

**BEFORE THE
GOVERNING BOARD OF THE
SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusations
Against:

JENNIFER ALBERT AND OTHER
CERTIFICATED EMPLOYEES and
TEACHERS OF THE SADDLEBACK
VALLEY UNIFIID SCHOOL DISTRICT,

OAH No. L-2008020108

Respondents.

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge, on April 10 and 11, 2008, in Mission Viejo. Complainant Saddleback Valley Unified School District was represented by David C. Larsen, Attorney at Law.

Except for the four respondents and four certificated teachers who represented themselves at the hearing, respondents and other certificated teachers, and each of them, were represented by Marianne Reinhold, Attorney at Law. Respondents Geraldine Jacome, Douglas Meeuwsen, Charmaine Potter, and Lynne Lidie were present and represented themselves at the hearing. Certificated teachers Elizabeth Brown, Marion Craine, and Patricia O'Neill, who have been classified by the school district as temporary employees, were not represented by counsel and did not appear at the hearing.

For the hearing in this matter, complainant presented documentary evidence and the testimony of the Assistant Superintendents of Personnel Services and Business and the directors of secondary and elementary education. Respondents presented documentary and oral evidence. Respondents who represented themselves also testified. In addition, the parties presented oral stipulations that were placed on the record and made argument.

Documentary, stipulated, and oral evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:¹

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that the Accusations were made and filed by Jennifer Huff in her official capacity as Assistant Superintendent of Personnel Services and as a designee of the Superintendent of the Saddleback Valley Unified School District (hereinafter District).

2. Respondents, and each of them, are certificated employees of the District.

3. On March 11, 2008, the Assistant Superintendent of the District's Business Division published a 2007-2008 Second Interim Financial Report which stated that, due to the release of the Governor's January Budget for 2008-2009, school districts are "bracing for what is likely the worst budget ever presented to education." For 2008-2009, the Assistant Superintendent estimated that the District would have a loss of revenue of approximately \$10.6 million. In order to maintain solvency and reach a "positive certification for the multi-year projections," the Assistant Superintendent indicated that the District was required to develop a \$19.3 million "worst case scenario budget reduction list." A draft Prioritized Budget Reduction List for 2008-2009 proposed, in part, the elimination or reduction of certain services that would result in general fund savings of \$19,534,910. After the \$19.3 million in budget reductions, the District would have an ending balance of \$1.5 million above a two percent reserve. If the Governor's January 2008 Budget Proposal is enacted, or fiscal conditions deteriorate further, the Assistant Superintendent indicated that the District would implement the \$19.3 million in ongoing budget reductions to maintain the positive certification that the school district will meet its financial obligations for the current and subsequent two fiscal years.

4. On March 11, 2008, pursuant to Education Code sections 44949 and 44955, the Superintendent of the District gave written notice to the Governing Board of his recommendation that certificated employees be notified that their services will not be required for the 2008-2009 school year and set forth the reasons for his recommendation. Thereupon, the Governing Board adopted Resolution No. 41:07-08 which found that the Governor's proposed budget cuts for the 2008-2009 fiscal year requires the District to cut approximately \$19 million, the District must eliminate programs and services to maintain a balanced budget and provide for essential services, and that it is necessary to reduce or discontinue particular kinds of services now being rendered by certificated personnel for the 2008-2009 fiscal year. The Governing Board further resolved that the Superintendent be

¹ The Administrative Law Judge also marks and admits the contracts, agreements, and notices of the certificated teachers classified by the school district as temporary employees as Exhibit 19A, collectively.

directed to give written notice to certificated employees prior to March 15, 2008, in order to reduce the number of certificated positions in accordance with Exhibit A to the Resolution, or Services or Programs to be Eliminated or Reduced. The Governing Board also adopted tiebreaker criteria and a point system (Resolution, Exh. B) that the District was to apply when certificated employees shared the same first date of paid service.

5. On March 12, 2008, pursuant to the resolution of the Governing Board and the provisions of Education Code sections 44949 and 44955, Assistant Superintendent Huff as designee of the Superintendent of the District gave written notices to respondents, and each of them, that the Superintendent had recommended to the Governing Board that their services will not be required for the ensuing 2008-2009 school year. The written notices included the resolution of the Governing Board to reduce or discontinue certain services or programs in the District and a request for hearing. Respondents were notified that their positions would be eliminated or filled by a regular certificated employee with more seniority. The District had respondents, and each of them, sign a certification that they had received a preliminary layoff notice and file a written request for a hearing to determine if there was cause not to re-employ them for the ensuing school year. The District executed receipts acknowledging receipt of the requests for hearing.

6. The notice dated March 12, 2008 and served upon respondents was sufficient in providing notice to respondents, and each of them, under Education Code sections 44949 and 44955. Respondents were not prejudiced by errors in the notice, if any, with respect to the description of their current assignments or any other matters. No claims were raised that the notices were deficient.

7. On or about March 21, 2008, the District served respondents, and each of them, with an Accusation, Statement to Respondent, copies of Government Code sections 11507.5 and 11507.6 - 11507.7, Notice of Defense form, and Notice of Hearing. Respondents filed timely notices of defenses, requesting a hearing to determine if there is cause not to employ them for the ensuing school year. All prehearing jurisdictional requirements have been met.

8. On March 11, 2008, pursuant to Resolution No. 41:07-08, the Governing Board of the District resolved and took action to reduce or discontinue certain services or programs offered by the District for the 2008-2009 school year in the following full-time equivalent positions (hereinafter FTE):

<u>Administration</u>	<u>Full-Time Equivalent Positions</u>
Elementary Principal II	2.0
Elementary Principal I	2.0
High School Assistant Principal	4.0
High School Activity Director	4.0
Intermediate Assistant Principal	2.0

Elementary Assistant Principal	2.0
District Coordinator	2.0
Program Specialist I	2.0
Program Specialist III	1.0

Administrative Support Services

High School Librarian	4.0
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Pupil Services

School Psychologist	2.0
School Counselor	2.0

Instructional Program

Language Arts Assistance Program	1.0
Elementary Field Studies Science Program	2.0
Elementary Music Specialists	16.0
Secondary Course Offering, Cultural Geography	15.0
Class Size Reduction Program Option I, Grades 1-3	130.0

The reduction or discontinuance of the services set forth hereinabove constitute a total of 193.0 full-time equivalent positions.

9. (A) The services set forth in Finding 8 above are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. The determination of the Governing Board of the District to reduce or discontinue these services is within the sound discretion of the District and is not arbitrary or capricious.

(B) Further, the District has obviated the need to terminate certificated employees pursuant to this reduction or discontinuance of particular kinds of services by taking into account personnel changes due to temporary and permanent attrition and reassignment of individual employees within the District. Nevertheless, the District has determined that these services in administration, administrative support services, pupil services, and instructional programming must be reduced or discontinued to maintain a balanced budget and provide essential services.

10. (A) After the Board Resolution on March 11, 2008, and the service of the Accusations, and before the hearing in this matter, the District dismissed the Accusations against the following 27 certificated employees and reinstated them: Erin Adragna, Roberta Austin, Margaret Boss, Tiffany Bromm, Rae Caso, Cassandra Clark, Elisa Felix, Lucille Francis, Melinda Hawkins, Charles Hughes, Valerie Lau, Lisa Lotito-Byers, Martin Mackey,

Susan Marron, Daniel Moon, Deborah Morines, Lori Null, Pamela Olaveson, Daniel Oshea, Lisa Paisley, Daniel Peters, Kristen Quintero, Kristen Roush, Pamela Rudkin, Jonathan Stewart, Susan Volas, and Monique Yessian.

(B) During the hearing in this matter, the District dismissed the Accusations against the following five certificated employees: Elissa Babiuk, Liam Clemons, Darlene Sands, Jennifer Frisk, and Michael Spencer.

Administration

11. (A) The District currently employs 12 assistant principals and four activity directors at its four high schools and proposes to reduce or discontinue assistant principals by 4.0 FTE and all 4.0 FTE of its activity directors. Assistant principals serve as educational leaders and assist principals in planning, coordination, and directing of various activities and programs. Activity directors oversee different student activities at the high schools, including dances and assemblies, and supervise student clubs and organizations and their teacher-sponsors. The District has four intermediate schools and proposes to reduce or discontinue assistant principals at its intermediate schools by 2.0 FTE. With these reductions in administrative positions, the District anticipates that there will be less services and supports for students, teachers, and parents but expects other administrators and teachers to assume the additional duties of these positions. Staff Reduction Flow Charts demonstrate that two high school assistant principals remain subject to lay-off while two assistant high school assistant principals, four high school activity directors, and two intermediate assistant principals have been reassigned.

(B) At the elementary school level, the District proposes to reduce or discontinue elementary principals I and II and elementary assistant principals by 2.0 FTE each. The District plans on having principals supervise more than one elementary school. As such, four additional school sites would have shared principals. The Staff Reduction Flow Chart for this service shows that two elementary principals have been reassigned to different positions in the District and two assistant principals are subject to lay-off in this proceeding.

(C) The District currently employs a district coordinator of special projects who serves as the senior administrative officer for such projects as federal and state consolidated programs, vocational and adult education, and grant programs. The District also employs a district coordinator of the Healthy Kids program who implements programs in health, physical education, and drug, alcohol, and tobacco prevention. The District proposes to reduce or discontinue these district coordinator positions, which comprise 2.0 FTE, and have the services performed or shared by other administrators.

(D) No specific evidence was presented with respect to the reduction or discontinuance of program specialists I and III by a total of 3.0 FTE. Staff Reduction Flow Charts show that, of five program specialists I and two program specialists II, only one

program specialist III, who is junior to all of the others, is subject to layoff. No claims or complaints were lodged by administrative personnel due to the reduction or discontinuance of services in administration. Accordingly, the District may terminate administrative personnel pursuant to the reduction or discontinuance of administrative services by 21.0 FTE.

Administrative Support and Pupil Services

12. (A) The District currently employs a high school librarian at each of its four high schools. Each high school librarian is responsible for overseeing the supervision, budget, and philosophy of the high school library; providing instruction to pupils in the use of the library and information and media literacy; providing research and support to teachers and department chairpersons; and ordering relevant materials and books for the library. The high school librarian usually holds a special credential. Pursuant to Resolution No. 41:07-08, the District has proposed to eliminate or reduce all 4.0 FTEs for high school librarians. The District expects that the various duties of the high school librarians will be undertaken by assistant principals, department chairpersons, and teachers. Staff Reduction Flow Chart for this program indicates that the most junior of the four librarians is subject to layoff while the three others have been reassigned.

(B) The District proposes to eliminate or reduce school psychologists and school counselors by 2.0 FTEs in each field or service. None of the psychologists requested a hearing. The District employs 27 counselors at its intermediate and high schools. After the elimination or reduction of counselors by 2.0 FTEs, the students will receive less individual counseling. However, the District will still have approximately 25 counselors and there will be counselors assigned at every intermediate and high schools.

(C) The District may terminate high school librarians by 4.0 FTE, school psychologists by 2.0 FTE, and school counselors by 2.0 FTE pursuant to the reduction or discontinuance of these particular kinds of services. High school librarians who received a notice not to re-employ or accusation were reassigned to the classroom, resulting in the proposed layoff of one classroom teacher. The District served notices not to re-employ or accusations upon six counselors but the notices or accusations were withdrawn for four of them, and one of the counselors, who has a credential in mathematics, bumped a classroom teacher and was reassigned to another position.

Course Offerings/Instructional Programs

13. Language Arts Assistance Program—The Language Arts Assistance Program is a District elementary educational program to assist students who have difficulty in reading. The coordinator of the program supervises classified employees who provide instructional assistance to students in reading and language arts. The District proposes to reduce or discontinue the Language Arts Assistance Program by 1.0 FTE which means that the

coordinator of the program will be terminated from his or her employment. In addition, the District has proposed the termination of the classified employees from their employment in the program. No issues or claims were raised whether there is cause for the District not to re-employ the coordinator of the Language Arts Assistance Program. The Staff Reduction Flow Chart for this position shows that the sole certificated employee affected by this reduction or discontinuance of this program has been reassigned.

14. Elementary Field Studies Program—The Elementary Field Studies Program is a District elementary educational program designed to provide support in science to teachers and enrichment and hands-on activities in science to elementary students in grades four through six. The Elementary Field Studies Program is headed by an elementary science specialist who provides direct instruction in the District's science curriculum, teaches science to students in a field study setting, and develops lesson plans and instructional materials for classroom teachers. The District proposes to reduce the Elementary Field Studies Program by 2.0 FTE and expects that elementary school teachers will provide science activities to their students in the next school year. No issue or claims were raised whether there is cause for the District to reduce the Elementary Field Studies Program due to the reduction or discontinuance of particular kinds of services. The Staff Reduction Flow Chart indicates that the sole certificated employee affected by this reduction or discontinuance has been reassigned to a new position.

Elementary Music

15. The District employs certificated employees in 20 positions in its elementary music and performing arts program. An elementary music teacher provides instruction in instrumental and/or choral music to students in grades one through six and develops and conducts a comprehensive music education program. As part of its reduction or discontinuance of particular kinds of services for the ensuing school year, the District proposes to reduce or discontinue its elementary music and performing arts program by 16.0 FTE. This elimination or reduction of the elementary music program will mean the elimination of music instruction in the elementary classrooms, chorale music for grades four through six, and instrumental music for grades five and six. In the elementary music program, choral music instruction usually occurs after school hours and instrumental music instruction, such as for string orchestra and band, occurs during regular school hours.

16. (A) As part of its proposed elimination or reduction of the elementary music and performing arts program, the District served notices and/or accusations upon 16 elementary music or performing arts teachers. Eight of those teachers have been reassigned to different positions. Respondents Janice Dove, Claire Hsu, Fabio Kayama, Diane Mecham, and Kimberly Robes are the most junior of the remaining elementary music and performing arts teachers subject to layoff. All of them have a seniority date of September 5, 2006. Respondents Hsu, Kayama, and Mecham hold single subject credentials in music. Respondent Dove holds a multiple-subject credential with supplemental authorizations in music and math and respondent Robles holds a multiple subject credential with a

supplemental authorization in music. It was neither contended nor established that respondents Dove, Hsu, Kayama, Mecham, and Robles have the credentials or competency to provide services to the District in positions other than as elementary music teachers.

(B) Respondent Sarah E. Norris is a music and English teacher at Laguna Hills High School. She has dual single subject credentials in music and English and a seniority date of September 4, 2007. Norris is one of the most junior of respondents in this proceeding and is apparently subject to lay-off due to being bumped by a more senior music teacher from the elementary music program. In addition to music and English, Norris teaches in the Advancement Via Individual Determination (AVID) program and is director of the choral department. According to Norris, her high school has experienced turnover in the directorship of the choral department over the past four years and the choral program and students in the program need stability for the sake of development and morale.

(C) Respondents Dove, Hsu, Kayama, Mecham, Robles, and Norris may be terminated pursuant to the reduction or discontinuance of services of 16.0 FTE positions for elementary music teachers.² It was not established there are any certificated employees with less seniority than these respondents who are being retained by the District to render services that they are certificated and competent to provide.

17. In addition to the 16.0 FTE of elementary music teachers, the District served notices and accusations upon three high school music teachers and band directors: respondents Daniel C. Fritz, Andrew G. Julian, and Russell Moreau. The positions of these three high school music and band teachers are not necessarily subject to termination as part of the reduction or discontinuance of 16.0 FTE of the elementary music program. Rather, these three high school music and band teachers are junior in seniority to six other elementary and high school music teachers and subject to be bumped by them. The District desires to maintain its high school band programs but has not determined which of the six elementary and high school music teachers and the three high school band directors have the credentials and competency to fill the three positions of high school music teachers and band directors as a matter of the welfare and best interests of the schools and students.

18. The District has musical band programs at its four high schools, each of which is under the supervision of a band director. To qualify to work as a band director, a certificated employee must have a music credential. A band director teaches seven periods of music, which may include classes in instrumental music, symphonic music, orchestra, and marching band. In addition, a high school band director is required to organize and supervise the competitive band program at the school site which is comprised of a marching band, color guard, and drum lines. As such, a high school band director must possess the requisite special skills, knowledge, and/or experience in the areas of teaching competitive

² Respondent Janice Dove also has a supplemental authorization in math and is subject to possible retention based on that authorization, as discussed in Finding 29 below.

band groups, interfacing with booster groups, engaging in fund raising for the band programs, and leading and supervising band groups at state and national competitions.³

19. (A) Respondent Daniel Fritz is one of three high school music teachers who have been served with a notice and accusation. He has a single subject credential in music. His seniority date is September 6, 2005. Fritz is a music teacher and band director at El Toro High School. For the past three school years, Fritz has been the sole director of instrumental music at El Toro High School. He completed his student teaching at the elementary and intermediate school levels. Fritz asserts that teaching music to high school students is different from teaching elementary and intermediate school students in that a high school music teacher may have the same students for a four-year period. Prior to Fritz's arrival there, El Toro High School's music and band program had not been consistent and stable, for the program had nine different band directors over the course of 10 years.

(B) Respondent Andrew G. Julian is one of the three high school music teachers who have been served with a notice and accusation. He also has a single subject credential in music and a seniority date of September 6, 2005. Julian is employed as a music teacher and band director at Laguna Hills High School. No additional evidence about Julian was presented at the hearing in this matter.

(C) Respondent Russell Moreau is one of the three high school music teachers who have been served with a notice and accusation. He also has a single subject credential in music and a seniority date of September 6, 2005. Moreau is a music teacher and band director at Trabuco Hills High School. No additional evidence about Moreau was presented at the hearing.

20. (A) Respondent Ben Fawley is an elementary music teacher and possesses a single subject credential in music. His seniority date with the District is September 2, 1997. Fawley desires to continue as a music teacher for the District at any grade level. He asserted that two elementary music teachers, who have less seniority, were retained, skipped, or reassigned to the classroom, but those two teachers also have credentials in English and Math, respectively, which allow them to teach those subjects and to bump other teachers of those subjects who have less seniority.

(B) Fawley contends that he can teach band, orchestra, choir, and jazz band at the high school level. He completed his student teaching at high and intermediate schools in the San Fernando Valley where he worked with the bands, orchestra, and jazz bands. While he has not worked with marching or competitive bands or taught music at the secondary level, he works with choral groups at his elementary school and has volunteered his time to work with choral groups at Trabuco Hills High School. During his eleven years with the

³ The District also has a chorale music program at its high schools and intermediate schools. A teacher in the chorale music program must possess a music credential and is required to teach beginning choir and show choir and supervise chorale performance groups.

District, Fawley has received awards as the music teacher of the year and helped developed the District's arts plan. He plays the guitar and trumpet and teaches guitar.

21. (A) Respondent Kenneth G. Lee is an elementary school music instructor and music coordinator for the District. His seniority date with the District is September 2, 1997. Lee has a life credential to teach music to students in grades 7 through 12. He has bachelor and master of art degrees in music from California State University Fullerton.

(B) Prior to being hired by the District in September 1997, Lee was the director of concert, marching, and jazz bands at Gladstone High School in Azusa from 1979 to 1980; director of concert and marching bands at Desert High School in North Edwards from 1980 to 1982; director of marching, concert, and jazz bands at Buena Park High School from 1982 to 1984; and director of concert and beginning band at Northview Junior High School in Duarte and director of marching, concert, and jazz bands at Duarte High School from 1984 to 1997. Respondent Lee is credentialed and competent to teach music at the secondary level.

22. Respondent Dolores Sahelian is an elementary music teacher and music coordinator for the District. She possesses a single subject credential in music. Her seniority date with the District is November 12, 1997. Sahelian teaches vocal music and chorale. She attended college in Pennsylvania and has completed work towards a master's degree in early childhood education and music education. She was trained in instrumental music and as a vocalist. As a student teacher, Sahelian assisted the string orchestra and band at an elementary school. Sahelian has been an elementary music teacher for 23 years and loves music. She has no prior experience with high school bands.

23. (A) Respondent Donn R. Jones is an instrumental music teacher at Rancho Santa Margarita Intermediate School. He holds a single subject credential in music and a multi-subject credential with a supplemental authorization in music. He has a seniority date with the District of September 22, 1998. Presumably like other teachers, Jones is subject to layoff due to the reduction or discontinuance of elementary music teachers and/or as a result of bumping by another music teacher with more seniority.

(B) Respondent Jones has been a teacher at the elementary, intermediate and high school levels for many years. Prior to joining the District in 1998, he taught band and music at elementary schools for approximately 12 years. Subsequently, he taught band, marching band, jazz band, drum line, and color guard at the high school level for another five years. Since joining the District nine years ago, Jones has not been a band director at the high school level.

24. Respondent Douglas Meeuwsen is a music teacher at Mission Viejo High School. He possesses a single subject credential in music. His seniority date with the District is September 7, 1999. Meeuwsen is one of two band directors at Mission Viejo High School. He teaches or works with the wind ensemble, symphonic band, jazz combo, jazz big band, marching band, and color guard. He also teaches a band competition class.

Under his direction, the marching band, jazz band, and drum line have performed and won accolades at state and national competitions. In addition, Meeuwsen has a degree in jazz studies and performs as a professional brass musician.

25. Respondent Theodore Wait is a music teacher at Los Alisos Intermediate School. He has a single subject credential in music and a supplemental authorization in marketing. His seniority date is September 2, 2003. Wait has experience teaching high school band. From 1995 through 1999, he was a high school band director at Sultana High School in Hesperia where he worked with the field and parade marching band and choir. He has also taught beginning band at the high school level and middle school band with other school districts. In addition, while working for the District, Wait has helped the brass instructor and assisted with musicals at Trabuco Hills High School. He also assists the spirit and/or pep bands at San Diego State University before its football games.

26. (A) Based on Findings 8 – 9 and 17 – 25 above, respondents Lee, Jones, and Meeuwsen shall be retained by the District as high school music teachers and band directors. Based on their individual experiences, these three respondents are the most senior of the music teachers who have the requisite competency to act as high school band directors. Respondents Fritz, Julian, Moreau, and Wait have the competency to act as high school band directors but they are junior in seniority. Respondents Fawley and Sahelian, while having seniority with the District, are deemed not to have the competency to act as high school band directors due to their lack of experience in this field.

(B) Based on Findings 8 – 10 and 17 – 25 above, respondents Fritz, Julian, Moreau, Wait, Fawley, and Sahelian may be terminated from their employment with the District pursuant to the reduction or discontinuance of services of elementary music teachers. There are no certificated employees with less seniority than these respondents who are being retained by the District to render services which said respondents are certificated and competent to provide.

Tie-Breaking Criteria

27. (A) Respondent Robyn Audrey Fischbach is a sixth grade teacher at El Cerro Elementary School. She possesses a multi-subject credential for kindergarten through grade 12. She has a seniority date of September 8, 1998, that she shares with approximately 31 other elementary teachers. After the District applied the tie-breaking criteria to her and other certificated teachers with the same seniority date, Fischbach returned with a ranking of number 22. Fischbach complains about the tie-breaking criteria. She has been employed with the District for almost ten years. In past school years, she has been the acting principal at her school site, a teacher for a gifted class, advisor for the Associated Student Body, and a mentor for new teachers under the BTSA program. Fischbach argues that she should receive credit or points for these activities under tie-breaking criteria. Respondent Fischbach's contentions are not persuasive, for it was not established that the District's development of its tie-breaking criteria for certificated employees with the same seniority date, and its

decision not to give credit for other worthwhile activities undertaken by teachers, are necessarily arbitrary or capricious.

(B) Respondent Linda M. Lees is a first grade teacher at Melinda Heights Elementary School. She holds a multi-subject credential for kindergarten through grade 12 and has a seniority date of September 8, 1998. After the District applied the tie-breaking criteria to her and other certificated teachers with the same seniority date, Lee returned with a ranking of number 12 among a group of 32 elementary teachers whose first date of paid service is September 8, 1998. Lees contends that the District did not correctly apply the tie-breaking criteria to her because she did not receive a credit or a point for "having a major in the subject taught in the 2007-2008 school year." She attended Southern Connecticut College in New Haven, Connecticut, and attained a bachelor of science degree in elementary education. Because she taught elementary school for the District for the 2007-2008 school year, Lees contends that she is entitled to credit for majoring in elementary education. Respondent Lees' contentions do not warrant a change in her ranking after application of the tie-breaking criteria. In college, Lees majored in elementary education. Last school year, she was an elementary school teacher but did not teach a particular subject, such as math, English, or science. As established by the rebuttal testimony of the Assistant Superintendent, this particular tie-breaking criterion was meant to apply to secondary teachers who majored in substantive subjects in college and then taught the subjects in the District last year. Elementary teachers teach students in several academic areas but do not teach a certain substantive subject. Lees did receive tie-breaking credit for having attained a master's degree.

(C) Respondent Karen L. Simeroth is kindergarten teacher for the District at Glen Yermo Elementary School. She possesses a teaching credential and has a seniority date of September 5, 2000. Due to her position and seniority date, Simeroth is part of a group of elementary teachers who were subject to the tie-breaking criteria. She contends that the tie-breaking criteria were not fair because the District gave credit or tie-breaking points to teachers for being department chairs and BTSA support providers but only for the 2007-2008 school year. Simeroth was department chair for two school years and a BTSA support provider for one year in earlier school years. Simeroth's contentions are not persuasive under the circumstances. It was not established that the District's decision to limit tie-breaking credits to the one school year of 2007-2008 is arbitrary or capricious.

(D) The District developed the tie-breaking criteria only after reviewing the teachers' collective bargaining agreement and consulting with the teachers' association. The criteria were then presented to the Governing Board of the District which adopted them. The evidence showed that the development of the tie-breaking criteria was made in furtherance of the welfare of the schools and its students.

(E) It was not established that respondents Fischbach, Lees, and Simeroth were eligible for skipping or reassignment due the possession of other credentials or competencies, such as bilingual accreditation. Fischbach, Lees, and Simeroth may be terminated pursuant to the reduction or discontinuance of services for elementary teaching by

130.0 FTE. It was not established there are any certificated employees with less seniority than said respondents who are being retained by the District to render services that said respondents are certificated and competent to provide.

Other Teachers

28. (A) Respondent Henry C. Chen is a health and driver education teacher and head volleyball coach for boys and girls at Laguna Hills High School. He possesses a single subject credential in health and driver education. Chen teaches one section of driver education. Due to his seniority date of September 5, 2006, he received a notice and accusation after the District apparently determined that he should be bumped by another certificated employee with more seniority.

(B) Chen contends that he should be retained because the District must offer driver education and is concerned that the District will have another teacher instruct students in driver education who is not properly credentialed to do so. Chen's contentions were not borne out by the evidence. The District offers five or six sections of driver education among its high schools and has two classes of driver education each semester at Laguna Hills High School. In addition, the District is retaining two teachers who have credentials to teach driver education and possess more seniority than Chen: Thomas V. Millich, a senior physical education teacher at El Toro High School, and Robert A. Anderson, a senior physical education teacher at Trabuco Hills High School. Accordingly, respondent Chen may be terminated pursuant to the District's reduction or discontinuance of particular kinds of services. It was not established that the District is retaining any certificated employee with less seniority than Chen to provide services that Chen is certificated and competent to render.

29. (A) Respondent Francine R. Kim is a science teacher at Rancho Santa Margarita Intermediate School. She holds a multiple subject credential with supplemental authorizations in math, science, and physical education. She has a seniority date of September 5, 2006, and received a notice and accusation that her services were not needed for the next school year due to the reduction or discontinuance of particular kinds of services. Kim challenges the District's retention of an intermediate school colleague who has the same credential and seniority date.

(B) Similarly, respondent Janice Dove has a seniority date of September 5, 2006, and received a notice and accusation that her services will not be needed for next year. Dove is an elementary music teacher with a multiple subject credential and supplemental authorization in music and is therefore subject to layoff due to elimination or reduction of the elementary music or performing arts program. However, Dove also possesses a supplemental authorization to teach math.

(C) Susan M. Volas is a math teacher at Los Alisos Intermediate School who has a multiple subject credential with a supplemental authorization in math. Her seniority

date is September 5, 2006. Volas was not served with a notice or accusation and is not a respondent in this matter. The District did not establish the reason why Volas is being retained and why respondent Kim and Dove are being terminated. Nor did the District demonstrate that respondent Kim, Dove, and Volas were involved in any application of the tie-breaking criteria or an examination of their respective credentials or competencies, which resulted in the retention of Volas and not the other two teachers.

Cultural Geography

30. Under Resolution No. 41:07-08, the District proposes, in part, to reduce or discontinue the secondary course offering in cultural geography by 15.0 FTE. Cultural geography is a course required of all freshmen in the District's high schools. The District plans to eliminate the courses in cultural geography and compensate for that course loss by reducing the secondary school day from seven to six periods and the number of credits required for graduation by 10 credits. In lieu of cultural geography, students will be able to take elective courses, such as foreign language, fine arts, or technology, to meet graduation requirements. The District does not anticipate any impact on secondary class sizes or staffing ratios by the elimination of the course offering in cultural geography.

31. (A) Respondent Kristine N. Ortiz is a senior social studies teacher at Trabuco Hills High School. She possesses a single subject credential in social science. Her seniority date is September 6, 2005. The District proposes to terminate Ortiz from her employment pursuant to the reduction or discontinuance of the secondary course offering in cultural geography. Ortiz contends that a colleague Sean F. Fletcher is being retained and he has less seniority and a social science credential.

(B) Respondent Lindsay Chappell is social science teacher and member of the athletics department at Laguna Hills High School. She teaches the honors class in cultural geography and directs the Model United Nations program at her high school. Chappell holds a single subject credential in social science and has a seniority date of September 6, 2005. She also points out that colleague Sean F. Fletcher is being retained and he also teaches social science and has the same seniority date with the District.

(C) Respondents April Daems and Michael Grant are high school social science teachers for the District. Daniel O'Shea, Jonathan Stewart, and Lisa Lotito-Byers are also high school or intermediate social science teachers. All of them hold single subject credentials in social science, have the same seniority date of September 6, 2005, and were ranked after application of the tie-breaking criteria. Subsequently, O'Shea, Stewart, and Lotito-Byers had their notices of lay-off rescinded based on their rankings under the tie-breaking criteria. Respondents Daems and Grant, like Ortiz and Chappell, received notices and accusations from the District and remain subject to lay-off pursuant to the reduction or discontinuance of cultural geography.

(D) Sean F. Fletcher did not receive a notice or accusation from the District and he is being retained. His seniority date is September 5, 2006, like that for respondents Ortiz, Daems, and Grant. While Fletcher is credentialed to teach social science, he also has a credential in geoscience and, unlike respondents Ortiz, Chappell, Daems, and Grant, may teach geoscience or science for the District. In fact, Fletcher has a dual assignment and teaches science or earth science in addition to social science at Laguna Hills High School. The District has not decided where Fletcher should be assigned to teach for the next school year but he can teach earth science.

32. Based on Findings 8 – 10 and 30 – 31 above, respondents Kristine N. Ortiz, Lindsay Chappell, April Daems, and Michael Grant as well as the other certificated social science teachers who received notices and accusations may be terminated pursuant to the reduction or discontinuance of services for the secondary course offering in cultural geography by 15.0 FTE. It was not established there are any certificated employees with less seniority than said respondents who are being retained by the District to render services that said respondents are certificated and competent to provide.

Class Size Reduction for Grades 1-3

33. Under Resolution 41:07-08, the District has proposed, in part, to reduce or discontinue the Option I Class Size Reduction Program for grades one through three by 130.0 FTE to achieve budget savings and/or to prevent encroachment upon the general fund. Under the Option I program, the District has been offering a reduced class size in its elementary classrooms. The District's reduction or discontinuance of the class size reduction program would mean that all classes in grades one through three would increase to 30 students. To mitigate this increase in class size, the District is considering the implementation of the Option II program in which certificated part-time teachers would supplement the instruction of the regular classroom teachers by coming into the classroom and teaching reading, language, and math to students for one-half of the school day.

34. For the elimination of the reduced class size program, the District served notices and accusations upon certificated elementary school teachers to achieve the elimination of 130.0 FTE positions. A number of certificated elementary school teachers were reassigned to different positions based, in part, on their possession of additional credentials. Approximately 10 elementary school teachers with less seniority were skipped and retained due to their possessing bilingual credentials and competency in teach in the dual or Spanish immersion program at Gates Elementary School, a charter school dedicated to bilingual learning and fluency. The immersion program at Gates Elementary School has approximately 22 teachers, all of whom must have proficiency in Spanish. The retention of the bilingual teachers for the immersion program meant that a number of more senior teachers were bumped and given notices and accusations that their services will not be needed next year. The determination of the District to skip bilingual teachers in the Spanish immersion program at Gates Elementary School was in the best interest and welfare of the schools and students and not arbitrary or capricious.

35. Respondent Geraldine Jacome and Brittany L. Pelzel are Spanish immersion teachers at Gates Elementary School. Each has a multiple subject credential with a bilingual emphasis. Jacome's seniority date is September 8, 2006. Pelzel's seniority date is September 4, 2007. Jacome and Pelzel are the two most junior of the Spanish immersion teachers at Gates Elementary School.

36. Respondent Tracy M. Feller is a first grade teacher at Gates Elementary School. She holds a multiple subject credential but not a bilingual credential. As such, she is not credentialed or competent to teach in the Spanish immersion program. Feller complains, however, that the District has skipped and retained too many bilingual teachers for the immersion program. Feller contends that the elimination of the reduced class size program will mean that immersion classes will likewise be increased in size and less Spanish bilingual teachers will be needed for those classes. Feller's contentions were not established by the evidence, for the District has skipped and retained only about 10 or 11 immersion teachers with less seniority than other certificated employees.

37. (A) Respondent Charmaine Potter is a third grade teacher at Foothill Elementary School. She has a multiple subject credential and a seniority date of September 8, 1998.

(B) Respondent Mona Lee Montgomery is a fifth grade teacher at Melinda Heights Elementary School. She possesses a multiple subject CLAD credential. Her correct seniority date is September 7, 1999.

(C) Respondent Beverly J. Stephenson is a second grade teacher at Portola Hills Elementary School. She holds a multiple subject CLAD credential. Her correct seniority date is September 9, 1999.

38. Respondent Alison E. Brick is a sixth grade teacher at Gates Elementary School. She holds a multiple subject credential for kindergarten through grade 12 but has no bilingual credential or certificate. Her seniority date is December 10, 1999. Brick has also taught first grade and a combination first and second grade class. Like Feller, Brick contends that too many bilingual teachers are being retained for the immersion program. She points out that she teaches immersion students in English language development and math and that teachers, who are junior to her, like Adam Wright, are being retained and did not receive notices. Brick's contentions do not warrant her retention. Spanish immersion teachers with less seniority, including Adam Wright, Kevin M. Rohr, and Ana C. Silva, possess credentials in Spanish or bilingual education and were skipped in order to maintain the immersion program at the District's charter school.

39. Based on Findings 8 – 10 and 33 – 38 above, respondents Geraldine Jacome, Brittany L. Pelzel, Tracy M. Feller, Alison E. Brick, Charmaine Potter, Mona Lee Montgomery, and Beverly J. Stephenson as well as other respondents who are certificated elementary school teachers and received notices and accusations may be terminated pursuant to the elimination or reduction of services under the reduced class size program for grades

one through three by 130.0 FTE. It was not established there are any certificated employees with less seniority than said respondents who are being retained by the District to render services that said respondents are certificated and competent to provide.

Teachers Classified as Temporary Employees

40. (A) On or about March 12, 2008, the Assistant Superintendent on behalf of the Superintendent duly notified approximately 55 certificated teachers by letter that the District's records indicated they were temporary employees and that the District was not reelecting each of them as certified employees for the 2008-2009 school year pursuant to the Education Code.

(B) This March 12 notice added that, if the teachers were claiming employment status other than as temporary employees, the teachers were further notified that the Superintendent was recommending to the Governing Board that their services will not be required for the ensuing school year pursuant to the reduction or discontinuance of particular kinds of services under Resolution 41:07-08. The teachers were further notified that any probationary or permanent position claimed to be held by each of them would be eliminated or filled by a regular employee with more seniority under Education Code section 44955. To the extent that teachers are probationary or permanent certificated employees, the Assistant Superintendent notified them of their rights under Education Code section 44949 to request a hearing to determine if there is cause for not re-employing them for the ensuing year and enclosed copies of pertinent sections of the Education Code, the resolution, and a request for hearing form. The notice dated March 12, 2008, was sufficient in providing notice to the 55 certificated teachers, and each of them, under the provisions of Education Code sections 44949 and 44955.⁴

41. (A) Among the 55 certificated teachers that the District released and notified as temporary employees that they were not re-elected for next year, 35 of them filed requests for hearing. On March 21, 2008, the District served these 35 certificated teachers, and each of them, with an Accusation, Statement to Respondent, copies of Government Code sections 11507.5 and 11507.6 - 11507.7, Notice of Defense form, and Notice of Hearing. As such, these 35 teachers filed timely requests for a hearing to determine if there is cause not to employ them for the ensuing school year and jurisdictional requirements have been met under sections 44949 and 44955.

(B) In this proceeding, approximately 16 of these 35 teachers challenge their classifications as temporary employees and factual findings regarding their claims are made herein. Nine of the certificated teachers concede through counsel that any claims about their temporary employment status is "negatively impacted by the applicable statute of limitations." No findings are made for these nine certificated teachers or for the remaining

⁴ Further section references are to the Education Code.

certificated teachers classified as temporary employees for whom no claims were made regarding their employment status or classifications.

42. (A) Patricia O'Neill is a fourth grade teacher at Melinda Heights Elementary School. She has a multiple subject credential CLAD credential. For the 2005-2006 school year, O'Neill was a temporary employee under a Temporary Contract. At the end of that school year, on June 12, 2006, the District advised O'Neill that her contract would be concluded at end of its term, released her from her temporary job, and placed her on a substitute list for the next school year.

(B) On September 5, 2006, O'Neill began working for the District for the new school year. On September 18, 2006, O'Neill accepted an offer from the District to work as a long-term substitute with the understanding that she could be converted to a temporary contractor depending on the needs of the District. On or about September 26, 2006, she signed a Temporary Contract which set forth her employment status and salary for the school year. At the end of that school year, on June 1, 2007, the District released her from the temporary contract.

(C) On July 11, 2007, O'Neill accepted a position with the District as a long-term substitute for the upcoming school year. Her position was subject to conversion to a temporary employee by contract depending upon the District's needs. On September 4, 2007, she signed a contract to be a temporary teacher on her first date of paid service for the 2007-2008 school year.

(D) Based on Findings 40 – 41 and 42(A)–(C) above, in September 2006, O'Neill is deemed to have been a probationary employee for 2006-2007 under section 44916 because she was not notified of her employment status or salary as a permanent, probationary, temporary, or substitute teacher on her first date of paid service with the District for that school year. (*Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal. 4th 911.) Subsequently, the District properly terminated O'Neill as a first year probationary employee by giving her notice by the end of the 2006-2007. (*Vasquez v. Happy Valley Union School District* (2008) 159 Cal.App. 4th 969, 974; *California Teachers Assn. v Mendocino Unified School Dist.* (2001) 92 Cal.App.4th 522, 526-527.) For 2007-2008, she signed a substitute agreement and then temporary teacher contract which put O'Neill on notice that she was a temporary employee. As such, O'Neill is properly classified as a temporary employee.

43. (A) Joyce Kemmerle, also known as Joyce Levaratt, is a first grade teacher at Trabuco Mesa Elementary School. She holds a multiple subject CLAD credential. For 2005-2006, Kemmerle was employed with the District as a temporary employee after signing a Temporary Contract before the start of the school year on September 2, 2005. At the end of the school year, the District released her from her temporary position.

(B) On September 22, 2006, Kemmerle signed a Temporary Contract for 2006-2007 but after she had already started working that school year as an elementary

teacher. At the end of that school year, on June 12, 2006, the District released her from the temporary contract and placed her on the substitute list. On June 13, 2007, Kemmerle entered into another contract to work as a temporary employee for 2007-2008.

(C) Based on Findings 40 – 41 and 43(A)-(B) above, Kemmerle is deemed to have been a probationary employee for the 2006-2007 school year under section 44916 because she was not notified of her employment status or salary on her first date of paid service with the District that school year. (*Kavanaugh v. West Sonoma County Union High School District, supra.*) However, the District then terminated Kemmerle's employment as a probationary teacher by releasing her by the end of the 2006-2007 school year. Thereafter, Kemmerle rejoined the District as a temporary employee after signing a temporary teaching contract before the 2007-2008 school year. As such, Kemmerle is properly classified as a temporary employee.

44. (A) Kathryn O'Brien is a second grade teacher at Melinda Heights Elementary School. She holds a multiple subject CLAD credential. For 2005-2006, O'Brien started work for the District at the start of the school year and then signed a Temporary Contract on October 18, 2005. She was released by the end of the school year.

(B) For 2006-2007, O'Brien rejoined the District after signing a Temporary Contract on November 29, 2006. She was released at the end of the school year. For 2007-2008, O'Brien signed a Temporary Contract before she began working for the District.

(C) Based on Findings 40 – 41 and 44(A)-(B) above, O'Brien is deemed to have been a probationary employee for 2005-2006 under section 44916 because she was not notified of her employment status or salary on or before her first date of paid service with the District that school year. (*Kavanaugh v. West Sonoma County Union High School District, supra.*) However, the District then terminated Kemmerle's employment as a probationary teacher by notifying her of her release by the end of the 2005-2006 school year under section 44954. Thereafter, Kemmerle rejoined the District as a temporary employee after signing temporary teaching contracts before working in the 2006-2007 and 2007-2008 school years. These contracts provided notice that she was a temporary employee. As such, O'Brien is properly classified as a temporary employee. It was not established that the District had an administrative practice of releasing teachers and rehiring them in order to evade the teacher classification rules or that O'Brien had an expectation of re-employment. (See *Balen v. Peralta Junior College District* (1974) 11 Cal. 3d 821, 830-831.)

45. (A) Tiffany Voss is a fifth grade teacher at Lake Forest Elementary School. She has a multiple subject CLAD credential. On September 6, 2005, Voss started working for the District. On September 27, 2005, Voss signed a Temporary Contract for the 2005-2006 school year after she started working for the District. The District did not release Voss from her contract by or before the end of the school year. Instead, on or about June 1, 2006, Voss signed another Temporary Contract for the 2006-2007 school year. The District did not release her at the end of that school year either. On June 13, 2007, she entered into another Temporary Contract to work as a District elementary teacher for the 2007-2008 school year.

(B) Based on Findings 40 – 41 and 45(A) above, in September 2005, Voss is deemed to have been a probationary employee for 2005-2006 under section 44916 because she was not notified of her employment status and salary on or before the first day of paid service to the District. (*Kavanaugh v. West Sonoma County Union High School District, supra.*) Moreover, Voss was not terminated as a probationary employee or released as a temporary employee at the end of the 2005-2006 school year. Rather, she was signed to another temporary contract, which meant that she was re-employed or rehired. Because the District did not release her at the end of 2005-2006, Voss was likewise a probationary employee for a second year when she returned to work for the District in the next school year, 2006-2007. Subsequently, the District failed to timely notify Voss as a second-year probationer by March 15, 2007, of a decision not to re-elect for the next or third school year. Accordingly, Voss is deemed to have been re-elected for 2007-2008 and classified as permanent employee under section 44929.21, subdivision (b). Therefore, Voss is a permanent employee with a seniority date of September 6, 2005, and entitled to receive notice that her services are not needed for next year due to the reduction or discontinuance of services under sections 44949 and 44955. Voss received proper and timely notice and an accusation for this lay-off.

46. (A) Thomas Williams is a secondary technology education teacher at Laguna Hills High School. He has a designated credential in carpentry and a full-time CLAD credential in auto mechanics and business. Thomas first began working for the District in the 2005-2006 school year. He started teaching on September 6, 2005. After starting work, he signed a Temporary Contract for the 2005-2006 school year on October 21, 2005. He was not released at the end of the school year. Instead, on June 15, 2006, Thomas and the District entered into a Temporary Contract for the next school year, 2006-2007. One year later, he signed another Temporary Contract to work as secondary teacher for the 2007-2008 school year.

(B) Based on Findings 40 – 41 and 46(A) above, in September 2005, Williams is deemed to have been a probationary employee for 2005-2006 under section 44916 because he was not notified of his employment status and salary on or before the first day of paid service to the District. (*Kavanaugh v. West Sonoma County Union High School District, supra.*) At the end of the 2005-2006, Williams was not terminated as a probationary employee or released as a temporary employee. Instead, the District signed him to another temporary contract which meant that he was re-employed or rehired. Because the District did not release him at the end of 2005-2006, Williams was likewise a probationary employee for a second year when he returned to work for the District in the next school year, 2006-2007. Subsequently, the District failed to timely notify Williams by March 15, 2007, of a decision not to re-elect him for the next or third school year. Accordingly, Williams is deemed to have been re-elected for 2007-2008 and classified as permanent employee under section 44929.21, subdivision (b). Therefore, Williams is a permanent employee of the District with a seniority date of September 6, 2005. He is entitled to receive notice that his services are not needed for next year due to the reduction or discontinuance of services under sections 44949 and 44955. In fact, Williams received proper and timely notice and an accusation for this reduction in force proceeding.

47. (A) Sharon Smith is a first and second grade teacher at Gates Elementary School. She possesses a multiple subject CLAD credential. Smith began working for the District in September 2005. For the 2005-2006 school year, the District began school on September 5, 2005. On September 8, 2005, Smith accepted a substitute assignment. Two weeks later, on September 21, 2005, she signed a Temporary Contract. The District released Smith at the end of the school year.

(B) On August 24, 2006, Smith accepted a position as a substitute teacher by signing a Statement of Acceptance of Substitute Agreement. On September 21, 2006, she signed a Temporary Contract. The District did not release her at the end of the school year. Instead, on June 13, 2007, Smith signed another Temporary Contract for the 2007-2008 school year.

(C) Based on Findings 40 – 41 and 47(A)-(B) above, Smith is deemed to have been a probationary employee for 2005-2006 under section 44916 because she was not notified of her employment status and salary on or before her first date of paid service to the District. (See *Kavanaugh v. West Sonoma County Union High School District*, *supra*.) She signed the substitute and temporary teacher agreements after she started working. However, the District terminated Smith's employment as a probationary teacher by releasing her at the end of the 2005-2006 school year. Thereafter, she rejoined the District for 2006-2007 as a substitute teacher and then as a temporary teacher. By signing the Statement of Acceptance before she started working in 2006-2007, Smith was put on notice that her employment was temporary for that school year. She signed another Temporary Contract before the 2007-2008 school year. As such, Smith is properly classified as a temporary employee.

48. (A) Jeremy Sherman is a special day class teacher for the non-severely handicapped in the District's Special Schools program. He holds a special education credential in mild and moderate disabilities. For the 2005-2006 school year, the District started school on September 6, 2005. On September 7, 2005, Sherman signed a Temporary Contract to work as a temporary teacher for the District.

(B) For the 2006-2007 school year, he signed a Temporary Contract on June 16, 2006. For the 2007-2008 school year, Smith entered into another Temporary Contract. He signed this contract on June 20, 2007, which was before he started his job as a teacher.

(C) Based on Findings 40 – 41 and 48(A)-(B) above, Sherman is deemed to have been a probationary employee for 2005-2006 under section 44916 because he started working and was not notified of his employment status and salary on or before his first date of paid service to the District. (See *Kavanaugh v. West Sonoma County Union High School District*, *supra*.) The District then effectively terminated Sherman's employment as a probationary employee at the end of the 2005-2006 school year when the parties entered into a Temporary Contract for the next year.⁵ For the following two school years, 2006-2007 and

⁵ In her brief, respondent's counsel concedes that the District released Sherman before the end of the 2006-2007 school year.

2007-2008, Sherman was notified before his first dates of paid service that his job was temporary since he agreed to be a temporary teacher before the start of each school year. As such, Sherman is properly classified as a temporary employee. It was not necessarily established that Sherman was a probationary employee during 2006-2007 based on an evaluation that described his position as a second year probationary employee. No evidence was presented regarding this evaluation and it was not shown that the District adopted the description of Sherman's position as being correct.

49. (A) Carolyn Yatco is a first grade teacher at Cordillera Elementary School. She holds a multiple subject CLAD credential and a supplemental authorization in art. On June 14, 2005, Yatco signed a Temporary Contract for the 2005-2006 school year and taught for the rest of the school year. At the end of the school year, on June 12, 2006, the District released her from her temporary employment and placed her on the substitute list for the next school year.

(B) On September 5, 2006, Yatco began working for the District for the new school year. She did not sign a Temporary Contract for 2006-2007 until September 25, 2006. On June 12, 2006, the District notified Yatco that it was releasing her. On June 14, 2007, she signed another temporary teacher contract for 2007-2008 but before she began working for the District.

(C) Based on Findings 40 – 41 and 49(A)-(B) above, Yatco was a temporary employee for all of the 2005-2006 school year. In September 2006, Voss is deemed to have been a probationary employee for 2006-2007 under section 44916 because she was not notified of her employment status and salary on or before the first day of paid service to the District. (*Kavanaugh v. West Sonoma County Union High School District, supra*.) Because she worked as a temporary employee for the preceding school year and was then employed as a probationary employee for the following school year, Yatco is deemed to have been a second-year probationary employee for 2006-2007 under section 44918, subdivision (a). Subsequently, the District failed to timely notify Yatco by March 15, 2007, of a decision not to re-elect for the next or third school year. Accordingly, Yatco is further deemed to have been re-elected for 2007-2008 and classified as permanent employee under section 44929.21, subdivision (b). Therefore, Yatco is a permanent employee with a seniority date of September 6, 2005, and entitled to receive notice that her services are not needed for next year due to the reduction or discontinuance of services under sections 44949 and 44955. Yatco received proper and timely notice and service of an accusation for this lay-off.

50. (A) Joyce Taysom is an Option II elementary teacher at La Madera Elementary School and holds a multiple subject CLAD credential. She has been working under temporary contracts for several years. For 2005-2006, Taysom signed her Temporary Contract for the school year on September 8, 2005, after starting work for the District two days earlier. At the end of the school year, on June 12, 2006, the District released Taysom and placed her on the substitute list.

(B) For 2006-2007, Taysom started teaching for the District again on September 5, 2006. She did not sign a Temporary Contract for the school year until September 26, 2006. At the end of the school year, on June 1, 2007, the District again released her from her temporary position. For the current 2007-2008 school year, Taysom entered into a temporary teacher contract before starting work with the District.

(C) Based on Findings 40 – 41 and 50(A)-(B) above, in September 2005, Taysom is deemed to have been a probationary employee for 2005-2006 under section 44916 because she was not notified of her employment status and salary on or before the first day of paid service to the District. (*Kavanaugh v. West Sonoma County Union High School District, supra.*) The District released her at the end of 2005-2006. However, Taysom is deemed to have been a probationary employee again for 2006-2007 because she was not notified of the temporary nature of her job on or before her first day of paid service for that school year. She should be considered to have been a second-year probationary employee for 2006-2007 under the provisions of sections 44916 and 44918. Moreover, because the District failed to timely notify Taysom as a second-year probationer by March 15, 2007, of the decision not to re-elect for the next or third school year, she is deemed to have been re-elected for 2007-2008 and classified as a permanent employee under section 44929.21, subdivision (b). Therefore, Taysom is a permanent employee with a seniority date of September 6, 2005, and entitled to receive notice that her services were not needed for next year due to the reduction or discontinuance of services under sections 44949 and 44955. Taysom received proper and timely notice and service of an accusation notifying her of her prospective lay-off.

51. (A) Heather Lebus is a first grade teacher at Len Yermo Elementary School who has been classified as a temporary employee. She possesses a multiple subject CLAD credential. For 2005-2006, Lebus began teaching when the school year began on September 6, 2005. Three days later, on September 9, 2005, she signed a Statement of Acceptance of Substitute Assignment. Two weeks later, on September 22, 2005, she signed a Temporary Contract.

(B) At the end of the 2005-2006 school year, the District did not release Lebus but, instead, on June 15, 2006, signed her to a Temporary Contract for 2006-2007. At the end of 2006-2007, on June 1, 2007, the District released her from the temporary contract. Later that month, on June 20, 2007, Lebus accepted a long-term substitute assignment for 2007-2008. On September 20, 2007, she signed a Temporary Contract for the remainder of the 2007-2008 school year.

(C) Based on Findings 40 – 41 and 51(A)-(B) above, in September 2005, Lebus is deemed to have been a probationary employee for 2005-2006 under section 44916 because she was not notified of her employment status and salary on or before the first day of paid service to the District. (*Kavanaugh v. West Sonoma County Union High School District, supra.*) Because the District did not terminate or release her at the end of 2005-2006, and instead signed her to another temporary contract, Lebus was likewise a probationary employee for a second year when she returned to work for the District for the

school year of 2006-2007. Because the District failed to timely notify Lebus by March 15, 2007, of the decision not to re-elect for the next or third school year, Lebus is deemed re-elected for 2007-2008 and classified as a permanent employee under section 44929.21, subdivision (b). Therefore, Lebus is a permanent employee with a seniority date of September 6, 2005, and entitled to receive notice that her services were not needed for next year due to the reduction or discontinuance of services under section 44949 and 44955. Lebus received proper and timely notice and service of an accusation for this lay-off proceeding.

52. (A) Cynthia Pieterse is a sixth grade teacher at Montevideo Elementary School, who holds a multiple subject CLAD credential and has been classified as a temporary employee. For 2005-2006, Pieterse was hired and then released as a temporary employee. For 2006-2007, she began teaching when school began on September 5, 2006. One week later, on September 12, 2006, she signed a Statement of Acceptance of Substitute Assignment. Ten days later, Pieterse signed a Temporary Contract that outlined her position and salary for 2006-2007. At the end of the school year, on June 1, 2007, the District released Pieterse from her temporary contract. On June 14, 2007, she accepted a long-term substitute assignment before starting work for the 2007-2008 school year. On September 19, 2007, she signed a contract to be a temporary elementary teacher.

(B) Based on Findings 40 – 41 and 52(A) above, Pieterse is deemed to have been a probationary employee for 2006-2007 under section 44916 because she was not notified of her employment status or salary on her first date of paid service with the District for that school year. (*Kavanaugh v. West Sonoma County Union High School District*, *supra*.) Subsequently, she signed a substitute and then temporary teacher contracts which were not effective in changing her deemed classification as a probationary employee. However, the District terminated Pieterse's employment as a probationary teacher by releasing her at the end of the 2006-2007 school year. Thereafter, Pieterse rejoined the District as a temporary employee after signing a substitute contract before the next school year. As such, Pieterse is properly classified as a temporary employee.

53. (A) Alice Donawerth holds a multiple subject CLAD credential and is employed as a fifth grade teacher at Valencia Elementary School. On March 31, 2006, Donawerth and the District entered into a Settlement Agreement and Release in settlement of a discrimination complaint by the teacher. Under this agreement, the District agreed that Donawerth would continue as a long-term substitute teacher for the rest of the 2005-2006 school year and then be placed on the non-seniority based Re-employment List of Temporary Teachers for the 2006-2007 school year for possible hire as a full-time elementary teacher.

(B) On September 5, 2006, Donawerth was hired and began working for the District on the first day of the new school year. Two weeks later, on September 21, 2006, she signed a Temporary Contract. On June 1, 2007, the District gave her notice that she was being released. Three weeks later, on June 22, she accepted a long-term assignment as a substitute teacher for the next school year. On September 21, 2007, Donawerth signed a Temporary Contract after the start of the 2007-2008 school year.

(C) Based on Findings 40 – 41 and 53(A)-(B) above, it was not established that Donawerth should be deemed a probationary employee under section 44916 at the beginning of 2006-2007 due to the District's failure to notify her of her employment status on her first day of paid service. By entering into the Settlement Agreement in March 2006, Donawerth was duly notified that she was to be a temporary employee if hired for the 2006-2007 school year. Thereafter, she worked as a temporary teacher, was properly released from her temporary position, and re-hired in a temporary position for 2007-2008. Her signing of the long-term substitute contract notified her of the temporary nature of her assignment. As such, Donawerth is properly classified as a temporary employee.

54. (A) Gayle Dains holds standard elementary CLAD credentials in biological science and sociology and is a science teacher at an intermediate school. At the start of 2005-2006 school year, on September 6, 2005, she began working for the District. One month later, on October 3, 2005, she entered into a Temporary Contract. The District did not notify her that she was released at the end of that school year.

(B) On August 24, 2006, Dains accepted the assignment of a long-term substitute. She started teaching at the start of the 2006-2007 school year. On September 22, 2006, she signed a Temporary Contract for the year. At the end of the school year, on June 1, 2007, the District notified Dains that she was released from her contract. On August 3, 2007, Dains signed a Temporary Contract for 2007-2008 before the start of the school year.

(C) Based on Findings 40 – 41 and 54(A)-(B) above, in September 2005, Dains is deemed to have been a probationary employee for 2005-2006 under section 44916 because she was not notified of her employment status and salary on or before the first day of paid service to the District. (*Kavanaugh v. West Sonoma County Union High School District, supra*.) Moreover, because the District did not terminate or release her at the end of 2005-2006, Dains continued as a probationary employee for a second year when she returned to work for the District in the next school year, 2006-2007. Because the District failed to timely notify Dains by March 15, 2007, of the decision not to re-elect for the next or third school year, she is deemed re-elected for 2007-2008 and should be classified as a permanent employee under section 44929.21, subdivision (b). Therefore, Dains is a permanent employee with a seniority date of September 6, 2005, and was entitled to receive notice that her services were not needed for next year due to the reduction or discontinuance of services under sections 44949 and 44955. Dains received proper and timely notice and service of an accusation for this lay-off proceeding.

55. (A) Shelley Chretin is an Option II teacher at Cielo Vista Elementary School who holds a multiple subject CLAD credential. At the start of the 2005-2006 school year, on September 6, 2005, Chretin began working for the District. One month later, on October 5, 2005, she signed a Temporary Contract. At the end of that school year, on June 12, 2006, the District released Chretin from her job.

(B) For 2006-2007, Chretin started work for the District on the first day of school which was September 5. Three weeks later, on September 25, 2006, Chretin signed a

Temporary Contract. On June 1, 2007, the District gave notice to Chretin that she was released at the end of the school year. For 2007-2008, Chretin signed a Temporary Contract before starting work for the District.

(C) Based on Findings 40 – 41 and 55(A)-(B) above, in September 2005, Chretin is deemed to have been a probationary employee for 2005-2006 under section 44916 because she was not notified of her employment status and salary on or before the first day of paid service to the District. (*Kavanaugh v. West Sonoma County Union High School District, supra.*) The District released her at the end of 2005-2006, but Chretin is deemed to have been a probationary employee again for 2006-2007 because she was not notified of the temporary nature of her job on or before her first day of paid service for that school year. Whether she was a probationary employee in 2005-2006, Chretin should be considered to have been a second-year probationary employee for 2006-2007 under the provisions of sections 44916 and 44918. Because the District failed to timely notify Chretin as a second-year probationer by March 15, 2007, of the decision not to re-elect for the next or third school year, she is deemed to have been re-elected for 2007-2008 and classified as permanent employee under section 44929.21, subdivision (b). Therefore, Chretin is a permanent employee with a seniority date of September 6, 2005, and entitled to receive notice that her services were not needed for next year due to the reduction or discontinuance of services under sections 44949 and 44955. Chretin received proper and timely notice and service of an accusation.

56. (A) Christine Blanchard is a third grade teacher at Cordillera Elementary School. She possesses a multiple subject credential. On June 20, 2006, Blanchard signed a Temporary Contract with the District and accepted employment as a temporary elementary teacher for the 2006-2007 school year. On June 1, 2007, the District notified Blanchard that her temporary contract was to conclude on June 21 because there may not be any teaching assignment available for her next year. On June 27, 2007, she accepted an offer from the District to work as a long-term substitute for 2007-2008. After the eighth day of enrollment, the district was to analyze its needs and possibly convert her to a temporary contract to replace a teacher on a leave of absence. Three months later, on September 20, 2007, Blanchard signed a Temporary Contract and accepted a position as a temporary elementary teacher for 2007-2008 school year. The Temporary Contract set forth her employment status as a temporary teacher for the school year and her salary for that time period.

(B) Based on Findings 40 – 41 and 56(A), it was not established that Blanchard should be deemed a probationary employee at the beginning of 2007-2008 under section 44916. In June 2007, she accepted a substitute teacher's position for the school year and was therefore notified by written statement, prior to and at the time of her initial employment for the 2007-2008 school year, of her status as a temporary teacher. (See *Kavanaugh v. West Sonoma County Union High School District, supra.*) The District properly classified Blanchard as a temporary employee.

57. (A) Respondent Lynne Lidie is an Option II teacher at Valencia Elementary School. She possesses a multiple subject CLAD credential. For portions of the 2006

calendar year, Lidie worked as a long-term substitute teacher for the District. On October 31, 2006, after working as a substitute since the start of the school year, she signed a Temporary Contract to work as a part-time, Categorical Title I elementary teacher at San Joaquin Elementary School. On June 1, 2007, Lidie was released by the District and placed on a substitute list. For 2007-2008, she accepted a full-time teaching position as a long-term substitute in August 2007 and started the school year working as a substitute teacher at Rancho Canada Elementary School. On October 8, 2007, Lidie signed a Temporary Contract for her present position as a part-time Option 2 elementary teacher.

(B) Based on Findings 40 – 41 and 57(A) above, Lidie is deemed to have been a probationary employee for 2006-2007 under section 44916 because she was not notified of her employment status and salary on or before her first date of paid service to the District. (See *Kavanaugh v. West Sonoma County Union High School District, supra*.) She signed the temporary teacher agreement after she started working that school year. On the other hand, the District terminated her employment as a probationary teacher by releasing her at the end of the 2006-2007 school year. Thereafter, she rejoined the District for 2007-2008 as a substitute teacher and then as a temporary teacher. By accepting the substitute position before her first date of paid service for 2007-2008, Lidie was duly notified that her employment was temporary for that school year. As such, Lidie is properly classified as a temporary employee. Lidie asserts that she was misled by her principal into accepting the substitute teacher position in August 2007 and missed job opportunities. It was not established, however, that the District had a policy or practice to evade the teacher classification rules or that Lidie had an expectation of re-employment after signing temporary teacher agreements. (See *Balen v. Peralta Junior College District, supra*.)

58. It was not established that the District's announcements of open certificated positions (Exh. 20) were actually read or relied upon by any particular certificated teacher, who has been classified as a temporary employee, in applying for or accepting a teaching job with the District.

59. (A) Based on Findings 45, 46, 49, 50, 51, 54, and 55 above, certificated teachers Tiffany Voss, Thomas Williams, Carolyn Yatco, Joyce Taysom, Heather Lebus, Gayle Dains, and Shelley Chretin, who were initially classified as temporary employees, are deemed to be permanent employees.⁶ These certificated teachers may be terminated from

⁶ The claims of these certificated teachers for permanent employment status are not barred by *Vasquez v. Happy Valley Union School District, supra*, for that opinion of the Court of Appeal of the Third Appellate District sets forth factual circumstances which are distinguishable from the facts of the teachers' cases here. Nor was it established that the claims are barred by the equitable defense of laches. The evidence did not demonstrate that the teachers unreasonably delayed in claiming that they are permanent employees, acquiesced to the complained employment status, or caused prejudice to the District thereby. (See *Johnson v. City of Loma Linda* (2000) 24 Cal. 4th 61, 68.) Here, the evidence suggests that this layoff proceeding is the first opportunity for these teachers to question and learn about their employment status and their claims date back only two school years. Contrary to

their employment with the District due to the reduction or discontinuance of particular kinds of services, including the reduced elementary class size program.

(B) Based on Findings 42, 43, 44, 47, 48, 52, 53, 56, and 57 above, certificated teachers Patricia O'Neill, Joyce Kemmerle, Kathryn O'Brien, Sharon Smith, Jeremy Sherman, Cynthia Pieterse, Alice Donawerth, Christine Blanchard, and Lynne Lidie are all properly classified as temporary employees. These certificated teachers may be released from their employment inasmuch as they have been duly notified that their contracts will not be renewed and they would not be re-elected for the next school year.

(C) Based on Findings 40 – 41 and 59(B) above, any certificated teachers who have been classified as temporary employees and did not present any claim regarding their employment status or did not request a hearing, may be released from their employment inasmuch as they have been duly notified that their temporary contracts will not be renewed and their services will not be needed for the next school year.

60. With respect to those respondents whose employment has been found to be subject to termination by the District and any other respondents or certificated employees who received notices but did not request a hearing and for whom no specific findings have been made, the causes set forth in the Accusations relate solely to the welfare of the District's schools and pupils. No certificated employee with less seniority than any of said respondents or certificated employees is being retained to perform services which any one of said respondents or certificated employees is certificated and competent to render.

* * * * *

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

LEGAL CONCLUSIONS

1. Jurisdiction exists for the subject proceedings pursuant to Education Code sections 44949 and 44955; and all notices, accusations, and other related papers and reports required by said sections have been provided in timely manner and, as such, the parties have complied with the requirements of said sections.

2. Cause exists pursuant to Education Code sections 44949 and 44955 to reduce by 193.0 full-time equivalent positions the concomitant number of certificated employees of

the District's contention, it was not shown that the teachers relied upon the position opening postings (Exh. 20). The District is not necessarily prejudiced by these claims because it has noticed and served accusations upon all teachers classified as temporary employees.

the District due to the reduction or discontinuance of particular kinds of services, as set forth in Findings 1 – 60 above. Said cause relates solely to the welfare of the schools of the District and the pupils thereof within the meaning of Education Code section 44949.

3. Cause does not exist to terminate respondents Kenneth G. Lee, Donn R. Jones, and Douglas Meeuwsen, all of whom are music teachers for the District, from their employment with the District, based on Findings 8 – 9 and 17 – 26 above. These three respondents will be retained as high school band directors.

4. Cause does not necessarily exist to terminate respondents Francis R. Kim and Janice Dove in that it was not establish why said respondents are being terminated due to the reduction or discontinuance of particular kinds of services but Susan M. Volas, who has the same seniority date and similar credential(s), is being retained by the District, based on Finding 29.

5. Cause exists to deem certificated teachers Tiffany Voss, Thomas Williams, Carolyn Yatco, Joyce Taysom, Heather Lebus, and Gayle Dains, who were initially classified as temporary employees, as permanent employees of the District pursuant to Education Code section 44916, as set forth in Findings 45, 46, 49, 50, 51, 54, 55, and 59(A) above. These certificated teachers were properly given notices of their prospective termination and served with accusations under Education Code sections 44949 and 44955 and may be terminated due to the reduction or discontinuance of particular kinds of services.

6. There are no certificated employees with less seniority than respondents or other certificated employees who are being retained by the District for the 2008-2009 school year to render services which respondents or other certificated employees are certificated and competent to provide.

* * * * *

WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

1. The Accusations against respondent Erin Adragna and the 31 other respondents named or listed in Findings 10(A) and (B) above are dismissed due to the representations and motions to dismiss made by the District.

2. The Accusations against Kenneth G. Lee, Donn R. Jones, and Douglas Meeuwsen are dismissed and these respondents will be retained as high school band directors, based on Conclusion of Law 3 above.

3. Provided that the District determines that the reasons that respondent Susan Volas is being retained and respondents Francine R. Kim and Janice Dove are being terminated are valid and supported by their seniorities, credentials, and positions, the Accusations against respondents Kim and Dove may be sustained due to the reduction or discontinuance of particular kinds of services, based on Conclusion of Law 4 above.

4. The Accusations against certificated teachers Tiffany Voss, Thomas Williams, Carolyn Yatco, Joyce Taysom, Heather Lebus, Gayle Dains, and Shelley Chretin who were initially classified as temporary but are deemed permanent employees of the District, based on Conclusion of Law 5 above, may be sustained provided that the District performs application of tie-breaking criteria to them, if applicable, due to their deemed date of first paid service as well as analyses of their standing or eligibility for termination or retention based on their seniority ranking, credentials, and service positions as affected by the reduction or discontinuance of particular kinds of services.

5. The Accusations against certificated teachers Patricia O'Neill, Joyce Kemmerle, Kathryn O'Brien, Sharon Smith, Jeremy Sherman, Cynthia Pieterse, Alice Donawerth, Christine Blanchard, Lynne Lidie, and the other certificated teachers who were classified as temporary employees, as set forth in Findings 59(B)-(C) above, are sustained inasmuch as these certificated teachers are temporary employees and have been released but nevertheless received timely and proper notice and service of accusations for their termination due to the reduction or discontinuance of particular kinds of services.

6. The Accusations are sustained as to all other respondents, and each of them, and notice may be given to all of them, as well as to those certificated employees who received written notices and/or accusations but did not request a hearing or appear at the hearing, that their services will not be required for the ensuing 2008-2009 school year because of the reduction or discontinuance of particular kinds of services.

7. Before giving notice in inverse order of seniority under Education Code section 44955 to respondents and other certificated employees who did not request a hearing or appear at the hearing, the District shall determine and take into account positively assured attrition among certificated employees, if applicable, in deciding how many and when certificated employees should be terminated before the ensuing 2008-2009 school year.

Dated:

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings