

**BEFORE THE
GOVERNING BOARD
OF THE PASADENA UNIFIED SCHOOL DISTRICT**

In the Matter of the Accusation Against:

OAH Case No. 2010020636

Certificated Employees of the Pasadena
Unified School District,

Respondents.

PROPOSED DECISION

The hearing in the above-captioned matter was held on April 19 and 20, 2010, at Altadena, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by Amy R. Levine, Dannis, Woliver, Kelly. Joe C. Hopkins represented respondents Cloda Jones and Dawn Mays. Jean Shin and Joshua Adams, Rothner, Seagall, Greenstone & Leheny, represented the Respondents listed on Attachment A, incorporated by reference hereto. Respondents Sharon Teich, Sharron March, Amy McGuiness, and Natasha Mitchnick appeared and represented themselves.¹

Oral and documentary evidence was received, and argument was heard, but the record was held open until April 30, 2010, so that the parties could file written briefs on various issues.² Those briefs were timely received, and are identified for the record as follows: Respondents Mays and Jones brief entitled "Final Argument in re: Cloda Jones and Dawn Mays" is identified as Exhibit M. The District's Brief entitled Closing Brief re Psychologists is identified as Exhibit 26. Jones' and Mays' Reply to PUSD's Closing Brief is identified as Exhibit N. The letter brief from the District regarding the Jones and Mays Reply Brief, constituting an objection to the Reply

¹ Complainant asserted that Respondent Mitchnick was not properly a respondent because she did not file a notice of defense, although she appears on the Amended List of Respondents filed by Complainant with OAH, upon which Attachment B is based. The issue of her status is addressed within this proposed decision.

² Because the issues raised by Jones and Mays differed substantially from the issues raised by the other respondents, briefing on those issues, pertaining to skipping, was scheduled for a date earlier than April 30. The parties were authorized to use a letter format in closing briefs, and to file them by FAX transmission. In some cases originals have been marked; received stamps indicating a later date of receipt are not controlling, as the FAX copies were timely received.

Brief is identified as Exhibit 27. Ms. Shin's post-hearing brief, in letter format, is identified as Exhibit E. The District's Closing Brief is identified as Exhibit 28.

Two briefs submitted at the outset of the hearing were not marked for identification. Therefore, the District's Brief re Race-Based Evidence is identified as Exhibit 29, and the brief entitled Contentions of Respondents Cloda Jones and Dawn Mays is identified as Exhibit O.

As noted, the District objected to the Reply Brief filed on behalf of Jones and Mays, correctly noting that the parties were not authorized to file reply briefs. The District's objection is well taken, especially given the point made by its counsel that she was at that time engaged in completing her closing argument regarding the rights of the other 163 teachers exposed to lay off in this proceeding, and, as important, the District's rights in the matter. Therefore, consideration was not given to the arguments set out in Exhibit N.

The case was submitted for decision on April 30, 2010. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and order, as follows.

FACTUAL FINDINGS

Jurisdiction and the Parties:

1. Complainant Edwin Diaz filed and maintained the Accusation³ and Amended Accusation in the above-captioned matter while acting in his official capacity as Superintendent of the Pasadena Unified School District (District).
2. The persons listed on Attachment B hereto, incorporated herein by reference, are certificated employees of the District and are Respondents in this case. However, persons not identified on that list, but represented by Ms. Shin, shall also be deemed Respondents in the case, as are Ms. Mitchnick and any persons appearing on Attachment B who appeared at the hearing. Further, Karin Smith, for whom the Amended Accusation was generated, does not appear on the Districts "Amended List of Respondents," which document was attached to the Amended Accusation, Exhibit

³ The term "accusation" refers to a type of pleading utilized under the Administrative Procedure Act, Government Code sections 11500 and 11503; that statutory scheme governs the hearing procedures in this case. The Respondents are not "accused" in the every-day sense of that word; they have done nothing wrong, and all appear to be dedicated professionals. It might be said that they are simply accused of not having enough seniority or other qualifications to retain their positions with the District in the face of a resolution to reduce positions.

10 in the proceeding. Attachment B is based on that document. As noted below, there is also some uncertainty as to how many people received preliminary notices of the District’s intent to lay them off.

3. (A) On March 9, 2010, the Governing Board of the District adopted Resolution number 2,073 entitled “Resolution to Decrease the Number of Certificated Employees Due to a Reduction in Particular Kinds of Services” (Reduction Resolution). The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2010-2011 school year. Specifically, the resolution requires the reductions of 165.6 “FTE”—Full Time Equivalents—by reducing various types of services. This decision was based on financial concerns as the District faces a budget shortfall of some 23 million dollars in the next school year.

(B) The FTEs that the Board determined to reduce are described in the Reduction Resolution, as follows:

Secondary (6-12) Counselors	6.5
Classroom Teachers (K-6)	76.0
Secondary School Librarians	6.0
High School English Teachers (Blair, Muir, Marshall, PHS)	3.0
High School Math Teachers (Blair, Muir, Marshall, PHS)	1.0
Middle School English	5.0
Middle School Math	5.0
Nurses	2.6
Nurse (months)	1.0
(Reduce from 11 months to 10)	
Resource Teachers (Non-special education)	
LDRT’s, CRT’s, (TOSO I’s)	19.0
IB Coordinator TOSA I	.5
Special Education TOSA II	1.0
BTSA Support Provider TOSA II	1.0
GATE TOSA II	1.0
Language Assessment & Development TOSA II	1.0
LEARNS TOSA II	2.0
Math Coaches	4.0
Resource Specialists	6.0
Music Teachers	3.2
Physical Education Teachers	3.0
Social Studies Teachers	3.0
French Teachers	2.0
School Psychologists	5.8
Assistant Principals	2.0

Executive Director Secondary Education	1.0
Certificated Coordinators	4.0

TOTAL FTE TO BE REDUCED: 165.6

4. Set forth in the Reduction Resolution is a further resolution adopting criteria that the District could use to deviate from terminating certificated employees in order of seniority, a process commonly known as “skipping.” According to the resolution, such deviation could be “based on a specific need for personnel who possess special training, experience, and/or competency to teach specific course or courses of study or to provide specific services, which others with more seniority do not possess, . . .” (Ex. 1, p. 3.)

5. The skipping criteria adopted with the Reduction Resolution most relevant to this proceeding are as follows:

[¶] . . . [¶]

C. Current, valid authorization in mathematics based on a major in mathematics and/or successful completion of all three levels of the CSET in mathematics, and service in the District as a math teacher for at least the past five years.

[¶] . . . [¶]

E. Authorization to instruct English Language Learners as demonstrated by:

1. Possession of a . . . Cross-cultural Language Academic Development Certificate (CLAD) by March 8, 2010, and
2. Possession of a current, valid credential to serve in a classroom setting (including resource classes)

[¶] . . . [¶]

G. Demonstrated fluency in speaking, writing and translating Vietnamese, Farsi, Armenian or Spanish within PPS School Psychology. “

(Exhibit 1, p. 3.)

6. On the same day that the Board adopted the Reduction Resolution, it adopted tie-breaking criteria, to determine the order of seniority in cases where more than one teacher shared the same seniority date. (Ex. 16.) Among the criteria were

number of years of experience as a probationary or permanent employee in a public school district, number of credentials and certificates, Highly Qualified status, and advanced degrees. Any ties remaining after those criteria were applied were to be broken by a lottery.

7. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.⁴

8. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion given the uncertainty regarding the state budget and the District's financial resources.

9. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

10. (A) On or about March 10, 2010, each Respondent, and other certificated teachers were given written notice that pursuant to sections 44949 and 44955, their services would not be required in the 2010-2011 school year (preliminary notices). One additional teacher, Karin R. Smith, was given such notice on March 12, 2010. A total of 213 certificated employees received preliminary notices, constituting the persons identified in the District's Exhibit 4 and Ms. Smith.⁵ Respondents requested a hearing, and thereafter each was served with an Accusation and other documents pertaining to the hearing process. Each Respondent filed a notice of defense.

(B) During the hearing, the District rescinded its preliminary notices to Elizabeth Klinger, Jose Trejo, Louis Brinker, Maria Stemwell, Christine McQuinn, Kathryn Wolford, Robert Marrufo, Lucia De La Paz Garcia, and those respondents shall be dismissed from this proceeding.

(C) Three persons who participated in the hearing are shown as not having filed a notice of defense. They are school psychologists, Jones, Mays, and

⁴ All further statutory references are to the Education Code.

⁵ Mr. Miller testified that 220 notices were served. However, Ms. Shin rightly points out that 212 are listed on Exhibit 4, the "Amended List of Individuals Who Were Sent Notice Packet." Ms. Karin Smith—the person whose reduction necessitated the amended accusation—is not shown on Exhibit 4. What became of the other seven people who Mr. Miller believes were noticed, or if they were noticed, and if so who they might be, can not be readily determined from this record, and the District must be bound by its Exhibits 3 (notice to Smith) and 4.

Mitchnick. Ms. Mitchnick testified at the hearing that she had requested a hearing, but did not receive an accusation. The District records showed she had been served, but she testified that she moved from that address in January 2010. She attested that she had learned about the hearing when she came to the facility where it was being held on an errand. Ms. Mitchnick was credible in all her testimony, in terms of her demeanor and the content of the testimony, whether on the issue of why she did not file a notice of defense, or as to the substantive issues.

(D) Although Mr. Hopkins appeared for Jones and Mays, he submitted no evidence on their behalves as to why they did not submit a notice of defense. To be sure, the OAH file contains a letter to OAH, by Mr. Hopkins, informing OAH that he represented Ms. Mays and Ms. Jones. That letter was dated April 8, 2010, and copied to Complainant's counsel, Ms. Levine; it was sent three days after the notice of defense was due. Correspondence in the OAH file from Complainant's counsel, dated April 12, shows that Mr. Hopkins participated in a pre-hearing conference with Ms. Levine and Ms. Shin, and he made a motion to continue the case, which was denied. In responding to that motion April 15, no mention was made of the failure of Jones and Mays to file a notice of defense.⁶

(E) All jurisdictional requirements have been met.

The Seniority List:

11. In the course of the reduction in force process, the District created a seniority list. That seniority list took into account a number of factors, including first date of paid service and the tie-breaking criteria.

12. (A) During the hearing, it was stipulated that the seniority date of Respondent Gina Sorensen-Hernandez should be September 4, 2007, and that she is a permanent teacher. However, no effort was made to apply tie-break criteria to set her seniority against the numerous other teachers holding that same seniority date.

(B) On the day of the hearing, an adjustment had to be made to the seniority list, which created a three-way tie among Ruth Several, Melanie Go, and Merina Esperza. Because they were tied after all other tie breaking criteria had been utilized, a lottery was held during a break in the hearing, and it was established that among the three, Ms. Several would be senior, followed by Ms. Go, and then Ms. Esparza, the most junior.

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⁶ Notice is taken of the correspondence, copies of which are made part of the record as Exhibit P.

The District's Efforts To Skip Some School Psychologists:

Statistics Pertaining to "English Learners:"

12. As set forth in Factual Finding 5, the District developed skipping criteria for school psychologists, calling for retention of those who “demonstrated fluency in speaking, writing and translating Vietnamese, Farsi, Armenian or Spanish within PPS [Pupil Personnel Services] School Psychology.” (Ex. 1, p. 2.) Based on such, the District sought to skip several junior psychologists, including a probationary psychologist.

13. (A) The District has a large number of “English Learner” (EL) students among its students, especially those speaking Spanish. According to a survey of such ELs, 4,160 students reported having a primary language other than English. Ninety per cent of that group reported Spanish as their primary language.⁷ Four per cent, or 147, spoke Armenian. The next largest group—71—claimed Korean as a primary language; they constituted 2 per cent of the ELs. The remaining four percent of the EL students spoke more than 20 different languages, as diverse as Turkish, Urdu, Hungarian, and French. (Ex. 5, p. 1 at section III.)

(B) Every school in the District had EL students, and grades K through 2 each had a relatively high number, from 600 to 662 per grade. Thus, it is likely that every class has at least one English Learner student.

14. The EL survey, Exhibit 5, establishes that there are only 13 EL students who claim Vietnamese as their primary language. Only 4 speak Farsi. Together, those 17 students make up less than one-half of one per cent of the EL students. On the other hand, 8 students speak French, 22 speak Mandarin, and 29 speak Phillipino/Tagalog. Indeed, as many students speak Hungarian as those who speak Vietnamese, and more claim Arabic as their primary language than do those who claim Farsi. (Ex. 5, p. 2.)

The School Psychologists—Seniority and Language Skills:

15. A list of the school psychologists is found in Exhibit 7. The first certificated employee identified, Arthur C. Jackson, has no seniority date listed, although a note next to his name describes him as having a life credential as a psychologist and counselor.⁸ Mr. Jackson can not be located in the alphabetical

⁷ This amounted to 3,759 students in both elementary and secondary classes, with two-thirds of the group being elementary students. (Ex. 5, p. 2.)

⁸ The date “00/00/00” is set out in the seniority date column for this individual. Because the list is written in descending order of seniority, Jackson’s

seniority list, part of Exhibit 14. No notice was sent to him, and his presence on Exhibit 7, essentially a seniority list for the psychologists, is a cipher.

16. The most junior psychologist listed, Ms. Roberson, is shown as temporary until June 30, 2010, and the District made clear that she would not be re-elected. That accounts for 1 of the 5.8 FTE to be reduced in the ranks of school psychologists.

17. The District served preliminary notices on Mr. To, Ms. Marvel, Ms. Mays, Ms. Goldstein, Ms. Jaimes, Ms. Mitchnick, Ms. Kramer, and Ms. Harris, who are the eight most junior psychologists. It should be noted that Ms. Harris holds a .8 FTE position. The District did not serve Mr. Peinado, the next most junior, but it did serve Ms. Jones, who holds the same seniority date as Mr. Peinado (8/27/02). Ms. Enriquez and Ms. Toledo were skipped, but Mr. Acosta was served with a notice; his seniority date is August 28, 1995, which is senior to that of Enriquez and Toledo, and he is sixth overall in terms of seniority. The four most senior psychologists (excluding Arthur Jackson) did not receive notice; they are Ms. Marxmiller, Ms. Klijian, Ms. Kasparian, and Ms. Alvarez. Those five teachers have seniority dates between 1992 and 1995.

18. Three of the psychologists who were served a preliminary notice did not request a hearing: To, Harris, and Acosta. Some who requested a hearing are shown as not having filed a notice of defense, those being Jones, Mays, Goldstein, Jaimes, Mitchnick, Kramer, and Harris. However, it should be noted that the list of those filing a notice of defense (Ex. 11) and the list of those who did not submit one (Ex. 12) contain some anomalies: Ms. Mitchnick, who acknowledged not serving a notice, appears on neither list. Neither does Ms. Goldstein, Ms. Jaimes, Ms. Kramer, and Ms. Harris. Hence, the evidence shows that they did, and did not, file notices of defense. Ms. Jones and Ms. Mays, represented by Mr. Hopkins, appear on the list of those who did not file a request for hearing, though Mr. Hopkins appearance indicates they wished to participate.

19. In the course of the hearing, the District staff stated that it had skipped several of the psychologists that it had sent preliminary notices, those persons being To, Goldstein, Sorja, Kramer, Pienado, Enriquez, and Toledo. However, the record does not establish that the notices have been rescinded prior to or during the hearing. Ms. James testified that some “precautionary notices” were served on some of the psychologists, and it is inferred that such would be to Kramer, To, and Goldstein.

20. (A) In order to determine which psychologists could speak one of the four languages set out in the skipping criteria (Spanish, Armenian, Farsi, or Vietnamese), Ms. James testified that she reviewed the employees’ files. Many had, upon applying for a position, answered a question on the job application about

placement at the top of the list implies the most seniority, but that can not be established.

whether they spoke another language. Those psychologists who the District would skip answered that query in the affirmative. Those that stated they could speak another language identified it on the job application.

(B) The other step to determine who could speak one of the four languages in the skip criteria was an inquiry by Ms. James to a person assigned to the psychology unit. That employee, Ms. Knedel, told Ms. James who could speak what languages. During her testimony, it became clear that Ms. James did not fully understand what Ms. Knedel's job with the psychology unit was, but she understood the person to have worked with the District for many years. There is no evidence that Ms. Knedel is qualified in any way to determine if someone is fluent in "speaking, writing and translating" any language, let alone the four listed on the skip criteria. It is plain from her testimony that Ms. James is not; she took no steps to personally examine the matter, and her knowledge of what the psychology staff actually did was quite limited.⁹

21. There is no evidence that any of the persons proposed for skipping have been tested in any way regarding their abilities. There is no evidence that these teachers are fluent in any languages in terms of reading or writing the languages, yet the ability to fluently read and write the languages is part of the skipping criteria. At bottom, the only evidence that the persons to be skipped can speak one of the four languages is their own statements, made in the past when they were trying to obtain a position, coupled with the assertions of a staff person whose role within the psychology department was not established. There has been no "demonstration" of fluency.¹⁰

22. (A) It was not demonstrated by the District that having psychologists who spoke Vietnamese and Farsi was necessary to provide psychological services. As acknowledged in Complainant's closing brief regarding the school psychologists, there are no Farsi or Vietnamese speaking students in the special education system. (Ex.26, p. 2, lines 13-17.) Indeed, there are a total of 17 students in the entire District

⁹ At one point the ALJ had to cut off testimony by Ms. James because she was being drawn into speculation.

¹⁰ During his testimony Mr. Miller stated that those to be skipped demonstrated their ability, but there is no evidence that he has any knowledge of their skills other than what he heard from Ms. James. It must be noted that the job applications themselves likely do not constitute official records within the meaning of section 1280 of the Evidence Code, in that the writing was made, apparently, by prospective employees of the District, and not by an employee acting in the scope of their duties, and there is no evidence to support the trustworthiness of such documents. The statements by Ms. Knedel, not themselves records, hardly qualify either.

who claim EL status based on Farsi and Vietnamese being the primary languages. While the District contends that the EL students, by definition, are not fluent in English, it is not clear from Exhibit 5 that such students are without any capacity in English either.

(B) Ms. James, in her testimony did not know, but assumed, that if the psychology staff needed to deal with a student who spoke one of the 25 foreign languages not covered in the skip criteria, that a translator would be hired, or perhaps a psychologist who spoke the language would be contracted for. Ms. Mitchnick testified that she was unaware of a situation where the psychologists had been required to obtain the assistance of a translator from outside the District; she has worked for the District as a psychologist for nearly six years. There was no evidence that the staff had ever been unable to serve the needs of any the fourteen students who claim Farsi as their primary language, let alone the four who claim Vietnamese.¹¹

(C) When questioned by the ALJ as to whether the skipping criteria had been based on the District's needs, or what the psychology staff could provide in terms of language skills, Ms. James testified that it "was a little of both" or words to that effect.

23. Ms. Mitchnick stated she speaks some Spanish, "enough to get by" in many circumstances, but when necessary either pairs up with one of the Spanish speaking staff, or turns the matter entirely over to them. This was an admission that she is not fluent in Spanish. The attorney for Mays and Jones implied that they could speak Spanish, and had simply decided not to volunteer that information when hired, and in his written contentions, Exhibit O, he made various claims, but neither of those Respondents testified to any of those matters. Thus, it can not be said that they demonstrated the ability to speak, write and translate another language.

24. There is no evidence that would support a finding that the District's actions in attempting to retain teachers who spoke the four languages listed in the skip criteria discriminated in any way against the two African-American Respondents, Jones and Mays, that such was in some way racially biased against those employees, or African-American children. Nor was it established that the District legally could have adopted skip criteria that would retain one or more African-American school psychologists to meet the alleged needs of its African-American students to have an African-American psychologist to relate to; indeed, Complainant offered authority for that proposition that it would be illegal to do so.

25. As also set forth in the Legal Conclusions, it has not been demonstrated that there is a specific need for psychologists who can speak Farsi and Vietnamese. Furthermore, it has not been demonstrated that any of the school psychologists have

¹¹ And, there is no information as to how much facility such students have with English.

fluency in speaking, writing and translating any foreign language. In an of itself, bilingual skills could support skip criteria, but in this particular case, on this particular record, the need for some of the language skills has not been demonstrated, and whether any school psychologist has such skills has not been demonstrated. Nor has racial discrimination been demonstrated.

26. In all the circumstances, To, a probationary employee, can not be retained because he could speak to four of the District's non-special education students. Regardless of the skipping criteria, Ms. Marvel and Respondent Mays would be laid off, as they are the next most junior psychologists. Ms. Kramer and Ms. Jaimes, who received precautionary notices must be laid off as they are next lowest in seniority, but Ms. Jaimes, the more senior of these two, should be laid off as to .8 FTE.

Findings Regarding the Contentions of Other Certificated Employees:

27. It was established that Respondent Marjorie Keith was senior to another teacher, Camyrin Sharp, who was being retained by the District, and it was established that Ms. Keith is credentialed and competent to fill Ms. Sharp's position. Therefore, as stated by the ALJ at the hearing, Ms. Sharp can not be laid off and must be dismissed from the case.

28. It was established that Respondent Edward Messler is senior to Sam Vanis, who is not being laid off. Both hold a Mild-Moderate credential so that they can teach special education classes. In addition, Mr. Messler holds a single subject social studies credential. Mr. Miller acknowledged in his testimony that both teachers are credentialed to teach the same special education students, and that Mr. Messler is credentialed and competent to take the position held by Mr. Vanis. (The seniority list indicates Vanis is teaching in a mild-moderate assignment.) The position held by Mr. Vanis was not subject to the skipping criteria. Therefore, Respondent Messler can not be laid off while Mr. Vanis is retained.

29. The District served Respondent Dana English, number 1069 on the seniority list (seniority date 9/2/08) but skipped Mr. Guinto, number 1152 on the list (seniority date 9/8/09). Mr. Guinto was skipped pursuant to the skipping criteria because he is credentialed to teach severely handicapped children. However, Ms. English holds the same credential. When questioned as to why the senior teacher, Ms. English, received notice, Mr. Miller was unable to shed light on the matter. In the circumstances, it must be found that a junior teacher is being retained to fill a position that Respondent Dana English is credentialed and qualified to fill, and thus she may not be laid off.¹²

¹² The skipping criteria for those with credentials to teach the severely handicapped also refer to the teacher being highly qualified. On the skipping chart, Exhibit 17, Respondent English received a point for NCLB, implying that she is highly qualified and thus meeting the skipping criteria.

30. (A) District staff applied tie-breaking criteria to a number of elementary teachers who shared the seniority date of September 6, 2005; this amounted to 34 elementary teachers. The teachers received points under the formula laid out in the tie-break criteria. Where that failed to resolve the matter, the lottery was used. Thus, for example, Respondent Cid had 20 tie break points, and was the most senior of all. One teacher had 18 points, another 16, but three teachers had 15 points and were then ranked by a lottery.

(B) Ten teachers had nine points, and they were then ranked by lottery, with Respondent Kimberly Sibbrel being the most senior of that group, and Respondent Candace Montesanti being the most junior. (See Ex. 17, p. 1.)

(C) However, two of the teachers on that the tie-break list were not given layoff notices. Those two are Linda H. Chang and Laura Cambrelen.¹³ They are not listed on Exhibit 4, which Complainant put in evidence as the “Amended List of Persons Who Were Sent Notice Packet.” Likewise, they are not listed on the Amended List of Respondents, which is attached to the Accusation and Amended Accusation and referenced therein. Nor are they listed on Exhibit 8, which is the list of those who did not request a hearing; the fact they did not appear there indicates that the District did not expect them to request a hearing since they were not noticed.¹⁴

(D) Plainly, if Ms. Cambrellen did not receive a preliminary notice, she can not be laid off. Neither can Ms. Linda Chang, who was not noticed, not served with an accusation making her a party to this proceeding, and not listed on Exhibit 13 as a teacher to receive a final lay off notice. Both of these teachers are permanent teachers, and thus can not be terminated by a notice of non-reelection. There is no evidence that they were skipped for some reason. The most obvious criteria, holding a CLAD, does not distinguish them from any other elementary teacher; the tie-break list shows that all 34 have a CLAD.¹⁵

¹³ Ms. Cambrelen was one of three teachers who had 10 tie break points, and was the most senior of the three with that many points.

¹⁴ However, for some reason, Ms. Cambrelen is listed on Exhibit 13, the District’s proposed list of those to receive final lay off notices. She is also listed on the list of persons not filing a notice of defense, but one would not be necessary if she was not, as the record shows, served with a preliminary notice.

¹⁵ On cross examination, Mr. Miller, the District’s Director of Human Resources, was asked why Ms. Chang had not been notice for layoff, and he could not provide an explanation. He was not asked about Ms. Cambrelen.

(E) The District gave notices to, and received requests for hearing from all the other persons listed on Exhibit 17 who are senior to Ms. Chang, except Ms. Cambrelen, who received no notice.

(F) In these circumstances, the following Respondents who are senior to Ms. Chang would be laid off while she is retained to perform elementary school teaching: Carmen Cid, Lillian De Groof, Dana Hunt, Jennifer Gahlmann, Jennifer Graves, John Newall, Matthew Brooks, Corrine Badertscher, Lauren Mayo, Christine Mitchell, and Kimberly Sibbrel. Those teachers must be dismissed from the proceeding to avoid a violation of section 44955, subdivision (b).

31. Sara Dickerson contested her seniority date, providing testimony to the effect that she had served as a substitute teacher prior to October 1, 2006, her seniority date. However, she was unable to provide details that would establish her claim, although she did recall working part of 2005 as a short term substitute, and only the first six months of 2006 as a “long term” substitute. Insufficient evidence was provided to establish that her seniority date should change by reason of her right to “tack” some teaching time to her probationary period.

32. Cynthia Macias (formerly Cynthia Renteria) objected to her seniority date of April 1, 2007, and her status as a probationary teacher. She attested to working as a long term substitute in the 2006-2007 school year, and that she obtained her intern multiple subject credential on January 8, 2007; she described her credential as a “university intern” credential. According to District records, she became a probationary employee beginning on April 1, 2007, when she received a contract that classed her as a “1st year prob intern” which contract stated an effective date of April 1, 2007. (Ex. 23.) However, regardless of whether or not she could “tack” a year of substitute service in front of her probationary tenure, she did not establish that she worked 75 per cent of the prior school year in a substitute or temporary position.

33. (A) Arlene Robles is number 919 on the seniority list, shown as a permanent employee with a seniority date of September 5, 2006. She asserted that she was employed in the 2005-2006 school year, for the entire year, as a third grade teacher, and that such time was as a temporary teacher, which time should have been tacked to her probation period. Complainant asserts she started the 2006-2007 school year as a temporary employee, received a probationary contract in December 2006, and then was given retroactive credit back to September 5, 2006, and that such is the correct seniority date. It provided testimony to the effect that she could not have previously been a temporary teacher because she had an emergency credential, and that they would not hire such a person as a temporary teacher. Respondent testified she taught the 2005-2006 school year on an internship and emergency credential.

(B) Respondent Robles and the District executed a contract, made effective September 5, 2006, for employment as a first year probationary employee. (Ex. 24.) While it was executed by Respondent Robles on December 18, 2006, the

signature of the Director of Certificated and Classified Personnel is dated September 26, 2006.

(C) Two “Certificated Personnel Assignment Order(s)” were received as part of Exhibit 24. One, dated December 20, 2006, states that there is a change in Respondent Robles’s status to probationary status, from a temporary position; under the remarks section of section number 2, it states the reason as “preliminary credential.” An earlier Assignment Order, dated August 29, 2006, states at the line for “remarks/replaces,” “temporary contract.” This tends to support the Complainant’s contention that Respondent started the 2006 school year as a temporary employee.

(D) A District employee, Ms. Munoz, testified that a review of the Respondent’s file showed that Respondent accepted a “long term substitute assignment at Loma Alta School” on or about August 26, 2005. (See Closing Brief, Ex. 28, at p. 8, lines 13-14.)¹⁶ This corroborates Respondent’s testimony that she served the entire 2005-2006 school year in the same third grade class room.

(E) That the District may have “given probationary credit” to Respondent for the first part of the 2006-2007 school year does not foreclose the matter. As noted in the Closing Brief, absent statutory mandate, “the position of the teacher is created and fixed by the terms of the contract of employment,” and by the contract, drafted by the District and signed by it in September 2006, Respondent was a probationary teacher beginning on September 5, 2006. (Ex.28, p. 5, citing *Rutley v. Belmont Elementary Sch. Dist.* (1973) 31 Cal.App.3d 702, 705.) Respondent, under the contract, was not a temporary employee in the fall of 2006, she was probationary.

(F) It is undisputed that Respondent worked the entire 2005-2006 school year as a third grade teacher, a long term substitute. Under section 44918, subdivision (a), she is entitled to treat that year as a probationary term, which would advance her seniority date to the date she provided during her cross-examination, September 6, 2005.¹⁷ Subdivision (d) of that statute is not applicable given the admission by Ms. Munoz of Respondent’s status as a long-term substitute. The claim

¹⁶ The quote of this testimony is of some interest given the District’s position that it does not utilize what are known as “long term” substitutes. (I.e., Closing Brief, Ex. 28, p. 3, lines 13-14 [“ . . . the evidence showed all substitutes employed by the District are day-to-day substitutes”]; *id.*, p. 4 [distinction between day-to-day and long term substitutes is only a payroll distinction].)

¹⁷ Ms. Munoz’s testimony, described in Factual Finding 33(D), could support a seniority date of August 26, as Respondent did testify to attending new teacher training before the 2005 school year. However, because nearly four pages of the seniority list show teachers with a seniority date of September 6, 2005, it is inferred that such was indeed the first day of school in 2005.

that the substitute time can not be credited under section 44918 because Respondent held an emergency credential is not supported by the statute, which only refers to the job classification, and not the nature of the credential. Further, it is now quite settled that a teacher's job classification—temporary, substitute, or probationary—is not controlled by the teacher's credential.

34. (A) Respondent Ella Farinas disputed her seniority date, of February 5, 2007. She attested that she had been hired as probationary in September 2006, but that the District had put off executing her contract. She offered as corroboration an e-mail between a District staff person and the President of the Respondent's union, where the staff person, Ms. Shakoor, seemingly agrees with Respondent's analysis.

(B) The written probationary contract between the parties states the effective date is February 5, 2007; it was signed by the parties the next day. In the circumstances, the written contract must control, absent more compelling evidence. It should be noted that Exhibit A, the e-mail, references Respondent as serving continuously from September 2006, "first as a long-term sub," which is as supportive of the District's position, even if the statement by the District staff person might not be. Such ambiguity can not change the language of the contract.

35. Respondent Kelly Lynn Oxley was not skipped on the basis of holding a CLAD. She had submitted paperwork in 2005, to the Commission on Teacher Credentialing (CTC) and the District. For reasons not completely clear, the CLAD did not issue at that time. However, on March 11, 2010, the CTC informed Respondent that her CLAD was "granted and approved . . . on 3-11-2010. It will be dated 2-1-10." (Exhibit B.) Respondent provided that documentation to the District on March 15, 2010, the date deemed to be the cut-off date for submitting credentials under case law. Under the circumstances, she must be found to have had a CLAD that must be considered in any skipping or bumping.

36. Ms. Winkler was unable to provide sufficient evidence that her seniority date should change, in light of the District's documents showing that she was initially hired in 2006 as a substitute teacher.

37. (A) Respondent Orrin Barrow asserted that he should be a permanent employee rather than a probationary employee. In either event, the District shows his seniority date as September 2, 2003, he worked as a probationary employee not earning tenure for several years. Ms. Munoz produced a salary card for Mr. Barrow, which she explained showed he did not start his second year of tenure-earning service until September 2009, so that he would not become permanent until September 2010.

(B) The salary card, Exhibit 22, shows, in the position column, two separate entries marked "1st yr. Prob. Tchr." It also shows an entry for "2nd yr. Prob. Tchr.;" that is clearly shown for the 2009-2010 school year. What is ambiguous is the time period for the first two positions as a first year probationary teacher. While the

year 2007-2008 is clearly shown as a prob. 0 position, one of the first year positions, shown as 10 months, is marked “6-1-08 [to] 07-08” and the next first year position, also shown as 10 months, is marked “9-2-08 [to] 08-09.”

(C) At bottom, the salary card shows that Mr. Barrow served three separate 10 month positions at Marshall in a probationary capacity; whatever the ambiguity in the “effective dates” column, the District also shows three full school years of probationary service. As such, Respondent Barrow must be deemed a permanent employee with a seniority date of September 2, 2003.

(D) Respondent testified that he has passed the CSET in math, which creates skipping protection for math teachers. While Mr. Miller did not gainsay that testimony, he also testified that Mr. Barrow’s testimony was the first time he had heard of it; the District’s records as of March 15, 2010, did not reveal passage of that exam. In these circumstances, Respondent Barrow would not be able to protect himself with that skip criteria.

(E) It appears that Mr. Barrow’s seniority will protect him from lay off in this case due to his relatively high seniority date and he may not be laid off.

38. Several employees were noticed for lay off because they did not have their CLAD as of the dates of the preliminary notices. The testimony of Respondents Tiech, March, Mulder, and Green are unavailing on this point. As the District showed, it has routinely put teachers on notice that they must obtain this important certificate. The District’s testimony on this point is credited. Some of these Respondents had emergency CLAD credentials, and let them expire. Unlike Ms. Oxley, Mr. Mulder could not show that the CTC had acted on his application before March 15. His testimony and documentation to the effect that District staff said that he would be taken off the lay off list, because his university had issued an “R-19 letter,” was insufficient. He does not have the credential at this time. Mr. Grey, who purportedly relied on representations that he did not need a CLAD, can not be protected with that reliance given the evidence of prior notice and the reality that over 3,000 students speak Spanish.

39. Mr. Parekh was unable to establish that he met the Board’s skip criteria pertaining to math teachers. While he is plainly well-educated and experienced, the fact that he has not completed the CSET, in all parts, must work against him in this case.

40. Respondents Grey and Deschamp were unable to provide sufficient evidence to refute the District’s records regarding their seniority dates.

41. No other Respondent was able to demonstrate that their job classification, seniority date, credentials, or qualifications were incorrectly asserted by the District.

42. With the changes and adjustments that will flow from the dismissals called for above (i.e., the dismissal of those elementary school teachers senior to Ms. Chang), it can be found that no certificated employee junior to any Respondent was retained by the District to render a service for which a Respondent was certificated and qualified to render.

LEGAL CONCLUSIONS

Legal Conclusions of General Application:

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 10(E).

2. (A) A District may reduce a particular kind of service (PKS) within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The Court of Appeal has made clear that a PKS reduction does not have to lead to less classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-85; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

(B) The services to be discontinued are particular kinds of services within the meaning of 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 given the fiscal problems it faces. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949. This Legal Conclusion is based on Factual Findings 1 through 9 and the foregoing authorities.

3. (A) A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (§ 44955, subd. (b); *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) At the same time, junior teachers may be given retention priority over senior teachers—may be “skipped” in favor of that senior employee—if a district demonstrates a specific need for personnel to teach a specific course or to provide a specific service, and if it is demonstrated that the junior employee has special training or experience necessary to teach that course or provide that pupil service. (§ 44955,

subd. (d); *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.)

4. (A) It is settled that the trier of fact may “accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted.” (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.* at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal. App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of “one credible witness may constitute substantial evidence”, including a single expert witness. (*Kearl v. Board of Medical Quality Assurance, supra*, 189 Cal.App.3d at 1052.)

(B) However, the rejection of testimony does not create evidence contrary to that which is deemed untrustworthy. Disbelief does not create affirmative evidence to the contrary of that which is discarded. “The fact that a jury may disbelieve the testimony of a witness who testifies to the negative of an issue does not of itself furnish any evidence in support of the affirmative of that issue, and does not warrant a finding in the affirmative thereof unless there is other evidence in the case to support such affirmative.” (*Hutchinson v. Contractors’ State License Bd* (1956) 143 Cal.App. 2d 628, 632-633, quoting *Marovich v. Central California Traction Co.* (1923) 191 Cal. 295, 304.)

(C) Discrepancies in a witness’s testimony, or between that witness’s testimony and that of others does not necessarily mean that the testimony should be discredited. (*Wilson v. State Personnel Bd.* (1976) 58 Cal App.3d 865, 879.)

(D) It should be remembered that “on the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted—but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability.” (*Wilson v. State Personnel Board* (1976) 58 CA3d 865, at 877-878, quoting *Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.)

5. Pursuant to Government Code section 11520, subdivision (b), the ALJ concludes that Respondents Mitchnick, Jones, and Mays were entitled to a hearing. Ms. Mitchnick did not receive the accusation because she had moved, and the District provided no evidence that she was obligated to notify the District of any address change; it did not show she was within the provisions of section 11505, subdivision

(c), of the Government Code. While section 44949, subdivision (d), of the Education Code provides that “notice” at a last known address is effective, an accusation is more than a mere notice. As to Respondent’s Jones and Mays, their attorney gave notice of his appearance on April 8, no more than three days after a notice of defense was due. There was no evidence that counsel put him on notice that his clients were deemed to have waived their rights to a hearing; instead, the tone of the letters, Exhibit O, would lull him into complacency. In all the circumstances, disregarding any default is in the interests of justice.

Legal Conclusions Pertaining to the Skipping of Junior School Psychologists:

6. As generally discussed in Legal Conclusion 3, one way that a school district may deviate from seniority is through skipping, which is governed by Section 44955, subdivision (d). That subdivision states:

The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

7. (A) Thus, the Legislature established four justifications for a skipping over a junior employee and terminating a senior employee instead. First, a district may skip over a junior teacher and terminate a senior teacher if “the district demonstrates a specific need for personnel to teach a specific course or course of study.” Second, a district may skip if “the district demonstrates a specific need for personnel . . . to provide the services authorized by a services credential with a specialization in . . . pupil personnel services.” Third, a district may skip if “the district demonstrates a specific need for personnel . . . to provide the services authorized by a services credential with a specialization in . . . health for a school nurse.” Fourth, a district may skip to maintain or achieve “compliance with constitutional requirements related to equal protection . . .” (§44955, subd. (d).)

(B) Furthermore, a district must demonstrate that the certificated employee who would be skipped has special training and experience necessary to provide the instruction or service in question.

8. A school district may not create other justifications for skipping. The only permissible justifications are the four listed in Code section 44955, subdivision (d). Creation of other justifications for skipping would deprive teachers of their seniority rights. Here, the District must look to the second of the four statutory justifications, that is, it must “demonstrate” a specific need for personnel to provide services authorized by a services credential with a specialization in pupil personnel services,

and it must demonstrate that those it would skip have special training and experience necessary to provide the service in question. It has failed to demonstrate either.

9. It appears that the school psychologists, holding PPS credentials, fit that category of those providing services. It is less than clear that they must be bilingual to do so, especially give the fact that approximately 30 languages appear in the English Learner survey. Neither Ms. James nor Ms. Mitchnick could point to any occasion where the District had actually had to contract for a translator or psychologist who spoke one of the languages, though it is fair to say they have been able to avoid that because some staff—not particularly identified—have been able to assist Ms. Mitchnick when she has dealt with someone who spoke Spanish.

10. (A) That the statute, and the Board’s skip criteria, utilize the word “demonstrate” is of some import. The word is not defined in the Education Code, but used in that Code in other contexts. For example, Section 44830, subdivision (b), provides that no district shall hire a teacher in the capacity designated in their credential unless that person “has demonstrated basic skills proficiency as provided in section 44252.2 or is exempted” Section 44242.2 requires the passage of a test. And, even the CTC can not issue or renew a credential without the applicant “demonstrating” proficiency in basic skills by passing tests required by other statutes. (§44252, subd. (b). See also, § 44252.7, subd. (a) [applicants for children’s center instructional permit must demonstrate proficiency by passing tests or proving certain college degrees].)

(B) According to Black’s Law Dictionary, the word “demonstrate” means “to teach by exhibition of samples; to derive from admitted premises by steps of reasoning which admit of no doubt; to prove indubitably. (Citation omitted.) To show or prove value or merits by operation. (Citation omitted.)” (Black’s Law Dict. (4th ed. 1968), p. 519, col. 1.) Webster’s defines the term as “1: to show clearly. 2a: to prove or make clear by reasoning or evidence. B: to illustrate and explain esp. with many examples. 3: To show or prove to a customer.” (Webster’s Seventh New Collegiate Dict. (1965), p. 220, col. 1.)

(C) It can not be found or concluded that the Complainant has “show[n] clearly” or in a way that admits of no doubt, that it is necessary for its psychologists to possess any language, other than Spanish, to provide school psychologist services; such as not been “prove[n] indubitably.” Just as important, Complainant has not demonstrated that any of the psychologists can speak, translate, and write a language besides English with the fluency called for in the skipping criteria. Certainly, there is no evidence of fluency in writing the languages, and reliance on a years-old job application and the opinion of a staff person with no obvious qualifications does not support the conclusion of fluency even in speaking the languages.

11. The primary and controlling issue in these proceedings is seniority; skipping is an exception to the general rule. To create an exception from seniority so that junior staff would be retained on the chance they might have to speak to one of 17 students in the District would do violence to the seniority principal. It must be concluded that a need for psychologists who speak Farsi and Vietnamese has not been demonstrated, and it must be concluded that it has not been demonstrated that any of the junior psychologists proposed for retention are fluent in the speaking, writing and translation of any foreign language. To uphold the bulk of the skipping criteria, or the manner in which it would be applied would constitute an abuse of discretion. Based on all the foregoing, including Factual Findings 5 and 12 through 26, the psychologists must be terminated in order of inverse seniority.

12. In these circumstances, To, Marvel, Mays, and Goldstein must be laid off before any of the more senior psychologists, and along with the release of the temporary, Ms. Roberson, this accounts for 5 of the 5.8 FTE to be released. Ms. Jaimes, the next most junior psychologist, must have her position reduced by .8 FTE. Respondents Mitchnick, Kramer, Harris, and Cloda Jones, who received preliminary notices, must be dismissed.

Legal Conclusions Pertaining to Other Claims:

13. Respondents Keith, Edward Messler, English, Cid, DeGroof, Hunt, Gahlman, Graves, Newall, Brooks, Badertscher, Mayo, Christine Mitchell, and Sibbrel all established that they were senior to, and credentialed and qualified to perform the assignments of teachers junior to them, who had been retained by the District. The District did not establish grounds to skip such junior employees. Pursuant to section 44955, these Respondents must be dismissed from this proceeding. This Conclusion is based on Factual Findings 27 through 30(F)

14. Respondent Arlene Robles must be deemed a permanent employee with a seniority date of September 6, 2005, pursuant to section 44918, subdivision (a), based on Factual Findings 33(A) through (F). As noted in the Findings, the type of credential she held does not control her job classification; those holding emergency or intern credentials may still be probationary teachers. (*California Teachers Ass'n v. Governing Bd. Of Golden Valley Unified School Dist.*, (2002) 98 Cal. App. 4th 369; *Welch v. Oakland Unified School District* (2001) 91 Cal. App.4th 1421.) Likewise, whether the District calls her a day-to-day substitute does not control either; it is what her job actually is. In *Eureka Teacher's Assn. v. Board of Education* (1988) 202 Cal.App.3d 469, 473, it was held that a teacher's reemployment rights were not dependant on a teacher's formal classification as either a day-to-day or long term substitute, as section 44918 does not recognize that distinction. Instead, the issue was whether the teacher was in an "on-call" status to replace employees on a daily basis, which she, like Ms. Robles, was not. Here Ms. Robles served the entire year in a third grade classroom. Thus, she may not be laid off if any probationary or other

junior employee is otherwise retained for a position which she is certificated and qualified to render.

15. Respondent Kelly Oxley was entitled to be skipped because she received a CLAD effective prior to March 15, 2010, and the District had notice of it on that date, based on Factual Finding 35. As noted in the Findings, March 15 has, for years, been treated as the cut-off date for having a credential that may be considered in the lay off process. (*Degener v. Governing Board* (1977) 67 Cal.App.3d 689, 698-699.)

16. The seniority date of Respondent Gina Sorensen-Hernandez is modified to September 4, 2007, and she is to be classed as a permanent teacher pursuant to stipulation and Factual Finding 12(A). Respondents Ruth Several, Melanie Go, and Merina Esperza shall retain their seniority dates of September 5, 2006, each ranked with 8 tie break points, with Ms. Several the most senior, followed by Ms. Go, and then Ms. Esparza, the junior, based on Factual Finding 12(B).

17. Mr. Barrow is a permanent employee with a seniority date of September 2, 2003, based on Factual Finding 37, and section 44929.21, subdivision (b). Given his seniority as a permanent employee, he must be dismissed from this proceeding.

18. No Respondent established that they had the right to bump a junior employee or that they should have been skipped, based on the foregoing rules, and Factual Findings 38 through 42.

ORDER

1. The following Respondents are dismissed from this proceeding and they shall not be laid off: Orrin Barrow, Corrine Badertscher, Louis Brinker, Matthew Brooks, Carmen Cid, Lucia De La Paz Garcia, Dana English, Jennifer Gahlmann, Jennifer Graves, Lillian De Groof, Lisa Harris, Dana Hunt, Cloda Jones, Marjorie Keith, Elizabeth Klinger, Neda Kramer, Natasha Mitchnick, Robert Marrufo, Lauren Mayo, Christine McQuinn, Edward Messler, Christine Mitchell, John Newall, Maria Stemwell, Kimberly Sibbrel, Jose Trejo, and Kathryn Wolford.

2. Sonia Jaimes position shall be laid off to the extent of .8 FTE.

3 The seniority dates of respondents Sorensen-Hernandez, Several, Melanie Go, Esperza, and Robles must be modified consistent with the findings set forth above.

4. Respondents Barrow and Robles are to be shown as permanent employees on the District's records, with seniority dates consistent with the findings above.

5. Ms. Robles may only be laid off if she is junior to other permanent certificated employees of the same credentials and qualifications.

6. All other persons receiving preliminary notices may be laid off in compliance with the reduction resolution, in inverse seniority.

May 7, 2010

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A TO PROPOSED DECISION

Noemi Acosta
Christopher J. Akel
Nichole Diana Anderson
Martha Arevalo
Natalie Arutunian
Kelly Ann Atkatz
Brooke Autry
Corrine Elaine Badertscher
Charel Erin Bailey
Orrin L. Barrow
Cynthia Ann Beale
Elizabeth Ann Beaumont
Christina L. Berendt
Melinda E Bernabe
Michael F. Birnbryer
Siri R Boothby
Emily Elizabeth Brink
Louis A. Brinker
Matthew Edward Brooks
Roland Bynum
Harmony J. Cano
Jeffrey A. Cerveney
Carmen Maria Cid
Patrick E. Compton
Arlin Arely Cornejo
Kimberly M. Cuadra
Scott R. Dayman
Lucia De La Paz Garcia
Hilary S De Wolfe
Lillian Degroof
Rowelyn G. M. Dela Cruz
Raul F. Delgado
Andrew Jon Delscamp
Sara J Dickerson
Sandra Dondalski
Amber Douglas
Hilarie Anne Dyson
Deidra G Edwards
Dana M English
Jacqueline A Equite
Merina Esparza
Ella Farinas

Agnesa Freelove
Jennifer E Gahlmann
Antonette M. Garcia
Alison L Garfinkel
Monique K Garza
Luisa Geiger
Zsolt S. Girba
Madelyn Michell Gittens
Melanie Go
Dawn L Goldenberg
Jacqueline Gonzalez
Kristine K Gonzales
Jennifer J Graves
Roger Hilton Gray
Gary T Green
Tania Guadalupe Heredia
Weston T. Hester
Iris Yu-Jung Huang Hao
Dana Denise Hunt
Mercedes Ibarra
Jennifer M. Ikari
Joyce Cecelia Jacques
Sheila Marie Jakobsen
William C. Jenkins
Dana Renee Jones
Ani Karapetyan
Marjorie Ruth Keith
Joseph Kelly
Elizabeth L. Klinger
Deborah Garcia Kostich
Bryan Jonathan Lantz
Hanh Thuan Le
Priscila Leon-Didion
Lindsay D Lewis
Keleen R. Lewkewich
Christy Lim
Erica Civitate Linares
Marion K Lo
Marjorie Marie Lott
Cynthia Loraine Macias
Jeffrey Ara Maljian
Armenui Manasarian
Robert Marrufo
Chaneika T Martin
Julie Aurelia Martinez

Christine M Mc Quinn
Christine A. McLaughlin
Michael R. Mcneely
Edward Jennings Messler
Karyn Messler
Melissa B. Meyer
Sheila Anne Miller
Andrea Nicole Mills
Kenneth Miralles
Christine Simone Mitchell
Candace M Montesanti
Katrina Lynn Moore
Stephen Scott Mulder
Jana Marie Munoz
Erin D Musick
Laureen Nadirah C Nayo
Stephanie Ann Nef
John Allan Newell
Karen H Oien
Tricia Michelle Oliver
Irad Orduna
Erin Shannon Otoole-Delawari
Kelley Lynn Oxley
Laura Ann Palmer
Bharatchandra M Parekh
Esther June Park
Sabrina V. Passanante
Elaine Pehlivanos
Melquiades C Renteria
Madeline Ribeiro
Karin Robinson Smith
Arlene Robles
Rene Rodriguez
Monica L Salas
Diane M Salson
Linda C Saucedo
Benita L Scheckel
Wendy Elizabeth Self
Veronica Serrano
Ruth J Several
Christine L Shannon
Kimberly Michelle Sibbrel
Gina Sorensen-Hernandez
Kristin Stafford
Janus E. Stechel

Maria Catherine Stemwell
Stacey L Sue
Lisa Tamiko Takemura
Hideyuki Tanaka
Olga V Torres
Martha L Gonzalez Tovar
Jose E. Trejo
Michelle Turnbaugh
Janice Ruth Vargas
Keisha Denise Wallace
Lewis R Watson
Laura J Williams
Stacy Ruth Williams
Kimberly D Winckler
Kathryn Jean Wolford
Cherie A. Wood
Veronica Yepez

ATTACHMENT B TO PROPOSED DECISION

Noemi Acosta
Christopher J. Akel
Nichole Diana Anderson
Martha Arevalo
Natalie Arutunian
Kelly Ann Atkatz
Brooke Autry
Corrine Elaine Badertscher
Charel Erin Bailey
Orrin L. Barrow
Cynthia Ann Beale
Elizabeth Ann Beaumont
Christina L. Berendt
Melinda E Bernabe
Michael F. Birnbryer
Siri R Boothby
Emily Elizabeth Brink
Louis A. Brinker
Matthew Edward Brooks
Roland Bynum
Harmony J. Cano
Jeffrey A. Cerveney
Carmen Maria Cid
Patrick E. Compton
Arlin Arely Cornejo
Kimberly M. Cuadra
Scott R. Dayman
Lucia De La Paz Garcia
Hilary S De Wolfe
Lillian Degroof
Rowelyn G. M. Dela Cruz
Raul F. Delgado
Andrew Jon Delscamp
Sara J Dickerson
Sandra Dondalski
Amber Douglas
Hilarie Anne Dyson
Deidra G Edwards
Dana M English
Jacqueline A Equite
Merina Esparza
Ella Farinas

Agnesa Freelove
Jennifer E Gahlmann
Antonette M. Garcia
Alison L Garfinkel
Monique K Garza
Luisa Geiger
Zsolt S. Girba
Madelyn Michell Gittens
Melanie Go
Dawn L Goldenberg
Jacqueline Gonzalez
Kristine K Gonzales
Jennifer J Graves
Roger Hilton Gray
Gary T Green
Tania Guadalupe Heredia
Weston T. Hester
Iris Yu-Jung Huang Hao
Dana Denise Hunt
Mercedes Ibarra
Jennifer M. Ikari
Joyce Cecelia Jacques
Sheila Marie Jakobsen
William C. Jenkins
Dana Renee Jones
Ani Karapetyan
Marjorie Ruth Keith
Joseph Kelly
Elizabeth L. Klinger
Deborah Garcia Kostich
Bryan Jonathan Lantz
Hanh Thuan Le
Priscila Leon-Didion
Lindsay D Lewis
Keleen R. Lewkewich
Christy Lim
Erica Civitate Linares
Marion K Lo
Marjorie Marie Lott
Cynthia Loraine Macias
Jeffrey Ara Maljian
Armenui Manasarian
Robert Marrufo
Chaneika T Martin
Julie Aurelia Martinez

Christine M Mc Quinn
Christine A. McLaughlin
Michael R. Mcneely
Edward Jennings Messler
Karyn Messler
Melissa B. Meyer
Sheila Anne Miller
Andrea Nicole Mills
Kenneth Miralles
Christine Simone Mitchell
Candace M Montesanti
Katrina Lynn Moore
Stephen Scott Mulder
Jana Marie Munoz
Erin D Musick
Laureen Nadirah C Nayo
Stephanie Ann Nef
John Allan Newell
Karen H Oien
Tricia Michelle Oliver
Irad Orduna
Erin Shannon Otoole-Delawari
Kelley Lynn Oxley
Laura Ann Palmer
Bharatchandra M Parekh
Esther June Park
Sabrina V. Passanante
Elaine Pehlivanos
Melquiades C Renteria
Madeline Ribeiro
Karin Robinson Smith
Arlene Robles
Rene Rodriguez
Monica L Salas
Diane M Salson
Linda C Saucedo
Benita L Scheckel
Wendy Elizabeth Self
Veronica Serrano
Ruth J Several
Christine L Shannon
Kimberly Michelle Sibbrel
Gina Sorensen-Hernandez
Kristin Stafford
Janus E. Stechel

Maria Catherine Stemwell
Stacey L Sue
Lisa Tamiko Takemura
Hideyuki Tanaka
Olga V Torres
Martha L Gonzalez Tovar
Jose E. Trejo
Michelle Turnbaugh
Janice Ruth Vargas
Keisha Denise Wallace
Lewis R Watson
Laura J Williams
Stacy Ruth Williams
Kimberly D Winckler
Kathryn Jean Wolford
Cherie A. Wood
Veronica Yepez