit. She worked as a substitute employee until July of 2006. This constituted a break in service from her initial probationary period. It was not established that this transfer was done in an attempt to manipulate the classification system to her detriment.[22] Respondent later signed a probationary contract dated July 1, 2006. This Respondent did not establish a basis to adjust her seniority.

92. Gabriela Mendoza. The District's RIF date for this Respondent is September 1, 2006, which was the effective date of a probationary contract issued to her. Respondent Mendoza was previously issued a provisional contract on August 2, 2006, at a time when she had less than a full credential. This was a suspect classification pursuant to *Kavanaugh*. However, she began serving as a full-time itinerant dance instructor on July 24, 2006, and was paid for her service beginning on that date. At the time, she was advised that she was hired as a long-term substitute employee, but no contract was submitted for the time period of July 24 through August 2, 2006. The District did not establish that this Respondent was properly classified as a temporary or substitute employee at that time.[23] Pursuant to the *Kavanaugh* and *Bakersfield* cases, she started her service as a probationary employee on July 24, 2006, which should be her correct RIF date.

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[21] See *Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911, 916-917, in which it was held that "probationary" is the default classification; i.e., school districts are to classify all teachers as probationary who are not otherwise required by the Education Code to be classified as permanent, temporary, or substitute. The Court concluded that the relevant Education Code sections revealed the Legislature's intent that teachers be informed of their classification sufficiently early in the process to enable them to make informed decisions regarding their future employment. (*Id.*, at 921.)

[22] See *Fine v. Los Angeles Unified School Dist.* (2004) 116 Cal.App.4th 1070, 1080.

[23] See *Bakersfield Elementary Teachers Assn. v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1282-1283, in which the court held that it is improper for a school district to classify a teacher as temporary simply because she has less than a full credential. By default, teachers in such a situation, who were not properly qualified to be assigned permanent or substitute status, should be classified as probationary employees.

93. Deborah Weiner. The District's RIF date for this Respondent is March 13, 2008, when she was issued a probationary contract. However, she began serving the District on September 14, 2007. At that time, she was serving under a "university intern" contract, which is akin to the aforementioned provisional contract. This was a suspect classification given that she was issued a non-probationary contract at a time when she had less than a full credential. The District did not establish that this Respondent was properly classified as a temporary or substitute employee at that time. Pursuant to the *Kavanaugh* and *Bakersfield* cases, it is presumed that she initially served as a probationary employee. Since she began that service on September 14, 2007, her RIF date should be adjusted to that date.

94. Julia Cervantes. The District has given this Respondent a RIF date of January 3, 2006. Respondent contends it should be January 10, 2003, when she taught as an elementary teacher under a university intern contract.

A. However, she was displaced due to an over-teachered situation effective June 30, 2005, and no longer had a position. In July of 2005, she signed an agreement to serve as a day-to-day substitute teacher, and she served in that capacity until she signed a probationary contract effective on her RIF date, when the District had a full-time teaching assignment available for her. By that time, she had obtained a clear credential. Because it was not established that her earlier temporary status was related to her having an intern credential, the *Kavanaugh* and *Bakersfield* cases do not apply to her situation.

B. This Respondent also contends her RIF date should be at least December 21, 2005, because she actually began to work that day in her new assignment, which was the day before the holiday break began. However, Respondent failed to establish that, in fact, she worked on that date or that she was paid for such work. The pay stubs she submitted do not show her dates of work in December of 2005, which is important because during some of that time she was still working as a substitute teacher. She failed to establish a basis to adjust her RIF date.

95. Janet Ismerio. This Respondent contends her RIF date should be adjusted from January 9, 2006, to October 9, 2000. She was initially issued provisional contracts as a pre-intern, because she had less than a full credential, for the 2000-2001, 2001-2002, and for part of the 2002-2003 school years. The District did not establish that this Respondent was properly classified as a temporary or substitute employee at that time. Since this was a suspect classification under the circumstances, it could have been presumed this Respondent was serving as a probationary employee during those times. However, in October of 2002 she was displaced to a substitute position because the credential she had at the time only allowed her to act as a substitute. She was advised of that fact. This constitutes a break in her service. She continued to serve in her substitute capacity until she was reassigned to her own classroom and issued a probationary contract in January of 2006. For the same reasons explained above regarding Respondent Estrada, this Respondent has not established a basis to adjust her RIF date.

96. Enrique Saldana. The District's RIF date for this Respondent is June 24, 2008. He seeks to adjust his RIF date to August 24, 2007, when he began serving under a "university intern" provisional contract. He served the entire school year, as well as the following one. His first paid date of service under those contracts was August 24, 2007. He was later issued a probationary contract effective June 24, 2008, which is his District assigned RIF date. He has had no break in service at any time. Pursuant to the *Kavanaugh* and *Bakersfield* cases, his RIF date should be when he initially began serving under his first provisional contract. Therefore, this Respondent has established a basis to adjust his RIF date to August 24, 2007.

97. Roberto Camberos. This Respondent sought to have his RIF date adjusted from November 28, 2005, to July 1, 2001. He initially served the District under a provisional contract. However, he was given notice that he was displaced to substitute teaching because he was not NCLB-compliant and he signed appropriate substitute documents in June of 2003. He continued to serve in a substitute capacity thereafter. This constitutes a break in his service. He was issued his first probationary contract in November 2005. Since Respondent Camberos was provided notice of his reassignments, including in writing, the *Kavanaugh* and *Bakersfield* cases do not apply to his situation and there is no basis to adjust his RIF date.

98. Ryan Small. This Respondent sought to have his RIF date adjusted from January 27, 2006, to October 15, 1994. Beginning in 1994, Respondent Small served as an "individualized intern." However, the California Commission on Teacher Credentialing (CTC) made a decision that individuals could no longer be employed in that capacity. Respondent Small therefore was reclassified as a substitute until he signed his probationary contract in 2006. Respondent Small was notified of this reclassification and the reason there for. It was not established that Respondent Small labored under a misconception that he was a probationary employee during this period, as evidenced by a document he submitted just prior to the hearing in which he stated that he had a RIF date of January 27, 2006. Under these circumstances, this Respondent did not establish a basis to adjust his RIF date.

99. Nancy Gonzalez. This Respondent sought to have her RIF date adjusted from May 15, 2007, to July 5, 2005. She initially served under a provisional contract from October 5, 2005, to June 30, 2006, when she had less than a full credential. She then served under a temporary contract for the 2006-2007 school year, but taught at the same school. The District did not establish that this Respondent was properly classified as a temporary or substitute employee at that time. It appears that the long-term contract was related to the fact that she had less than a full credential. She later signed a probationary contract on May 10, 2007, serving at the same school. Pursuant to the *Kavanaugh* and *Bakersfield* cases, her RIF date should be when she initially began serving under her first provisional contract, as she had no break in service but was simply given different contracts because she had less than full credentials. This Respondent's RIF date should be adjusted to July 5, 2005.

100. Jennifer Preuss. The District's RIF date for his Respondent is September 5, 2006, the effective date of her first probationary contract. Respondent Preuss contends her RIF date should be earlier. She initially served the District under provisional contracts, beginning in 2002. This was because she had less than a full credential. However, she knowingly became a substitute teacher in July of 2004 and continued substituting in various capacities through 2005. She obtained a full credential at some point during that time period. The record is not clear as to her teaching duties for the remainder of the 2005-2006 school year. Under these circumstances, it was not established that the *Kavanaugh* and *Bakersfield* cases apply to her situation or that there is a basis to adjust her RIF date.

F. Various Contract Issues

101. Amanda Fitzpatrick. During the summer of 2006, this Respondent was notified and agreed that she would be retained in the substitute teacher pool for the beginning of the 2006-2007 school year, and would be offered a contract for work by mid-October 2006. She began service in the fall of 2006 as a substitute teacher, pursuant to a day-to-day substitute teaching contract she signed before doing so. She later signed a probationary contract on October 10, 2006, which is the RIF date assigned to her by the District. It was not established that there is a basis for adjusting her RIF date.

102. Arlene Gutierrez. This Respondent failed to present sufficient evidence establishing a basis for adjusting her seniority date based on her testimony concerning a prior long-term temporary assignment.

103. Christian Herrera. This Respondent contends his RIF date of September 1, 2006, should be adjusted because he taught a summer school intervention class in July of 2006. Although he signed a probationary contract to be effective in September of 2006, he also signed an agreement to serve as a substitute teacher in February of 2006. The pay stubs he submitted for July 2006 reflect that he was paid during that time period as a substitute. Under these circumstances, it was established that this Respondent worked in July of 2006 as a substitute teacher and not as a probationary employee. Therefore, it was not established that there is a basis for adjusting his RIF date.

104. Salvador Montes. This Respondent's RIF date is August 29, 2006, which is when he began an assignment as a probationary employee at a year-round school. He contends his RIF date should be adjusted to July 1, 2006, which was a Saturday. Respondent failed to establish that he provided services on that Saturday. This Respondent was completing his substitute service at that year-round school prior to August of 2006. He failed to establish that any pay he received prior to August of 2006 was for his work as a probationary employee, as opposed to his substitute service. Therefore, this Respondent failed to establish a basis to adjust his RIF date.

105. Mahbanoo Sabet-Peyman. This Respondent contends her RIF date should be adjusted to June 1, 2006, as opposed to the District's RIF date for her of September 1, 2006. This Respondent began teaching for the District in October 2005 under a substitute teacher contract. In July of 2006, she signed a probationary contract, to be effective on or before October 10, 2006. She was compensated in June and July as a substitute teacher. Under these circumstances, it appears that this Respondent first rendered paid service in her probationary capacity on September 1, 2006. There is no basis to adjust her RIF date.

106. Anna Manahan. This Respondent sought to have her RIF date adjusted from October 15, 2007, to September 4, 2007. Although she served the District prior to these dates, she resigned on January 26, 2007. The Resignation Form she signed provides, "I understand there is no guarantee of future employment." When Respondent Manahan returned to the District at the beginning of the 2007-2008 school year, she was offered a position as a substitute employee, and signed a substitute contract. She was not offered a new permanent contract until October 15, 2007. There is no basis to adjust her RIF date.

107. Tracey Maye. This Respondent's RIF date is September 1, 2006, when she was issued her probationary contract with the District. She seeks to adjust her seniority date to September 1, 2005, because she served the entire 2005-2006 in the same position as a long-term substitute employee. At the time, she had a full credential. She argues that she should be able to tack-on the 2005-2006 school year for purposes of her seniority date pursuant to Education Code sections 44918 and 44914.[24] Her argument is without merit. Section 44918 is not applicable to the District, since the District has an ADA above 400,000 students. Section 44914 is permissive; a school district does not have to apply it. The District has decided not to apply it in this case. This Respondent has not established a basis to adjust her RIF date.

108. Emily Smith. This Respondent seeks to have her RIF date adjusted from May 10, 2006, to September 2, 2005. She signed a contract for temporary employment on August 3, 2005, and a probationary contract on May 10, 2006. It was not established that the temporary contract was a suspect classification for purposes of the *Kavanaugh* and *Bakersfield* cases. For the reasons described above with regard to Respondent Maye, this

[24] Both statutes provide that an employee who has served 75 percent or more of a school year as a substitute or temporary employee is eligible to be deemed to have served that school year as a probationary employee if they serve the following school year in a probationary status. However, Education Code section 44918, subdivision (f), indicates that the statute does not apply to school districts in which the average daily attendance is in excess of 400,000. Education Code section 44914 is permissive, in that it provides that "the governing board of the district *may* count the year of employment as a substitute or as a substitute and probationary employee as one year of the probationary period which he is required by law to serve as a condition to being classified as a permanent employee of the district." (Emphasis added.)

Respondent is not eligible to tack-on her prior year of temporary service. Thus, no reason was established to adjust Respondent Smith's RIF date.

109. Sonia Solis. The District's RIF date for this Respondent is September 8, 2009. However, she signed a probationary contract effective August 28, 2006, and began service on that date. Under these circumstances, Respondent Solis's RIF date should be adjusted to August 28, 2006.

110. Araceli DePraect. This Respondent's RIF date is September 1, 2006. She seeks to adjust it to November 7, 2005, when she began teaching at the Arroyo Seco Magnet School as a long-term substitute employee. She was issued her probationary contract effective on her RIF date. It was not established that there are any *Kavanaugh* or *Bakersfield* issues that pertain to her situation. Under these circumstances, she established no basis to adjust her RIF date.

111. Martha Garibay. This Respondent sought to adjust her RIF date from June 23, 2006, to August 22, 2005. However, she served from August 2005 through June 2006 as a long-term substitute teacher filling in for another teacher who was out on a leave of absence. She was later issued either a probationary or provisional contract effective June 23, 2006, which is her RIF date assigned by the District. Under these circumstances, there is no basis to modify her RIF date.

112. Alma Melgar. This Respondent sought to have her RIF date adjusted from September 1, 2006, to November 2001. But she admitted to a complete break in service from June 2005 to July 2006, an entire school year, during which she did not work for the District. She then signed a probationary contract for the 2006-2007 school year, effective on her RIF date. There is no basis to adjust her RIF date.

G. Returning to Service After Resignations

113. Five Respondents testified or intimated that their RIF dates should be adjusted due to circumstances surrounding past resignations from the District.

114. The policy of the District is to permit certificated employees returning to employment on the same or equivalent salary table within a 39-month period after a resignation to maintain their permanent status, but not their RIF date. (CBA, Art. XIV, § 15.0.) If the employee is rehired at a lower salary table, they are treated as a new hire. (CBA, Art. XIV, § 15.2.) District policy is to inform inquiring employees of the above.

115. Emily Morris. It is not clear what new RIF date this Respondent was requesting. However, she testified that when she left employment at the District to go to work for the Duarte Unified School District, she was directed by administrators from Duarte Unified to resign from LAUSD. She testified that LAUSD only told her that she would maintain her permanent status, not her seniority date.

116. Cynthia Ramos. This Respondent sought to have her RIF date adjusted from September 4, 2007, to August 2003. She resigned on May 28, 2006, and later signed a contract returning to the District on April 28, 2007. Respondent Ramos made the decision to resign from service with the District and go home to be with her parents and sick father before discussing her resignation with District staff. Regardless of what District officials told her, she still would have returned home. Therefore, there was no evidence that she had relied on any statement made by District personnel. Her testimony was a bit unclear as to the statements made to her, where she admitted that she was not "exactly" sure what she was told, although she remembered being told she could come back as a permanent employee.

117. Alesia Pride. This Respondent sought to have her RIF date adjusted from September 1, 2006, to September 2, 2003. Respondent Pride signed her initial probationary contract on August 18, 2003, and later resigned from the District effective June 30, 2005. She had decided to leave in March or April 2005, but did not contact District personnel about that decision until June 2005. Because she made her decision prior to any contact with District officials about her situation, she could not have relied on such comments made by the District. When Respondent Pride returned to the District in the middle of the 2005-2006 school year, she was given a substitute contract and served as a substitute until returning to permanent status in the fall of 2006.

118. The legal basis upon which these three Respondents (Morris, Ramos and Pride) seek to adjust their RIF dates is not clear. The most apparent is some form of estoppel, based on comments these Respondents attributed to District staff which they suggest led them to decide to resign from District service. Yet the elements of estoppel (see footnote 12 above) were not established as to these Respondents, namely that the District made statements to induce these Respondents to resign or that these Respondents relied on any such statements. There is no basis to adjust these Respondents' RIF dates.

119. Lorena Reyes. This Respondent sought to have her RIF date adjusted from September 11, 2006, to March 1997, when she returned from a prior resignation. However, she resigned again from the District in 2000. At that time, she executed a contract to teach as a substitute and to be an advisor in the Adult Education Division. From 2000 through 2006, she worked as an hourly employee in adult education. She returned to elementary teaching in September 2006 under the probationary contract she signed on September 7, 2006, and which was effective on her RIF date. There is no basis to adjust her RIF date.

120. Tiffanie Thompson-Griffin. This Respondent sought to have her RIF date adjusted from May 12, 2008, to August 7, 2007. She resigned as a permanent employee on August 21, 2006, executing a form that provides "I understand there is no guarantee of future employment." She returned to the District under a temporary contract on July 9, 2007, and later was given a probationary contract on May 28, 2008. She was rehired at a lower salary table than when she resigned as a permanent employee. Respondent Griffin presented no legal authority establishing that the District was prohibited from initially reemploying her as a temporary employee after her resignation, or that the District was required to restore her prior RIF date.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements of Education Code sections 44949 and 44955 were met. (Factual Findings 1-13.)

2. (A) A school psychologist (Thea Douglas), and two secondary counselors (Sarah Shippy and Gabriela Morales) are being retained, even though they are junior to many Respondents who have the same positions. For that reason, Respondents argue that all secondary counselors with greater seniority than Ms. Shippy and Ms. Morales must be retained, and all psychologists with greater seniority than Ms. Douglas must be retained. Respondents rely on a literal interpretation of Education Code section 44955, subdivision (b), which provides, "the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." This is the so-called "domino theory."

(B) Application of the domino theory is not supported by relevant legal authority. For example, it has been suggested that the proper remedy for such a situation is for a "corresponding number of the most senior employees" who did receive a layoff notice to have their notices withdrawn. (*Alexander v. Delano Joint Union High School District* (1983) 139 Cal.App.3d 567, 576.) Education Code section 44949, subdivision (c) (3), provides that "non-substantive procedural errors committed by the school district . . . shall not constitute cause for dismissing the charges unless the errors are prejudicial errors." This provision suggests that when a school district, through oversight, fails to notice one employee, that procedural error should only result in one corresponding respondent having his/her layoff notice withdrawn, as that employee would be most properly viewed as the one suffering prejudice. A noted legal scholar on school district layoff cases in California disapproves of applying the domino theory in cases of good-faith errors by districts. (Ozsogomonyan, *Teacher Layoffs in California: An Update*, (1979) 30 Hastings Law Journal 1727, 1754-1759.) Finally, the approach approved by the *Alexander* court has been generally accepted by ALJs of the Office of Administrative Hearings in cases of good faith errors by districts.

(C) In this case, there is no evidence suggesting that the failure to provide Ms. Shippy, Ms. Morales or Ms. Douglas with proper layoff notices was the result of anything other than inadvertence, which can be reasonably assumed given the massive number of employees involved (or potentially so) in this matter. Thus, the appropriate remedy relative to Ms. Shippy and Ms. Morales not receiving layoff notices is for the two most senior secondary counselor Respondents to have their layoff notices withdrawn, i.e. Mr. Gonzalez and Ms. Ramirez. The District urges that only the most senior secondary counselor need be retained because the Board still has time to terminate the employment of non-permanent employee Morales. However, Ms. Morales is still employed by the District. The ALJ has no jurisdiction to mandate the employment rights of situations of those other than Respondents in this matter, so this situation cannot be remedied by an order herein with respect to Ms. Morales. (Factual Findings 1-27.)

(D) With respect to Ms. Douglas, the proper remedy is to have the most senior school psychologist Respondent have his or her layoff notice withdrawn, i.e., Ms. Verrett. However, since the District admits it over-noticed by two for that position, the proper remedy is for an order allowing the District only to layoff the least senior 51 psychologist Respondents.

3. (A) A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee is said to displace or "bump" a junior employee who is filling that position. (Ed. Code, § 44955, subd. (c); *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

(B) The Board's attempt to limit the Respondents' bumping rights by creating a definition of competency that was too narrow and inconsistently applied is invalid. Any Respondent who is credentialed and competent to teach a position filled by a junior teacher shall therefore be eligible to bump into said position. Since the Board's definition of competency is invalid, the default provision of competency must be applied, i.e. an individual Respondent's credential. Since the District made no showing that any particular positions require any other particular competency other than the proper credential (excluding of course the recency clause), Respondents need simply show they have the proper credential to bump into another position. The District's request made during oral argument to modify the recency clause by extending it to five years and/or applying it to all categories of Respondents is not an available remedy. As the District points out in its closing brief, school districts are the entities which must exercise the "discretionary decisions" regarding how to define special competency for purposes of bumping rights. (*Duax v. Kern Community College District*, *supra*, 196 Cal.App.3d 555, 564.) The issue in this Proposed Decision is simply whether the competency definition in question is valid under the Education Code. In this case, the District's recency clause of its competency definition is invalid and therefore cannot be applied.

(C) The following Respondents established that they are credentialed and therefore competent to bump into the following positions: 1) Sara Line, art/English, Employee No. 794859; 2) Oscar Ochoa, computers, Employee No. 719520; 3) Stephanie Garza, health science, Employee No. 799713; 4) Richard Metzler, music, Employee No. 749989; 5) Kyung Sung, Employee No. 767511, intro to math; 6) Deborah Swanson, Employee No. 932286, single subject English; 7) Lauren Tovar, Employee No. 804538, single subject Spanish; 8) Laura Ramirez, reading/language, Employee No. 799732; 9) Michelle Pan, social science, Employee No. 794960; 10) Araceli Garcia, English/Spanish, Employee No. 703828; 11) Stacy Rivas, history, Employee No. 799791; 12) Tina Curtis, music, Employee No. 801015; 13) Terra Windbering, civic/government, Employee No. 799845; 14) Julia Rodriguez, English, Employee No. 702951; 15) Hector Hernandez, Employee No. 706764, single subject math; 16) Jesus Salvador Landazuri, clear multiple subject credential with a math authorization; and 17) Richard Morse, authorization to teach history in the middle school and ninth grade history. The Accusations against those Respondents shall therefore be dismissed. (Factual Findings 1-35.)

(D) In addition, the Seniority List (exhibit 33A, 33B, and 33C) also contains the identities of other Respondents who are credentialed and competent to bump into other positions filled by junior employees, given that the recency clause of the Board's competency definition is invalid. Given the size and complexity of the Seniority List, the ALJ is not in a position to determine the identities of those individuals. The District is in such a position. The District shall therefore be ordered to determine any other Respondent who may bump into a position being filled by a junior employee. The Accusation against any such individual(s) so identified shall be dismissed.

4. Respondents Wendy Gutierrez, Maura Castillo and Veronica Cortez established that they should have been skipped pursuant to Education Code section 44955, subdivision (d)(1), because they reported to the District that they were NCLB-compliant by or before March 15, 2010. Therefore, the Accusations against those Respondents should be dismissed. (Factual Findings 1-55.)

5. Temporary teachers may be released at the pleasure of the governing school board. (Ed. Code, § 44949, subd. (a).) The statutory layoff provisions therefore do not apply to them. (Ed. Code, § 44949, subd. (a); *Zalac v. Governing Board of the Ferndale Unified School District* (2002) 98 Cal.App.4th 838.) The precautionary Respondents who the District properly classified as temporary employees are not subject to the protections of Education Code sections 44949 and 44955. The Accusations against them should be dismissed, as the District has already provided them with appropriate notices of non-reelection for the following school year. (Factual Findings 1-63.)

6. Pursuant to stipulation between the parties, the layoff notices issued to Elizabeth Castillo Salas, Maria Finnerty, Jeeda Gabriel, Eesha Chabria, Chevon Griffith, Susan O'Malley, and Isabelle Ramirez are rescinded. The Accusations against these individuals shall be dismissed. (Factual Findings 1-66.)

7. Pursuant to Education Code sections 44845 and 87414, cause was established to adjust the RIF dates of the following Respondents: Diana Ginns, Lara Calgiocioglu, Tina Choi, Zarmanee Helwani, Cheryl Kono, Gabriela Mendoza, Deborah Weiner, Enrique Saldana, Nancy Gonzalez, and Sonia Solis. The District shall be ordered to determine if the adjusted RIF dates of these Respondents will no longer subject them to layoff, and if so, the Accusation against any such Respondent(s) shall be dismissed. (Factual Findings 1-120.)

8. The services identified in the Board's Resolution 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 students within the meaning of Education Code section 44949. (Factual Findings 1-120.)

9. 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 1-120.)

10. By taking into account the Legal Conclusions above and the resulting orders below, no junior certificated employee will be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-120, Legal Conclusions 1-9.)

ORDER

1. The Accusations are dismissed against Respondents Sagrario Gonzalez, with a seniority date of August 1, 2007, Esperanza Ramirez, with a seniority date of August 17, 2007, and Alga Verrett, with a seniority date of September 7, 1999. In addition, the District shall determine the identities of the two other most senior psychologist Respondents after Ms. Verrett. The Accusations as to them are dismissed. The District may only give notice to the 51 least senior psychologist Respondents that their services are not required for the 2010-2011 school year.

2. The Accusations are dismissed against Respondents Sara Line, Oscar Ochoa, Stephanie Garza, Richard Metzler, Kyung Sung, Deborah Swanson, Lauren Tovar, Laura Ramirez, Michelle Pan, Araceli Garcia, Stacy Rivas, Tina Curtis, Terra Windbering, Julia Rodriguez, Hector Hernandez, Jesus Salvador Landazuri, and Richard Morse. In addition, the District shall review the Seniority List and determine any other Respondent who may bump into a position being filled by a junior employee in view of the fact that the recency clause of the Board's competency definition is invalid. The Accusations as to any such Respondent(s) identified are dismissed.

3. The Accusations are dismissed against Respondents Wendy Gutierrez, Maura Castillo, and Veronica Cortez.

4. The precautionary Respondents identified in exhibits 15-17 are temporary employees who are not subject to this layoff proceeding. The Accusations against them are dismissed.

5. The Accusations are dismissed against Respondents Elizabeth Castillo Salas, Maria Finnerty, Jeeda Gabriel, Eesha Chabria, Chevon Griffith, Susan O'Malley, and Isabelle Ramirez.

6. The District's RIF dates for the following Respondents shall be adjusted in accordance with their applicable Factual Findings: Diana Ginns, Lara Calgiocioglu, Tina Choi, Zarmanee Helwani, Cheryl Kono, Gabriela Mendoza, Deborah Weiner, Enrique Saldana, Nancy Gonzalez, and Sonia Solis. The District shall determine if any of these Respondents are no longer subject to layoff given their adjusted RIF dates and seniority. The Accusations against any such Respondent(s) is/are dismissed.

7. The Accusations are sustained against the remaining Respondents. Notice shall be given to those Respondents that their services will not be required for the 2010-2011 school year, and such notice shall be given in inverse order of seniority.

Dated: June 8, 2010

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ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings