

BEFORE THE  
GOVERNING BOARD OF THE  
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT  
COUNTY OF SACRAMENTO  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL  
EMPLOYED BY THE SACRAMENTO  
CITY UNIFIED SCHOOL DISTRICT,

Respondents.

OAH No. 2011010622

**PROPOSED DECISION**

Administrative Law Judge Catherine B. Frink, Office of Administrative Hearings, State of California heard this matter in Sacramento, California on April 26-29, 2011.

Sarah Levitan Kaatz, Attorney at Law, and Dulcinea Grantham, Attorney at Law, represented the Sacramento City Unified School District (District).

Margaret Geddes, Attorney at Law, Beeson, Tayer, & Bodine, APC, and A. Eugene Huguenin, Jr., Attorney at Law, Huguenin Law Office, represented 266 respondents identified in Exhibit A attached hereto and incorporated herein by reference.

Oral and documentary evidence was received and the parties made oral closing argument. The record was held open to allow the parties to submit further argument concerning the applicability of Education Code section 44955, subdivision (d)(2), to these proceedings.<sup>1</sup> Respondents' Post-Hearing Brief was filed electronically on April 30, 2011, and was marked as Exhibit FF. The District's Post-Hearing Brief was received on May 2, 2011, and was marked as Exhibit 37. The record was closed and the matter submitted on May 2, 2011.

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<sup>1</sup> All statutory references are to the California Education Code, unless otherwise specified.

## FACTUAL FINDINGS

### *Jurisdiction*

1. Robert R. Garcia is the Chief Human Resource Officer for the District. Jonathan P. Raymond is the Superintendent of the District. Mr. Garcia is the Superintendent's designee for the certificated layoff process. The actions of Mr. Raymond and Mr. Garcia, and the actions of the District's Board of Education (Board), were taken in their official capacities.

2. On March 3, 2011, the Board adopted Resolution No. 2647, which reduced and/or discontinued particular kinds of certificated services no later than the beginning of the 2011-2012 school year in the amount of 355.6 full-time equivalent (FTE) certificated employees.

3. The Board further determined that it shall be necessary by reason of the reduction and/or discontinuance of services to decrease the number of permanent and/or probationary certificated employees at the close of the 2010-2011 school year by a corresponding number of FTE positions, and directed the Superintendent or his designee to proceed accordingly by notifying the appropriate employees to implement the Board's determination.

4. On or before March 15, 2011, the District served 496 affected certificated employees, including respondents, with written notice, pursuant to sections 44949 and 44955, that their services would not be required for the next school year (Notice). Each Notice set forth the reasons for the recommendation. The Notice attached and incorporated by reference Resolution No. 2647, which listed the services to be reduced or discontinued, resulting in a proposed reduction in the certificated staff by 355.6 FTE positions.

5. Requests for Hearing were timely filed by 309 certificated employees to determine if there is cause for not reemploying them for the next school year. Any certificated employee who failed to file a request for hearing has waived his or her right to a hearing, and may be laid off by the District.

6. On March 3, 2011, the Board adopted Resolution No 2011-C, in which the Board resolved pursuant to section 44954 to release or nonreelect 127 certificated employees which it identified as temporary. Prior to March 15, 2011, those 127 certificated employees received a Notice of Release from the District.<sup>2</sup> Of those employees designated as temporary, 105 also received a Notice of Recommendation that Services Will Be Terminated, which was served by certified mail on March 14, 2011 (double notice). The double notice notified the recipients that they had been released as temporary employees by the District; however, in the event the recipient was determined to have layoff rights, he or

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<sup>2</sup> Except as otherwise noted, certificated employees released by the District pursuant to section 44954 are not parties to this layoff proceeding.

she was being given notice of layoff pursuant to sections 44949 and 44955, and could request a hearing to determine if there was cause for not reemploying him or her for the 2011-12 school year. Of the 105 certificated employees who received the double notice, 13 filed timely requests for hearing; of those 13, seven filed timely notices of defense and were respondents in this proceeding.<sup>3</sup>

7. Mr. Garcia made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense (Accusation packet) were timely served on the respondents.

8. The parties stipulated that the respondents identified in Exhibit A filed timely individual or group Notices of Defense.

9. Any certificated employee who received an Accusation packet, other than the respondents listed in Exhibit A, either did not file a Notice of Defense or did not appear at hearing, and was determined to be in default pursuant to Government Code section 11520. These individuals may be laid off by the District.

10. Except as noted in Finding 6, each respondent is presently a certificated permanent or probationary employee of the District.

11. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955.

12. With respect to the temporary certificated employees who received double notices including the seven respondents identified in Exhibit A, no challenge to their temporary status was raised at hearing. The District properly determined them to be temporary employees, who were not entitled to the notice and hearing procedures set forth in sections 44949 and 44955. The District indicated its intention to rescind the Notices to these certificated employees and release them pursuant to section 44954.

#### *Services to be Reduced or Eliminated*

13. The District is a large urban school district that provides services to approximately 41,000 students at 85 school sites in and surrounding the City of Sacramento. The District employs approximately 2,200 certificated employees.

14. The District has experienced declining enrollment, increasing costs, as well as projected funding cuts from the State, which have continued over the past several years. Because of uncertainties surrounding the State budget for the 2011-12 fiscal year, the District has planned for the “worst-case scenario,” a projected budget deficit of between \$24 million

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<sup>3</sup> The “dual noticed” respondents are designated with an asterisk on Exhibit A.

and \$28 million for the 2011-12 school year. More than 80 percent of the District's budget is comprised of personnel costs (salaries and benefits for certificated and classified staff). As a consequence of the anticipated budget shortfall, the District recognized that programs and services would need to be reduced for the 2011-12 school year. The District held public forums in early 2011 to obtain community input into proposed program cuts.

15. Through a process referred to as "one-stop staffing," Mr. Garcia directed his staff to provide each school site and/or department with its projected budget and staffing allocation, from which staffing cuts were determined. Human Resource Services Department analysts met with site administrators and department heads about staffing decisions for 2011-12, and a "surplus list" of staffing reductions was created. Additional reductions were recommended, based on the reduction or elimination of programs and services to help close the budget gap.

16. Mr. Garcia presented his findings and alternative recommendations to the Board at a meeting on March 3, 2011, along with proposed resolutions specifying criteria to be used to deviate from terminating certificated employees in order of seniority (skipping criteria) and to determine the order of termination of certificated employees with equal seniority (tiebreaker criteria). As a result of the District's current financial situation, the Board determined that it must reduce particular kinds of services throughout the organization. The Board approved the recommendations and, following the adoption of the Resolution set forth below, directed the Superintendent to implement the recommendations. The Board also charged the Superintendent or his designee to identify an equivalent number of certificated personnel and give those certificated employees notice in writing of the recommendation that their services would not be required for the ensuing school year. The recommendation that certificated personnel be identified for layoff from employment with the District was not related to the work performance of the affected teachers.

17. On March 3, 2011, the Board adopted Resolution No. 2647, Resolution of Intention to Terminate Certificated Employees due to a Reduction in Particular Kinds of Services (PKS Resolution). The PKS Resolution authorized the Superintendent to take action to reduce or discontinue the following particular kinds of services for the 2011-12 school year, as were itemized in "Exhibit A" attached to the PKS Resolution:

<u>Particular Kind of Service (PKS)</u>	<u>Full-Time Equivalent (FTE)</u>
Assistant Principals	4.0 FTE
Elementary Teachers (K-6)	118.0 FTE
Counselors	14.6 FTE
Computers	9.0 FTE
Middle School Core	3.0 FTE
Art	4.0 FTE
English	29.0 FTE
Japanese	2.0 FTE
Spanish	5.0 FTE

Math, High School	19.0	FTE
Math, Middle School	12.0	FTE
Home Economics	2.0	FTE
Physical Education (PE)	15.0	FTE
Elementary Resource Teacher	6.0	FTE
Science: Biology	20.0	FTE
Science: Physical Science	4.0	FTE
Science: Earth Science	2.0	FTE
Science: Physics	2.0	FTE
Science: Chemistry	2.0	FTE
Music	4.0	FTE
Social Science	17.0	FTE
Social Worker	10.0	FTE
Librarian	2.0	FTE
Sub-Total:	305.6	FTE
All Adult Education Teachers	50.0	FTE
<b>Total FTE Reduction</b>	<b>355.6</b>	<b>FTE</b>

18. The services set forth in the PKS Resolution are “particular kinds of services” that may be reduced or discontinued within the meaning of section 44955. There was no evidence that the Board’s decision to reduce or discontinue the identified services was arbitrary or capricious. The reduction or elimination of the services set forth in the PKS Resolution constituted a proper exercise of the Board’s discretion, within the meaning of section 44955.

19. In arriving at the number of certificated employees to be noticed for layoff, the District considered all “positively assured attrition” which had occurred as of the date the Notices were sent to certificated employees, i.e. resignations, retirements, and other permanent vacancies and leaves of absence.

20. Prior to or at the hearing, the District rescinded the preliminary notice of layoff to respondent Gricelda Jaime, who shall be retained for the 2011-12 school year.

21. The PKS Resolution stated in part that, “for the purposes of Education Code section 44955, subdivision (b), ‘competent’ shall be defined as described in Exhibit ‘B.’” “Exhibit B” listed the following criteria for an individual to be deemed competent under section 44955, subdivision (b) (Competency Criteria):

- (1) Highly Qualified status, as required by the No Child Left Behind Act [NCLB];

- (2) Possession of a BCLAD, CLAD or other equivalent English Language Learner Authorization to the extent required by the position;
- (3) At least one (1) year of experience in the past five (5) years working under the credential or authorization;
- (4) In order to work in a Priority School, training and/or experience teaching in a Priority School setting;
- (5) In order to work in a Waldorf School, formal training/coursework in the Waldorf method of teaching;
- (6) In order to work in the Accelerated Academy, training in Accelerated Academy programs and experience relevant to working with the Accelerated Academy student population;
- (7) In order to work in a Dual Immersion program, one (1) year of experience in the past five (5) years teaching in a Dual Immersion program

22. On March 3, 2011, the Board adopted Resolution No. 2649, Resolution to Determine Criteria for Deviation from Terminating a Certificated Employee in Order of Seniority (Skipping Resolution). “Exhibit A” to the Skipping Resolution (Skip Criteria) stated:

For the 2011-12 school year, to meet the requirements of Education Code section 44955, the Board of Education determines the needs of the District and the students by establishing the following skipping criteria:

- A. Individuals fully-credentialed to serve in classes requiring Bilingual Cross-Cultural Language and Development (“BCLAD”) certification, to the extent necessary to staff BCLAD required positions.
- B. Individuals fully-credentialed to serve in a Special Education assignment.
- C. Individuals fully-credentialed to teach the full breadth of high school math assignments up to calculus, to the extent required to staff high school math positions.

- D. Individuals currently serving in a Priority School assignment, who will also be teaching in a Priority School assignment for 2011-2012.
- E. Individuals who have one (1) or more years of experience teaching in a Dual-Language Immersion Program.
- F. Individuals who have two (2) or more years of experience teaching and/or specialized training in a home or hospital setting.
- G. Individuals who have formal training/coursework in the Waldorf method of teaching.
- H. Individuals with specialized training and experience in the Accelerated Academy Program.

For purposes of the above-referenced criteria, “fully-credentialed” is defined to mean an employee who possesses a preliminary, clear or internship credential.

23. At the March 3, 2011 meeting, the Board also adopted Resolution No. 2648, Resolution of Determination for Tie-Breaking Criteria (Tiebreaker Resolution). The Tiebreaker Resolution set forth criteria for breaking ties when two or more certificated employees with the same first day of paid service were facing potential layoff. The Board listed categories for consideration, and assigned weights to each category, as follows: Category I – Professional Preparation, including each single subject, multiple subject or service credential (3 points per credential); each supplemental or subject matter authorization (1 point per authorization); each limited assignment permit (1/2 point per permit); doctorate degree (1 point per degree held), masters degree (1/2 point per degree held); and National Board certification (1 point for certification); and Category II – Experience, defined as “Each year of previous in-District experience as a certificated employee which reflects years of service under contract with the District other than that determined by the established hire date (for example, a certificated employee who may have resigned and been rehired at a later date). For purpose of this criterion, one year of service constitutes 75% or more of the days of a school year.” (1 point for each year of service). Each category of criteria was to be applied independently, with criteria in Category I constituting a first level tiebreaker, and so on. In case of ties continuing through the listed criteria, Category III – Lottery, was to be used to break such ties.

*Verification of Seniority Date, Employment Status, and Other Information on the District's Seniority List*

24. Tenure is the relationship between a teacher and the District which gives the teacher greater job security.

Seniority is the relationship between the teachers within a school district. Among the teachers credentialed to provide a given service, greater seniority in the District gives a greater legal entitlement to a position. (See *Ferner v. Harris* (1975) 45 Cal.App.3d 363.)

Seniority date is defined as the date upon which an employee first rendered paid service in a probationary position. (§ 44845.)

25. Employees were given the opportunity to correct and verify their seniority dates. In December 2010, the Human Resource Services Department sent Verification Statements, with attached Employee Information Report 298e, to all site and department administrators of the District for distribution to each certificated employee. The deadline for submission of the completed verifications statements was January 14, 2011.

26. The Employee Information Report for each employee was generated from the District's ESCAPE data system. It listed the employee information, including name; seniority date; permanency (first year probationary, second year probationary, or permanent); school assignment; position (e.g. elementary teacher, high school, nurse); and credentials (including issue date, expiration date, and credential title). The Verification Statement stated, in part:

Please verify the information shown on Employee Information Report 298e regarding your seniority date, credential, address, and phone number, and make any corrections as needed. Attach a copy of your credential(s) to Employee Information Report 298e and this form to correct or update our records.

**Please return the Employee Information Report 298e and this form to your site, School Office Manager, or department administrator so that the entire school or department staff can be returned in a single envelope to Human Resource Services, Box 770, no later than January 14, 2011.**

I certify the information shown on Employee Information Report 298e is true and correct.

The Verification Statement contained a line for the employee to sign and date, certifying the truth of the information provided.



27. If employees made corrections to the Employee Information Report, Personnel Analyst Terri Lauzon checked the information and, if correct, entered the corrected information into the ESCAPE data system; these corrections were reflected in the master seniority list.

28. Neither the Verification Statement nor the Employee Information Report contained information about NCLB “highly qualified” certification status (HQ), and did not request updated information about NCLB compliance.

29. The District relied on the verifications provided by certificated employees in updating the District’s seniority list, which it used to determine the order of layoff.

### **Updates/Corrections to Information on District’s Seniority List**

30. At hearing, the District changed the employment classification of respondent Bryan Fisher (9/7/07) to “permanent.” The District will update its records to reflect this information.

31. Respondent Thurrell Sanders (2/25/04) holds a multiple subjects (M/S) credential with supplemental authorizations in Introductory Social Science and History. He is HQ in history. The District shall update its records accordingly.

32. Respondent Robert Walters (9/5/06) holds an M/S credential with a subject matter authorization in Mathematics. He is HQ in history core, M/S, and mathematics. The District shall update its records accordingly.

33. Respondent Cassandra Woodruff (9/2/08) holds an S/S credential with a subject matter authorization in biology by examination. She is HQ in biology. The District shall update its records accordingly.

### **Seniority Issues**

34. Respondent Kenneth McPeters (9/7/04) was employed from October 1, 2001, through August 14, 2004, in a management position with the District, as a Specialist III – Healthy Start (Village Project). After his employment in that position ceased, he became an elementary school counselor, and he started work on August 25, 2004, which is the day all of the school counselors reported to work. However, the District gave him a seniority date of September 7, 2004, the first day of school for teaching staff, because of the manner in which he was paid. His pay stub for the period ending August 31, 2004, indicated his position as “Village Prjct/Fmly S.” His daily pay rate was \$356.78, and his gross earnings for the month were \$6,827.47. Thus, he was paid for slightly more than 19 days of service in August. His pay stub for the period ending September 30, 2004, indicated his position as “Counselor, Elementar[y];” his daily pay rate was \$202.08, and his gross earnings were \$2,303.73. Thus this pay stub reflects that he was paid for slightly more than 11 days. From the evidence introduced at hearing, it appears that respondent McPeters was paid for service to the District

between August 14 and September 7, 2004, albeit at the higher pay rate of \$356.78. Therefore, he provided paid service in a probationary capacity (as a school counselor) starting on August 25, 2004, and his seniority date shall be adjusted accordingly.

35. Respondent Michael Johnston (9/7/06) was initially hired by the District as a long-term substitute at America's Choice High School (America's Choice). During the 2006-07 school year, America's Choice operated on an alternate school year schedule which tracked the local college schedule. Thus respondent Johnston began work on August 14, 2006, which was the first day of school under the alternate schedule. In late October 2006, he was offered a probationary position, and the District gave him a seniority date of September 7, 2006, which was the first day of school under the District's regular school schedule. The District did not explain why the date of September 7, 2006, was selected rather than August 14, 2006, the date respondent Johnston actually began work for the District. Therefore, his seniority date should be adjusted to August 14, 2006, to reflect his first date of paid service.

#### *Method of Effectuating the Reduction in Services and Identifying Affected Employees*

36. The Board's Resolutions delegated to the Superintendent and his designees the authority to implement the reduction and elimination of the listed particular kinds of services, to identify and determine which District employees would be affected by the reductions and to draft and serve the preliminary notices upon those identified employees. Immediately following the passage of the Resolutions, Mr. Garcia and the Human Resource Services Department analysts worked together to identify the services to be reduced as set forth in the PKS Resolution. After identifying the positions to be eliminated pursuant to the PKS Resolution, the analysts used the seniority list to identify the least senior employees providing those services; they applied the skipping criteria and the competency criteria to determine which employees of the District would be affected by the reduction or elimination of the particular kinds of services set forth in the PKS Resolution. The analysts created a "Bumping Chart" which was used to identify the certificated employees to receive preliminary notices of layoff based on seniority. The analysts did not apply the tiebreaker criteria to determine the relative seniority of employees with the same first date of paid service prior to the District sending out the preliminary notices. Therefore, the District sent out more layoff notices than were necessary in some layoff categories, and will be required to rescind notices to employees who are deemed more senior based on the application of the tiebreaker criteria.

#### *Bumping and Skipping*

37. Economic layoffs are generally to be carried out on the basis of seniority. A teacher with more seniority typically has greater rights to retain employment than a junior teacher. A senior teacher whose position is discontinued has the right to a position held by a junior teacher if the senior teacher is properly credentialed and is competent to fill the position. That displacement of a junior teacher is known as "bumping." In general, the District has an affirmative obligation to reassign senior teachers who are losing their

positions into positions held by junior teachers if the senior teacher has both the credentials and competence to occupy such positions. The seniority rule is not absolute, and a junior teacher with a needed credential or skills may be retained even if a more senior teacher is terminated. Such “skipping” is recognized by statute (§ 44955, subd. (d)(1)) and appellate law (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of the Santa Clara Unified School District* (1981) 116 Cal.App.3d 831). In order to depart from a seniority-based economic layoff, section 44955, subdivision (d)(1), requires the District to “demonstrate a specific need for personnel to teach a specific course or course of study... and that the certificated employee [to be skipped] has special training and experience necessary to teach that course or course of study...which others with more seniority do not possess.” In addition, section 44955, subdivision (d)(2), provides that “a school district may deviate from terminating a certificated employee in order of seniority . . . For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.”

38. In *Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127 (*Bledsoe*), the court was called upon to determine whether a school district could lay off a more senior certificated employee when it skipped two more junior employees who were teaching in a community day school. The court in *Bledsoe* determined that, even though the more senior employee was credentialed and competent to teach in the positions that the more junior employees occupied, the school district demonstrated that it had a specific need for the two junior teachers to teach in the community day school, and the two junior teachers had special training and experience necessary to teach in a community day school that the more senior teacher did not possess. The *Bledsoe* court therefore found that, consistent with section 44955, subdivision (d)(1), the school district could skip the two junior employees and lay off the more senior employee.

39. In its opinion, the *Bledsoe* court made clear that the determination of whether a school district may lay off senior employees and retain more junior employees involves a two-step analysis: (1) pursuant to section 44955, subdivision (b), the school district must first determine whether the senior employees are credentialed and competent to render the services that the junior employees have been retained to render; and (2) if the school district determines that the senior employees are credentialed and competent to render these services, the school district must then decide whether, pursuant to section 44955, subdivision (d)(1): (i) it has a specific need for the junior employees to teach a specific course or course of study, and (ii) the junior employees have special training and experience necessary to teach that course or course of study that the more senior employees do not possess.

### **Priority Schools Skip**

40. In Paragraph D of the Skip Criteria, the Board determined that it was necessary to skip “individuals currently serving in a Priority School assignment, who will also be teaching in a Priority School assignment for 2011-2012.”

41. In the spring of 2010, the Superintendent announced the Priority Schools Initiative for the 2010-11 school year. The Superintendent designated the following six schools as Priority Schools: Oak Ridge Elementary; Father Keith B. Kenney Elementary; Jedediah Smith Elementary; Fern Bacon Basic Middle; Will C. Wood Middle; and Hiram Johnson High School (HJHS).<sup>4</sup> The stated purpose of establishing these Priority Schools was to provide additional assistance and resources to focus on improving underperforming schools. The six designated schools are among the 20 percent lowest performing schools in California, with Oak Ridge Elementary in the lowest five percent in the state. They are persistently underperforming, in that four of the six schools have been in Performance Improvement status (PI) for seven years, and all have been in PI for five or more years. They have had low yearly improvement rates in the Academic Performance Index and have failed to meet federal and state standards in English-Language Arts (ELA) and mathematics. They have low percentage rates of Adequate Yearly Progress (AYP) in ELA and mathematics. HJHS has the lowest rate of passage of the CAHSEE (high school exit examination) and the lowest graduation rate of the traditional high schools in the District.

42. The student population served in the six schools are primarily economically disadvantaged, minority students, with more than 90 percent of the students in five of the six schools living in or near poverty. The schools have large Title 1 (free or reduced-price meals) participation. In addition, the schools have significant enrollment of English-language learner (EL) students.

43. The District intended for the six Priority Schools to be “incubators of innovation,” through the application of intensive support strategies for teachers and students. The District allowed teachers who did not want to undertake the training and additional time commitment involved in working at a Priority School to transfer out of the school. The District also added administrative staff and instructional coaches at the Priority School sites to provide support to teachers and create a culture of success at the school sites.

44. The District provided the following training to the entire teaching staffs at the three elementary schools and two middle schools:

A. DataWise Data Inquiry Training. This was a multi-day training undertaken prior to the start of the 2010-11 school year. The training was provided by an outside consulting firm, Transformation by Design, which did follow-up training at each of the school sites and provided coaching and mentoring to teachers to implement the DataWise analysis process in their classrooms. The DataWise process involves collecting data from multiple sources to assess student work/achievement, and requires extensive staff collaboration to identify learner-centered problems, and to develop strategies to address these issues. Then teachers were expected to implement strategies, perform additional assessments, and determine whether strategies and interventions have been successful. The DataWise

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<sup>4</sup> A seventh school, Rosa Parks Middle School, has been identified as a Priority School for the 2011-12 school year.

process is a “cycle of continuous improvement,” tied to the use of student performance data analyzed in a specific way. Staff at the five schools are using Common Planning Time (CPT) in addition to other meeting time, for additional training and collaboration to implement the DataWise process.

B. WriteTools training. WriteTools is training program in academic writing. All teachers in the five schools received WriteTools training in August 2010, before the start of the school year. They have received additional training throughout the 2010-11 school year, with coaching in the classroom and modeling of the WriteTools techniques, in order to integrate the training into daily classroom teaching. This intensive training was deemed necessary to address a lack of achievement in student literacy, because the ability to read and write at the lower grade levels was identified as a key component of success in all subjects at the higher grade levels.

45. In addition to the training identified in Finding 44, the District provided training in Culturally Responsive Teaching Strategies (CRTS) to all teachers at the three elementary schools. This training was also provided prior to the start of the 2010-11 school year, and addressed the various learning styles of students, and provided strategies and techniques to design lessons to appeal to these styles of learning (visual, auditory, and kinesthetic). The purpose of this training was to enhance the ability of teachers to deliver content to students in a way that is accessible through different learning modalities.

46. Due to the size of the staff at HJHS (120 teachers), the District did not provide DataWise training to the entire staff. Rather, the District provided the multi-day DataWise training to a team of HJHS teachers, who were then supposed to train their colleagues during CPT. Consultants from Transformation by Design met with teachers in the English and mathematics departments to assist with implementation of the DataWise process. The staff at HJHS was not provided any other specialized training.

47. The District has provided DataWise training to teams of teachers at other District schools during the 2010-11 school year, beginning in or about October 2010, and continuing through January 2011. Several respondents testified that they participated in this training and provided training to the staffs at their schools during CPT. Other respondents testified that they have received training in the DataWise process from teachers at their schools who attended District training. The DataWise process is in various stages of implementation at many, if not most, of the schools in the District. However, the three elementary and two middle Priority Schools are much further along in the process, and those teachers have received much more coaching and support to integrate the DataWise process in their day-to-day teaching.

48. Many of the respondents testified that they have had WriteTools training in previous years through professional development courses offered by the District, and they have received training through various means in cultural sensitivity issues and techniques to teach a diverse student population. However, none of this training has been to the level of

focused intensity, school-wide, or with the ongoing follow-up and support, which has been given to the Priority Schools.

“Particular Course of Study” at Priority Schools

49. Section 51002 states:

The Legislature hereby recognizes that, because of the common needs and interests of the citizens of this state and the nation, there is a need to establish a common state curriculum for the public schools, but that, because of economic, geographic, physical, political and social diversity, there is a need for the development of educational programs at the local level, with the guidance of competent and experienced educators and citizens. Therefore, it is the intent of the Legislature to set broad minimum standards and guidelines for educational programs, and to encourage local districts to develop programs that will best fit the needs and interests of the pupils, pursuant to stated philosophy, goals, and objectives.

50. Section 51014 defines “course of study” as “the planned content of a series of classes, courses, subjects, studies, or related activities.” Section 51204 states: “Any course of study adopted pursuant to this division shall be designed to fit the needs of the pupils for which the course of study is prescribed.”

51. As set forth in Finding 44 above, the implementation of the DataWise training and WriteTools training at the three elementary and two middle Priority Schools constituted a “particular course of study” within the meaning of section of section 44955, subdivision (d)(1), in that it fundamentally affected the delivery of instruction to students at those schools in a unique way. The District has further demonstrated that it has a specific need for personnel to teach this particular course of study, and that special training and experience are required, in the form of intensive instruction in the DataWise and WriteTools training methodologies, the follow-up support, and the experience of collaboration to implement the training in day-to-day classroom teaching and assessment. While other elementary and middle school teachers, including respondents, have had portions of this training, they have not had the intensive level of training and experience with implementation necessary to teach this course of study at the five elementary and middle Priority Schools. Therefore, the District’s decision to skip the teachers at the elementary and middle Priority Schools is upheld.

52. The evidence did not establish that the District has implemented DataWise training at HJHS to the extent or in the manner that it did in the other Priority Schools i.e. on a school-wide basis. Respondent Cassandra Woodruff (9/2/08) holds a single subject credential with authorizations to teach biology and earth science. She teaches at HJHS, but received a preliminary layoff notice due to program reductions. She disputed the District’s

claim that teachers at HJHS have received extensive extra training. She stated that she was not trained in DataWise at HJHS and does not know if other staff in her department had such training, which was not widely offered to staff. During the 2010-11 school year, the staff in her department have met after school for CPT, during which staff looked at student achievement and behavior to identify students having difficulty, and collaborated on strategies to help students “get on track.” She acknowledged that the emphasis has been on data, specifically test scores. They have looked at students who are close to the next level of proficiency, to devise ways to “bump them up,” i.e., raise the achievement level of “borderline” students. Mary Shelton, the District’s Accountability Officer, stated that DataWise principles have been “embedded” in the CPT for teachers at HJHS. While Ms. Woodruff’s testimony indicated that application of the DataWise process has begun at HJHS to some extent, the evidence did not establish that the implementation of this program was substantially different at HJHS than it has been at other, non-Priority Schools of the District, as testified to by many of the respondents.<sup>5</sup> The District did not demonstrate that there is a “particular course of study” at HJHS that is sufficiently different from the course of study at the District’s other traditional high schools to warrant “special training or experience,” within the meaning of section 44955, subdivision (d)(1). Thus the District did not justify skipping teachers at HJHS.<sup>6</sup>

#### Counselor and Social Worker Skips at Priority Schools

53. Although the Skipping Resolution only refers to “teaching in a Priority School,” the District skipped all certificated staff at the six Priority Schools, including counselors and social workers. The District contended that counselors and social workers are part of the “teaching team,” and thus are properly skipped under the language of the Skipping Resolution. This contention is not persuasive. Section 44955, subdivision (d)(1) distinguishes between “personnel to teach a specific course or course of study,” and “personnel . . . to provide services authorized by a services credential with a specialization in . . . pupil personnel services.” However, the District may still skip counselors and social workers assigned to Priority Schools if it can “demonstrates a specific need for personnel to provide services authorized by a services credential with a specialization in . . . pupil personnel services . . . [and] the certificated employee has special training and experience necessary to . . . provide those services, which others with more seniority do not possess.”

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<sup>5</sup> For example, respondent Laura Shirley teaches at Rosa Parks Middle School; respondent Kimberly Nickel teaches at Albert Einstein Middle School. Both schools have been in PI for more than one year. Both respondents attended DataWise training during the 2010-11 school year, and provided training to teachers at their respective schools. Both testified that the DataWise process is being implemented during CPT.

<sup>6</sup> The District skipped three counselors (Leticia Bucio, Elxora Gray, and Jessica Gunning) and one social worker (Anna Jiang) at HJHS. These certificated employees were properly skipped, as set forth in Findings 53-54).

54. Applying the analysis outlined in *Bledsoe*, there are respondents who are certificated in pupil personnel services (PPS) who are competent to render services to students in the Priority School program.<sup>7</sup> Therefore, the District must demonstrate that it has a specific need for personnel to provide counseling and social worker services, and that personnel who were skipped have special training and experience that more senior counselors and social workers do not possess. In this case, the evidence did not establish whether or not counselors and social workers were given DataWise training, or the extent to which they participate in the collaborative process during CPT at the three elementary and two middle Priority Schools. Ms. Shelton testified about the importance of consistency and stability in establishing rapport with students and families in chronically underperforming schools such as the Priority Schools, where poverty, drugs, and gangs undermine family structures. By their assignment to Priority Schools during the 2010-11 school year, the counselors and social workers have begun the important process of building relationships of trust that are crucial to the success of the Priority Schools Initiative. This special experience is not possessed by more senior counselors and social workers, who have not worked in the six Priority Schools. Therefore, the District may properly skip counselors and social workers at the six Priority Schools.

Section 44955, subdivision (d)(2)

55. As a separate basis for skipping certificated employees at the six Priority Schools, the District asserted that it was entitled to deviate from terminating certificated employees in order of seniority “[f]or purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.” (§ 44955, subd. (d)(2).) The District noted that staff turnover at the Priority Schools has been very high in the years prior to the 2010-11 school year, partly due to the fact that teachers with less seniority typically are assigned to underperforming schools; thus, when layoffs take place based on seniority, a higher percentage of the teaching staffs at underperforming schools are laid off. The District asserted that high staff turnover has been correlated with low student performance. Thus, the District contended that, for the six Priority Schools, the imposition of layoffs would violate the fundamental right of the students at those schools to “basic equality of educational opportunity” guaranteed by the State Constitution (*Butt v. State of California* (1992) 4 Cal.4th 668, 685.) The District further contended that, because the fundamental right of education is at issue, strict scrutiny is triggered. (*Id.*, at pp. 685-686 [“heightened scrutiny applies to State-maintained discrimination whenever...the disparate treatment has a real and appreciable impact on a fundamental right or interest.”].) For that reason, the District claims that there must be a compelling state interest justifying seniority-

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<sup>7</sup> Paragraph (3) of the District’s Competency Criteria states that an individual shall be deemed “competent” if he or she has “at least one (1) year of experience in the past five (5) years working under the credential or authorization.” In this case, the affected respondents are currently using their PPS credentials. Paragraph (4) of the Competency Criteria states: “In order to work in a Priority School, training and/or experience **teaching** in a Priority School setting.” (Bolding added.) This criterion is inapplicable to counselors and social workers, who are not providing teaching services.



based layoffs at particular schools where layoffs negatively impact students' educational opportunities.

56. The District's argument is not persuasive. In particular, the District failed to show that layoffs affecting the six Priority Schools will result in an unconstitutional deprivation of an equal education, when compared to other schools of the District. The evidence at hearing established that 44 of the District's 85 schools are currently in PI status, and have been for two years or more. Approximately 68 percent of the District's students live at or near the poverty line, and an estimated 60 to 65 schools are designated as Title 1 schools. The testimony of many of the respondents demonstrated the devastating effect that layoffs will have on District programs with demographics similar to the Priority Schools that are not being "skipped."

For example, the District operates Sacramento New Technology High School (New Tech), a small dependent charter high school. The curriculum at New Tech is based on integrated projects, with career focused learning outcomes to achieve technical and academic proficiency. The teachers have undergone extensive specialized training in project-based learning. The demographics at New Tech are similar to other schools in the District, including the six Priority Schools: the student population is 74 percent minority and 61 percent low income, with a large percentage of EL students. There are gang involvement issues among the student body, and New Tech provides an alternative environment to the comprehensive high school, where many of the New Tech students were not successful. Of the 18 teachers at New Tech, four have received layoff notices, or 22 percent of the teaching staff. The loss of nearly one-quarter of the teaching staff will have a serious detrimental effect on the program, which relies on continuity of staff relationships with students as a key to success. Similarly, Albert Einstein Middle School is in its second year of PI. It has a diverse student population and high poverty levels. Of the six math teachers at Einstein, five have received layoff notices. As the testimony of respondents Kimberly Nickel and Gary Prentice established, the loss of all but one of the math teachers will decimate the department and undermine the efforts of staff to improve student achievement.

57. The District did not establish that the conditions at the six Priority Schools were such that the entire certificated staff needed to be skipped to provide equal educational opportunity to those students. Moreover, the District did not explain how it justified placing a disproportionate burden on other low-performing schools with similar demographics, whose staff received additional layoff notices as a result of the skipping of the six Priority Schools. Layoffs are clearly disruptive and detrimental to the academic programs of all low-performing schools, not just the Priority Schools. The Priority School skip cannot be justified based on section 44955, subdivision (b)(2).

#### Other Issues Pertaining to the Priority School Skip

58. In preparation for the hearing, the District created a list of Employees Skipped for Priority School (Exhibit 22). According to Ms. Lauzon, this list was not used by the District's personnel analysts to decide who would receive layoff notices, and she was unable

to state how many teachers were actually skipped. Ms. Lauzon stated that the analysts skipped all certificated employees in Priority Schools unless the position was eliminated, the teacher was a probationary release, or the teacher has initiated a voluntary transfer out of the Priority School.

A. Respondents to be Retained Because of the Disallowance of the Skip at HJHS.

59. The following teachers listed on Exhibit 22 were not noticed for layoff as a result of the Priority School skip at HJHS: Janet Lee; Michael Moore; Leticia Moran; Fernando Rodriguez; Cynthia McPhail; Stefan Villegas; Taudine Andrew; Brendan Murphy; Jessica Salomon; and Christopher Watkins. In addition, respondents identified the following teachers from HJHS that are not identified on Exhibit 22 as having been skipped, but were not give layoff notices: Nhu Tran; Kerry Vaughan-Bechtol; Sonia Page; Susan Kizer; Hillary Jones; and Casey Hollingsworth.

60. Under section 44955, subdivision (b), the District may not terminate the services of a permanent employee if a probationary employee, or any other employee with less seniority, is retained to render a service which the permanent employee is certificated and competent to render. Paragraph (4) of the District's Competency Criteria provides that, in order to be deemed competent to work in a Priority School, an individual must "have training and/or experience teaching in a Priority School setting." Mr. Garcia and Ms. Shelton both testified that this competency criterion was tied to the Skip Criteria pertaining to Priority Schools. Inasmuch as the skip for teachers at HJHS was not upheld, this competency criterion cannot be invoked to allow the termination of any respondent who is a permanent employee of the District and is more senior to an individual who is being retained to perform a service at HJHS for which the respondent holds the proper credential, and where the respondent has at least one year of experience in the past five years working under that credential (paragraph (3) of the Competency Criteria). As set forth below, the respondents identified to be retained are permanent employees; they are the most senior respondents with the applicable credential; and all have worked under the credential for at least one year in the past five years.

61. Janet Lee, Michael Moore, Leticia Moran, and Fernando Rodriguez all have seniority dates of September 7, 2010, and all hold S/S math credentials. Susan Kizer (9/2/08) holds an S/S math credential. There is no respondent who is a permanent employee who has more seniority than any of the above-listed individuals who holds an S/S credential.<sup>8</sup>

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<sup>8</sup> Respondent Jennifer Graziano (10/12/09) holds an S/S math credential, and is more senior to Ms. Lee, Mr. Moore, Ms. Moran, and Mr. Rodriguez; however, Ms. Graziano is a second year probationary employee of the District, not a permanent employee.

62. Kerry Vaughan-Bechtol and Casey Hollingsworth both have seniority dates of September 2, 2008, and both hold S/S foundational math credentials. Grace Yates (8/23/05) and Kimberly Nickel (9/5/06)<sup>9</sup> are the most senior permanent employees of the District who are respondents in this proceeding with S/S credentials in foundational math. They have more seniority than Ms. Vaughan-Bechtol and Mr. Hollingsworth, who are being retained by the District. Therefore, Ms. Yates and Ms. Nickel shall be retained, and their layoff notices rescinded.

63. Cynthia McPhail (9/7/10) and Stephan Villegas (9/21/09) both hold S/S PE credentials. Respondents Matthew Craine (1/8/07), Jennifer Cleland-Brinzer (1/29/07) (.8 FTE), and Nadine Nouchi (8/23/07) (.8 FTE), are permanent employees of the District with S/S PE credentials, and have greater seniority than Ms. McPhail and Mr. Villegas. Mr. Craine and Ms. Cleland-Brinzer shall be retained for 1.8 FTE, and their layoff notices rescinded. Ms. Nouchi shall be retained for .2 FTE of her .8 FTE position, and she shall be laid off for no more than .6 FTE.

64. Taudine Andrew (9/4/07) holds an S/S credential in home economics with a supplementary authorization in social science; she is teaching social science at HJHS. Brendan Murphy (9/4/07), Jessica Salomon (2/25/10), and Christopher Watkins (9/2/08) all hold S/S social science credentials. Respondents Christopher Gosney (11/1/06), Jason Elkins (11/16/06), and Jose Garcia (3/7/07), are permanent employees who have S/S social science credentials and have greater seniority than Ms. Andrew, Mr. Murphy, Ms. Salomon, and Mr. Watkins. Therefore, Mr. Gosney, Mr. Elkins, and Mr. Garcia shall be retained, and their layoff notices rescinded. Respondent Lynn Samaan (9/4/07) has the same seniority date as Ms. Andrew and Mr. Murphy, as do the following employees who hold S/S social science credentials: Bryan Fisher, David White, Patrick Reilly, Elizabeth Johnson, and Katrina Figueroa. Ms. Andrew and Mr. Murphy were not included in the tiebreak for September 4, 2007 social science. Therefore, the District shall include Ms. Andrew and Mr. Murphy and re-do the tiebreak, and shall retain the most senior respondent after application of the tiebreak criteria, if that individual has greater seniority than either Ms. Andrew or Mr. Murphy.

65. Nhu Tran (11/3/08) and Hillary Jones (9/2/08) both have S/S credentials in English. Michael Johnston (9/7/06) and Elissa Christensen (1/29/07) are permanent employees who have S/S English credentials and have greater seniority than Mr. Tran and Ms. Jones. Therefore, Mr. Johnston and Ms. Christensen shall be retained, and their layoff notices rescinded.

66. Sonia Page (9/2/08) has an S/S credential in Spanish. Respondents Scott Preston and Rebekah Campbell are permanent employees with a seniority date of September 2, 2008. They both hold S/S Spanish credentials. Ms. Page was not included in the tiebreak for September 2, 2008 Spanish. The District shall include Ms. Page and re-do the tiebreak,

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<sup>9</sup> Due to application of tiebreak.

and shall retain Ms. Campbell after application of the tiebreak criteria, if it is determined that she has greater seniority than Ms. Page.<sup>10</sup>

B. Respondents to be Retained Because of Transfers out of Priority Schools, Where Employees were not given Layoff Notices.

67. The following employees have initiated transfers (“self-surplused”) out of Priority Schools, and were identified as having been skipped by the District for their Priority School assignments: Ebony Benzing, Janet Spilman, and Sandra Pedley. These individuals are not being “skipped” by the District; however, they did not receive notices of layoff and are being retained by the District for the 2011-12 school year.

68. Ebony Benzing (9/7/10) has an S/S credential in foundational math. Respondent Kevin Burrill (9/5/06) is the next most senior respondent<sup>11</sup> who is a permanent employee and holds an S/S credential in foundational math. He has more seniority than Ms. Benzing, who is being retained by the District. Mr. Burrill shall be retained, and his layoff notice rescinded.

69. Janet Spilman (9/3/02) has a PPS credential in counseling, an S/S credential in social science, and a Learning Handicap-Specialist special education credential. She is currently assigned as a counselor at HJHS. There is no respondent with greater seniority than Ms. Spilman who holds a PPS counseling credential.

70. Sandra Pedley (9/7/04) has an M/S credential. Thomas Wolthius (9/23/03) is a permanent employee who holds an M/S credential, and who has greater seniority than Ms. Pedley, who is being retained by the District. Mr. Wolthius shall be retained, and his layoff notice rescinded.

**BCLAD Skip –Dual-Language Immersion Program Skip**

71. In Paragraph A of the Skip Criteria, the Board determined that it was necessary to skip “individuals fully-credentialed to serve in classes requiring Bilingual Cross-Cultural Language and Development (‘BCLAD’) certification, to the extent necessary to staff BCLAD required positions.”

72. According to Personnel Analyst Terri Lauzon, individuals with BCLAD credentials were skipped if they were using the BCLAD in their current teaching assignment, i.e., in the Dual Language Immersion Program (DLIP) or in the District’s Bilingual Early Exit Transition Program (Bilingual Program). During the “one stop staffing” process, no positions were reduced in either of those programs.

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<sup>10</sup> Respondent Preston is being retained as part of the Waldorf skip; Conseulo Millard is a probationary employee of the District.

<sup>11</sup> Due to application of tiebreak.

73. The evidence established that a BCLAD credential is necessary to teach DLIP; however, special training and experience are also required, in that the teacher must be able to present content in the “world language,” not just be able to speak, write, and read in that language. The evidence did not establish that any respondent was certificated and competent to render the services provided by the DLIP and Bilingual Program teachers. The District properly skipped the following certificated employees, who are currently using their BCLAD credentials in positions where BCLAD certification is required: Nancy Lopez, Teresa Martinez, Cristina Rios, and Shannon Zavala (DLIP); and Gricelda Jaime (Bilingual Program).

74. In Paragraph E of the Skip Criteria, the Board determined that it was necessary to skip “individuals who have one (1) or more years of experience teaching in a Dual-Language Immersion Program.” As set forth in Finding 73, special training and experience are necessary to teach DLIP, and the individuals who were skipped by the District (Lopez, Martinez, Rios, and Zavala) have special training and experience that individuals with more seniority do not possess. The District’s skip of DLIP teachers is upheld.

75. Yee Vang (9/4/07) has a BCLAD in Hmong. For reasons that were not explained by the evidence, he does not appear on the District’s seniority list. According to Ms. Lauzon, Mr. Vang is not using his BCLAD credential for the DLIP at Edward Kemble Elementary, and was skipped erroneously. Mr. Vang did not receive a layoff notice. Although his credential type was not established by the evidence, it is most likely that he holds an M/S credential in order to teach in an elementary school. There are respondents with greater seniority than Mr. Vang, who hold M/S credentials and are competent to perform the services for which he was retained by the District. The District will therefore be required to rescind the layoff notice of a more senior respondent with an M/S credential.

### **Special Ed Skip**

76. In Paragraph B of the Skip Criteria, the Board determined that it was necessary to skip “individuals fully-credentialed to serve in a Special Education assignment.”

77. The District demonstrated a need for teachers with special education credentials. The District skipped special education teachers in the 2010 layoff. However, despite retaining all District certificated employees with special education credentials, there were still vacant positions for special education certificated employees at the start of the 2010-11 school year. Based on data collected from past years, it has been difficult for the District to fully staff special education positions at the beginning of the school year.

78. According to Ms. Lauzon, teachers with special education credentials were skipped if they could demonstrate competency, i.e., that they had taught using their special education credential for at least one year in the past five years.

79. The District established that teachers with special education credentials had special training and experience necessary to teach special education, that individuals with more seniority do not possess. The District's skip of special education teachers is upheld.

80. Respondent Adam Eisner (9/4/08) teaches PE at Edward Kimble Elementary School. He holds an S/S credential in PE with a supplemental authorization in Health Science, and a Special Education Adapted PE Specialist credential. In the 2008-09 school year, he taught .8 FTE regular PE. He also filled a .2 FTE position in adapted PE from January through June 2009. He was not skipped because he was not deemed competent by the District under paragraph (3) of the District's Competency Criteria, which requires that a certificated employee have at least one year of experience in the past five years working under the credential or authorization. Respondent Eisner did not establish that he should have been skipped under the terms of the District's Skipping Resolution, or that he is credentialed and competent to bump a less senior certificated employee with an Adapted PE Specialist credential.

### **Math Skip**

81. In Paragraph C of the Skip Criteria, the Board determined that it was necessary to skip "individuals fully-credentialed to teach the full breadth of high school math assignments up to calculus, to the extent required to staff high school math positions."

82. Based on data collected from past years, it has been difficult to fully staff high school mathematics positions at the start of the school year. The District views this as an equity and access issue, in that a lack of fully qualified math teachers may deprive students of the opportunity to take high level math courses needed to fulfill college preparatory requirements at particular high schools. The District established a need for math teachers capable of teaching mathematics through calculus at the high school level, which it defined as teachers holding S/S math credentials.

83. In the 2010 layoff, the District skipped all credentialed math teachers, including those with credentials to teach foundational math (through algebra II, but not trigonometry, math analysis, or calculus), and M/S credentialed teachers with math supplemental authorizations (who can teach math up to the ninth grade). At the start of the 2010-11 school year, the District was over-staffed with lower level math teachers, but still had lacked sufficient single-subject-credentialed math teachers to fully staff upper level math courses at the District's high schools.

84. As a result of overall staff reductions, including a 19.0 FTE reduction in high school math, the District determined that it would need six fewer math teachers to staff high level math courses through calculus. It therefore identified the six least senior certificated employees with single subject math credentials and issued preliminary notices to them.

85. Respondents challenged the District's proposed skip of S/S credentialed math teachers, claiming that the District sought to retain junior teachers to teach lower level math

courses that senior certificated employees with S/S foundational math credentials or M/S credentials with supplemental authorizations in math could teach. This contention was not supported by the evidence. The District demonstrated that it had a specific need for math teachers able to teach the full range of mathematics, through calculus, and that the employees who were skipped had the special training and experience necessary to teach these courses that more senior certificated employees did not possess.

86. Respondent Gavin Williams (9/7/99) holds an S/S credential in math, with a supplemental authorization in computer concepts and applications. His teaching assignment with the District for the past five years has been in a small information technology learning community, where his courses have focused on technology and computer applications. He has incorporated math concepts into his program during the past five years. He has created Power Point presentations for geometry enrichment materials, and developed computer formats for student-to-student math content. He taught geometry in summer school in 2006 or 2007, and taught algebra 1 in the fall semester of 2010. Apart from the courses previously identified, he last taught math during the school year in 2005-06. Mr. Williams contended that he has the special training and experience to teach math up through calculus. He acknowledged that District employees who have taught math in the past five years have had training in instructional methods focused on algebra I and geometry, which he has not had. However, he claimed that such training would not be necessary to teach upper level courses such as math analysis, trigonometry, or calculus.

87. Respondent Williams has not demonstrated that he is certificated and competent to teach math, in that he does not have at least one year of experience in the past five years working under his math credential. The purpose of the competency requirement of recent teaching experience using the credential or authorization is to insure that the employee has had training in state standards and current pedagogical techniques. Since respondent Williams is not competent to teach math, he is not eligible to be skipped under Paragraph C of the Skipping Resolution, and is not eligible to bump a less senior math teacher.

### **Home and Hospital Skip**

88. In Paragraph F of the Skip Criteria, the Board determined that it was necessary to skip “individuals who have two (2) or more years of experience teaching and/or specialized training in a home or hospital setting.”

89. Paulette Meeks is the Director of Health Services for the District. Ms. Meeks oversees the District’s Home Teaching Program and Hospital Teaching Program. The District provides teachers for three hospitals: Sutter Hospital; U.C. Davis Medical Center; and Sutter Psychiatric Hospital. According to Ms. Meeks, the hospital teacher at Sutter Psychiatric Hospital must provide educational services to students of various ages. This teacher must be prepared to respond rapidly to changing circumstances, and must be “astute” in dealing with medically fragile and potentially dangerous students.

90. Sharon Rickert (9/2/08) holds an M/S credential. She has been assigned to Sutter Psychiatric Hospital as a teacher in the District's Hospital Program since the fall of 2008. Ms. Meeks is Ms. Rickert's immediate supervisor and is familiar with her training, experience and qualifications. Ms. Rickert has specialized training in dealing with aggressive behaviors, which she has obtained through in-services given by medical staff at Sutter Psychiatric Hospital. She has additional training in CPR, first aid, and HIPAA<sup>12</sup> compliance. Ms. Rickert is trained in therapeutic modalities to actuate learning, such as puppet therapy. Based upon Ms. Meeks' personal observations, Ms. Rickert has the ability to react calmly in volatile situations, interpret body language as well as verbal cues in severely disturbed and traumatized students, give instruction in a clear and concise manner, and provide instruction in short periods if necessary. Ms. Rickert has training that would permit her to put a child in therapeutic restraints if necessary. Ms. Meeks has spoken to Ms. Rickert's work coordinator at Sutter Psychiatric Hospital, who also confirmed her skills and training.

91. The District demonstrated that it has a specific need for personnel to teach in its hospital program, and that Ms. Rickert has special training and experience necessary to work as a hospital teacher which others with more seniority do not possess. Respondents provided no evidence that any certificated employee noticed for layoff with an M/S credential, and with greater seniority than Ms. Rickert, possessed the special training and experience necessary to serve as a hospital teacher at Sutter Psychiatric Hospital. The District may skip Ms. Rickert.

### **Waldorf Skip**

92. In Paragraph G of the Skip Criteria, the Board determined that it was necessary to skip "individuals who have formal training/coursework in the Waldorf method of teaching."

93. The District operates two Waldorf method schools, George Washington Carver School of Arts and Sciences (Carver), and Alice Birney Elementary School (Birney). The two Waldorf schools offer a course of study delivered in a method that differs substantially from other schools in the District. Allegra Alessandri, the principal at Carver, and Mechelle Horning, the principal at Birney, each testified convincingly that a Waldorf course of study infuses every aspect of the curriculum with the Waldorf method, which is based on linking critical thinking (the head), creative expression (the heart), and wholesome action (the hands). The District requires staff members that are trained in and supportive of the Waldorf philosophy in order to run the program at these two schools. The evidence established that there are formal training programs for elementary and secondary teachers that are necessary to be able to deliver instruction in the Waldorf method.

94. The District proposes to skip the following certificated employees who work in the Waldorf program: Philip Roberto (8/13/07); Diana Smith (1/8/07); Bryon Soules

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<sup>12</sup> Health Insurance Portability and Accountability Act of 1996.



(9/5/06); Keith Sabini (9/2/09); Vicky Schroeder (9/2/08); and Scott Preston (9/2/08).<sup>13</sup> All of these individuals have had extensive instruction in the Waldorf teaching method. Diana Smith testified about her experience as a teacher at Birney in the 2009-10 school year, when she did not have training in the Waldorf teaching method, and the difficulties she encountered due to her lack of knowledge about how to present a Waldorf curriculum. She stated convincingly that without formal training, she “would not be able to make it” as a Waldorf teacher.

95. The evidence established that the Waldorf schools provide instruction in a unique manner, and that the District has a specific need for instructors to teach in this program who have training and experience in the Waldorf method. The certificated employees that the District proposes to retain have special training and experience necessary to teach the Waldorf method. Respondents did not establish that there are any certificated employees with seniority greater than the individuals proposed to be skipped by the District who have the training and experience necessary to teach in the Waldorf program. The District may skip the above-identified employees and retain their services for the 2011-12 school year.

### **Accelerated Academy Skip**

96. In Paragraph H of the Skip Criteria, the Board determined that it was necessary to skip “individuals with specialized training and experience in the Accelerated Academy Program.”

97. The District’s Accelerated Academy is a credit recovery program serving primarily high school juniors and seniors. This is a course of study designed to allow students, who otherwise would be unable to graduate from a comprehensive high school due to credit deficiency, to graduate on time. The Accelerated Academy program addresses the needs of students who are not successful in a comprehensive high school environment for various reasons, including behavior issues. The program has been effective to address drop-out prevention. The students complete courses on the internet. Aventa is the vendor that provides the curriculum and on-line instruction. Students come to school five days per week, and attend class from 8:00 a.m. to noon, or from noon to 4:00 p.m. While at school, they access class materials using the Aventa on-line computer software system. The system is available to students 24-hours per day, if they have computer access. The District operates four classrooms/computer labs, with 30 students in each four-hour class; a total of 240 students participate in the two sessions of the program. District teachers are present to provide one-on-one assistance to students while they are working on-line. These teachers also build a close relationship with the students, acting as counselor, mentor, and friend. This relationship is a key element to the success of the program. The assigned teachers have experience dealing with behavior problems and gang issues. They also build relationships with families, through home visits, meetings, and frequent telephone contact. There is a

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<sup>13</sup> All of these teachers received precautionary layoff notices and are respondents in this proceeding.

“lead teacher” who oversees the day-to-day operation of the program, and a total of five teachers are assigned to the program.

98. The District proposes to skip the following certificated employees who teach in the Accelerated Academy program: Corey Fukuoka (9/5/06), Jennifer Healey (10/31/07), and Sarah Taylor (9/2/08).<sup>14</sup>

99. David Rodriguez is the Director of the District’s Student Hearings and Placement Department, which is ultimately responsible for the Accelerated Academy program. According to Mr. Rodriguez, Accelerated Academy teaching staff received two days of training in the Aventa software system before the start of the school year, and they are engaged in ongoing training throughout the year. He confirmed that it takes several months to become proficient in the use of the online program software. Moreover, he confirmed that many of the current students enrolled in the Accelerated Academy are juniors and will continue in the program in the 2011-12 school year. He stated that the relationships that have been developed between the current teaching staff and these students are crucial to ultimate student success in the program. He testified persuasively that the loss of three out of five staff would be devastating to the program.

100. The District established that it has a specific need for personnel to teach in the Accelerated Academy program, and that special training and experience are necessary to teach this particular course of study.

101. Respondents challenged the District’s decision to skip teachers in the Accelerated Academy program. Several respondents with greater seniority than the proposed skipped employees testified that they have the necessary credentials and experience in alternative education programs to be able to serve as Accelerated Academy teachers. However, none of the respondents have had the special training in the Aventa computer software program, or the experience working with the online program, that is necessary to teach in the Accelerated Academy. The skipped teachers have special training and experience necessary to teach this specialized course of study which individuals with greater seniority do not possess. The District may skip the above-identified employees and retain their services for the 2011-12 school year.

### **Talent Transfer Initiative Skip**

102. Although not set forth in the District’s Skipping Resolution, the District proposes to skip three certificated employees who are teaching in the Talent Transfer Initiative (TTI) program. TTI is an experimental program supported by funds from the federal Department of Education (USDOE), which began in the 2010-11 school year, and is

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<sup>14</sup> All of these teachers received preliminary notices of layoff. Mr. Fukuoka and Ms. Healey did not file requests for hearing. Ms. Taylor filed a request for hearing and was served with an Accusation, but did not file a Notice of Defense. These individuals are not respondents in this proceeding.

scheduled to continue through the 2011-12 school year. The purpose of the program was to identify the most “talented” teachers and place them in underperforming schools, in order to determine whether such skilled teachers could increase student achievement through excellence in teaching methods. Teachers who were accepted into the TTI program agreed to transfer from their current school assignment to an underperforming school and stay for two years. Teachers were placed in the 15 lowest performing schools in the District. The student achievement data for their students is being collected by the USDOE and analyzed to determine if there is improvement that can be attributable to the skills of the teacher. The teachers are paid a stipend for their participation in the TTI program. If teachers are forced to leave the program before its completion due to layoff, it will jeopardize the data being collected by the USDOE and will undermine the results of the study.

103. The District proposes to skip the following certificated employees who are teaching in the TTI program: Staci DiSantis (9/7/04); Ryan Fernald (9/7/04); and Lily Ngo (3/31/05).<sup>15</sup>

104. Respondents contended that the District’s attempt to skip certificated employees without including them as part of the Board’s Skipping Resolution deprived respondents of their right to notice and an opportunity to respond to the District’s layoff action, in violation of sections 44949 and 44955. Respondent’s argument is not persuasive. In *Bledsoe*, the court upheld the district’s right to skip less senior employees with special training and experience to teach a particular course of study without the district’s governing board having adopted a resolution authorizing the skip. Thus, the District may skip teachers in the TTI program if it can “[demonstrate] a specific need for personnel to teach a specific course or course of study . . . and that the certificated employee has special training and experience necessary to teach that course or course of study . . . which others with more seniority do not possess.” (§ 44955, subd. (d)(1).)

105. The District has demonstrated the need for personnel currently participating in the federal study to continue in the study for the 2011-12 school year, in order to preserve the validity of the study data. There are no respondents with the experience necessary to participate in the second year of the study, who can displace the study participants. The District may skip the above-identified employees and retain their services for the 2011-12 school year.

#### *Application of the District’s Tiebreaker Criteria*

106. Ms. Lauzon and the other personnel analysts in the Human Resource Services Department applied the criteria of the Tiebreaker Resolution to determine the order of seniority of certificated employees affected by the layoff with the same seniority date. Under

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<sup>15</sup> All of these teachers received preliminary notices of layoff. Mr. Fernald and Ms. Ngo did not file requests for hearing. They are not parties to this proceeding. Ms. DiSantis is a respondent in this proceeding.

“Category 1 – Professional Preparation,” the first criterion states: “(1) Each single subject, multiple subject or service credential – 3 points per credential.” The second criterion states: “(2) Each supplemental or subject matter authorization – 1 point per authorization.” In applying the first criterion, Ms. Lauzon stated that the analysts did not give any employee more than three points for an S/S credential, regardless of the number of subject areas in which the employee was credentialed. For example, an employee who held an S/S credential in English and Foreign Language: Spanish received a total of four points, three for an S/S credential, and one for the second subject, which Ms. Lauzon characterized as a subject matter authorization. An employee with an M/S credential, with a supplemental authorization in mathematics, also received a total of four points. An employee with an M/S credential and an S/S credential in any subject received a total of six points.

107. The analysts determined the order of seniority based on points awarded under the tiebreaking criteria. Where individual employees had the same number of points after application of all other criteria, the analysts conducted a lottery within each PKS category to determine which employee(s) would be subject to layoff.

108. Respondents objected to the District’s interpretation of criteria (1) and (2) and their application to certain respondents. Respondent contend that each S/S subject area is its own S/S credential, and should be awarded three points; under this interpretation, an employee with an S/S credential in English and Foreign Language: Spanish would receive six points, while an employee with an M/S credential, with a supplemental authorization in mathematics, would receive four points. Respondents’ argument is not persuasive. As was demonstrated by credential information submitted on behalf of respondent Sonia Rambo (Exhibit T), she was originally issued an S/S credential in music with CLAD, with an expiration date of July 1, 2012. Thereafter, she became credentialed to teach Foreign Language: Spanish by examination. The Commission on Teacher Credentialing (CTC) issued her a new S/S credential which listed the “Authorized Subject(s)” as “Music (Examination); Crosscultural, Language & Academic Development Emphasis; [and] Foreign Language: Spanish (Examination),” with an expiration date of April 1, 2015. Under “Authorization Code(s) R1S,” it states: “This document authorizes the holder to teach the subject area(s) listed in grades twelve and below, including preschool, in classes organized primarily for adults.” The information contained in the CTC’s Administrator’s Assignment Manual and Glossary is consistent with the above analysis. The District’s interpretation is reasonable, and it was not demonstrated that the interpretation is arbitrary or capricious.<sup>16</sup>

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<sup>16</sup> Respondent Brian Fisher (9/4/07) challenged the District’s calculation of his points on the tiebreaker for Social Science. Mr. Fisher has an S/S credential which authorizes him to teach social science and Japanese, for which he was awarded four points. Respondent Lynne Samaan has an S/S credential which authorizes her to teach home economics and social science, for which she was awarded four points. Mr. Fisher and Ms. Samaan were tied, and a lottery was conducted in which Ms. Samaan was #1 (deemed more senior) and Mr. Fisher was #2. If respondents were awarded three points for each S/S “credential,” Mr. Fisher and Ms. Samaan would still be tied, with six points each, and a lottery would have

109. At hearing, the District identified errors in the application of the tiebreaker criteria, and it made the following corrections:

A. Music (9/7/10): Respondent Elizabeth Hernandez holds an S/S credential which authorizes her to teach music and social science. She also has a master's degree. She was initially awarded six points under Category 1 for credentials held, and one point for the master's degree, for a total of seven points. She should have been awarded five points (three points for the S/S credential, one point for the second subject matter, and one point for the master's degree). Respondent Sonia Rambo holds an S/S credential which authorizes her to teach music and Spanish. She was initially awarded six points under Category 1 for credentials held, for a total of six points. She should have been awarded four points (three points for the S/S credential and one point for the second subject matter). After recalculating the points, Ms. Hernandez is still #1 (deemed most senior), but now a tie is created between Ms. Rambo and Patricia Wassum, who also has four points. The District shall be required to do a lottery to determine their positions on the seniority list for purposes of recall from layoff.

B. Spanish (9/2/08): Respondent Scott Preston holds an S/S credential which authorizes him to teach Spanish and English. He also has a master's degree. He was initially awarded six points under Category 1 for credential held, and one point for the master's degree, for a total of seven points. He should have been awarded five points (three points for the S/S credential, one point for the second subject matter, and one point for the master's degree). After recalculating the points, Mr. Preston is tied with respondent Rebekah Campbell, who also has five points. However, Mr. Preston is being retained because of the Waldorf skip (Findings 92-96), and Ms. Campbell is being retained because the District over-noticed teachers for the Spanish PKS reduction (Finding 114), so it is not necessary to determine which of them is more senior.

C. K-6 (7/30/04): Respondent Craig Burkhouse holds an M/S credential, for which he was awarded 3 points. However, he has two years of prior teaching experience with the District, and should have been awarded two points under Category II of the Tiebreaking Criteria, for a total of five points. After recalculating the points, Mr. Burkhouse is #1 (deemed most senior). A lottery was previously conducted to determine the positions of the three employees on this tiebreaker list. Therefore, respondent Jaymee Nazari is now #2, and respondent Christopher Taylor remains #3.

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been necessary to break the tie. Thus, Mr. Fisher's position on the layoff list would be unchanged.

### Failure to Apply Tiebreaker to Brian Campbell Bump

110. Brian Campbell (9/5/06) is currently assigned to teach business at Albert Einstein Middle School. He holds an S/S credential with authorizations to teach math and computer concepts and applications. His position was identified as one of the 9.0 PKS reductions in computers. On the District's Bumping Chart – Computers, it states that Mr. Campbell "Bumps Math." There are eight certificated employees on the District's Bumping Chart – Math with seniority dates of September 5, 2006, including the following respondents: Kevin Burrill; Rory Jones; Kimberly Nickel; Julio Olivares; Gary Prentice; Laura Shirley; and Robert Walters. However, all of these individuals have M/S credentials with supplemental authorizations in math, or S/S foundational math credentials. Thus, he was properly excluded from the "SU Math (9-5-06)" tiebreak. Mr. Campbell was not served with a preliminary layoff notice, and will be retained by the District for the 2011-12 school year. There is no respondent who has greater seniority than Mr. Campbell who also holds an S/S credential in math, who could render the service for which Mr. Campbell is being retained.

### *Over-Noticing*

111. In some instances, the District sent preliminary notices of layoff to more individuals than were necessary to effectuate the reduction in PKS identified in the PKS Resolution, as addressed in further detail below.

### **Art – 4.0 FTE PKS Reduction**

112. The District sent layoff notices to certificated employees occupying 5.4 FTE positions in Art. The most senior of these employees, Philip Roberto, will be retained by the District as a result of the Waldorf skip, leaving 4.4 FTE, which exceed the PKS reduction by .4 FTE. Ryan Varrelman is the next most senior respondent noticed for layoff in Art. He shall be laid off for .6 FTE, and shall be retained for .4 FTE.

### **Counselors – 14.6 FTE PKS Reduction**

113. The District sent layoff notices to certificated employees occupying 14.8 FTE counselor positions, which exceed the PKS reduction by .2 FTE. Kenneth McPeters is the most senior respondent noticed for layoff in counseling. He shall be laid off for .8 FTE, and shall be retained for .2 FTE.

### **Spanish – 5.0 FTE PKS Reduction**

114. The District sent layoff notices to certificated employees occupying 8.4 FTE positions in Spanish. The most senior of these employees, Scott Preston, will be retained by the District as a result of the Waldorf skip, leaving 7.4 FTE, which exceed the PKS reduction by 2.4 FTE. Rebekah Campbell (9/2/08), Esmerelda Tapia (9/23/08), and Laura Brislow

(9/8/09) are the next most senior respondents noticed for layoff in Spanish.<sup>17</sup> The layoff notices issued to Ms. Campbell and Ms. Tapia shall be rescinded, and they shall be retained by the District. The notice to Ms. Brislow shall be rescinded for .4 FTE, and she shall be laid off for .6 FTE.<sup>18</sup>

### **Mathematics – 31.0 FTE PKS Reduction**

115. The District sent layoff notices to certificated employees occupying 31.6 FTE positions in math. However, due to rescissions and skipping, as reflected in the Factual Findings above, the District is laying off fewer than 31.0 FTE certificated employees.

### **Music – 4.0 FTE PKS Reduction**

116. The District sent layoff notices to certificated employees occupying 4.3 FTE music positions, which exceed the PKS reduction by .3 FTE. After application of the tiebreak, Elizabeth Hernandez (9/7/10) (.8 FTE) is the most senior respondent noticed for layoff in music. She shall be laid off for .5 FTE, and shall be retained for .3 FTE.

### **Social Science – 17.0 FTE PKS Reduction**

117. The District sent layoff notices to certificated employees occupying 24.6 FTE positions in Social Science. Respondent Sarah Taylor will be retained by the District as a result of the Accelerated Academy skip, leaving 23.6 FTE, which exceed the PKS reduction by 6.6 FTE. As was set forth in Finding 64 above, the notices to respondents Christopher Gosney, Jason Elkins, and Jose Garcia shall be rescinded by the District, leaving the notices for an additional 3.3 FTE certificated positions occupied by respondents to be rescinded. As was further set forth in Finding 64, the District must re-do the tiebreak for certificated employees with S/S social science credentials with a seniority date of September 4, 2007, and shall retain the most senior respondents occupying 3.3 FTE positions.

### **K-6 – 121.0 FTE PKS Reduction**

118. The District sent layoff notices to certificated employees occupying 175.6 FTE positions in kindergarten through sixth grade (K-6). Respondents Bryon Soules and Diana Smith will be retained by the District as a result of the Waldorf skip, and respondents Ryan Fernald, Staci DiSantis, and Lily Ngo will be retained by the District as a result of the TTI skip, leaving 170.6 FTE, which exceed the PKS reduction by 49.6 FTE. As was set forth in Finding 70 above, the notice to respondent Thomas Wolthius shall be rescinded by the

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<sup>17</sup> Consuelo Millard (9/2/08) did not file a request for hearing, and is not a respondent in this proceeding. She may be laid off by the District.

<sup>18</sup> If the layoff notice to Ms. Campbell is rescinded after the tiebreak is redone, pursuant to Finding 66, then Ms. Brislow shall be retained, and her layoff notice rescinded; Sonia Rambo (9/7/10) shall be laid off for .6 FTE, and retained for .4 FTE.

District, leaving the notices for an additional 48.6 FTE certificated positions occupied by respondents to be rescinded. The District is instructed to identify the most senior respondents occupying 48.6 FTE certificated K-6 positions. Those respondents shall be retained, and their layoff notices rescinded.<sup>19</sup>

### *Individual Respondents*

119. **Cheryl Sims** (2/2/04) holds an M/S credential, with supplemental authorizations in Introductory Spanish, Business, and English. She is assigned to C.P. Huntington Elementary, a PI school site. Ms. Sims is the only African-American certificated employee at her school. She argued that her civil rights will be violated if she is laid off, and that she should be retained under section 44955, subdivision (d)(2) in order to maintain or achieve compliance with constitutional requirements pertaining to equal protection of the laws. Ms. Sims received a layoff notice as a consequence of the reduction of 121 FTE K-6 teachers. As set forth in Finding 118, Ms. Sims will be retained by the District because she has a seniority date prior to September 30, 2004. Therefore, it is unnecessary to address her constitutional argument.

120. **Miles Krier** (11/2/07) holds an S/S PE credential, with a supplemental authorization in biology. He is HQ in biology. He is currently the PE prep teacher at Bowling Green Elementary School – McCoy Campus (Bowling Green), a dependent charter school. In 2008-09 and 2009-10, he taught biology and life sciences at Will C. Wood, a Priority School. For the 2011-12 school year, Bowling Green is planning to have a PE prep period for primary grades (K-3), and a science prep period for grades 4-6. Mr. Krier is in the process of developing a curriculum for the science prep period, and because he holds the necessary credentials to teach science and PE, he asserted that he should be retained to provide these services, since none of the more senior retained PE teachers have both credentials. At this time, it is not certain what the curriculum will be for the teacher prep period at Bowling Green for the 2011-12 school year. The evidence was insufficient to establish that Mr. Krier should be retained by the District.

### *Additional Arguments Raised by Respondents*

#### **Reassignments to Child Development or Preschool Programs**

121. The District operates child development and/or preschool programs that are governed by section 8366, which states in pertinent part:

Each person employed by a public or private agency . . . in a position requiring a child development permit for the

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<sup>19</sup> Although the District shall be required to make an exact determination of the individuals who shall be retained (to omit employees who are not respondents in this matter), it is clear that respondents occupying K-6 positions who have seniority dates on or before September 30, 2004, will be retained by the District.



supervision and instruction of children, or for service as a physician, dentist, or nurse, or in the supervision of the child development program, shall be deemed to be employed in a position requiring certification qualifications.

Each other person employed by an agency in a child development program under the provisions of this chapter shall be deemed for all purposes, including retirement, to be a person employed by the agency in a position not requiring certification qualifications.

[¶] . . . [¶]

A district may lay off an employee required to have such a permit at any time during the school year for lack of work or lack of funds or may provide for his employment for not to exceed 90 days in any one school year on an intermittent basis which shall not be deemed probationary service. The order of layoff shall be determined by length of service. The employee who has served the shortest time shall be laid off first, except that no permanent employee shall be laid off ahead of a probationary employee. A permanent employee who has been laid off shall hold reinstatement rights for a period of 39 months from the date of layoff.

Service performed prior to September 18, 1959, shall not be included in computing the service required as a prerequisite for attainment of, or eligibility to, classification as a permanent child development employee.

A person who is employed by an agency as a probationary employee in a position requiring a child development permit for the supervision and instruction of children, or for service as a physician, dentist, or nurse, or in the supervision of the children's program and who has served in such a position for three complete consecutive school years as defined in Sections 44908 or 87468 and 44975 or 87776 immediately prior to September 18, 1959, may be dismissed only in accordance with the provisions of Section 44949 or 87740.

Other persons who are employed as probationary employees in positions requiring such permits on or after September 18, 1959, may be dismissed in accordance with the provisions of Section 44949 or 87740.

122. The District did not issue layoff notices to any child development center or preschool employees with child development permits as part of this layoff proceeding.

123. The following respondents have M/S credentials and also possess child development site supervisor permits: Michele Schlenker (10/11/06); Ka Yang (10/6/08); Christel Cruz (11/12/08); and Nathalie Damaso (1/5/09). In closing argument, respondents identified six permanent and seven probationary certificated staff who, according to the District's seniority list, have less seniority than the four identified respondents, and who are currently assigned to work in child development programs as teachers. However, respondents provided no evidence to establish that any of the identified respondents had taught in a child development program for at least one year in the past five years. Therefore, assuming that such displacement rights exist, none of the respondents is deemed competent under the Competency Criteria to bump a less senior certificated employee working in a child development center or preschool.

#### *Post- March 15, 2011 Attrition*

124. The District has received information after March 15, 2011, that individuals are resigning or retiring effective at the end of the 2010-11 school year. As of the date of hearing the District had not rescinded any layoff notices to account for this attrition. The District is committed to its stated goal of rescinding as many notices as possible. It intends to consider post-March 15, 2011 attrition, though not required to do so.

#### *Welfare of the District and Its Students*

125. Other than that set forth particularly above, the Superintendent's designees correctly identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, unless skipped, as set forth above.

### LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955. All notices and other jurisdictional requirements of sections 44949 and 44955 were met.

2. A District may reduce services 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.”<sup>20</sup> The burden is on the District to demonstrate that the reduction or elimination of the particular kinds of services is reasonable and that the District carefully considered its needs before laying off any certificated employee.<sup>21</sup>

3. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, “in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction.” The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Board’s decisions were a proper exercise of its discretion.

4. Legal cause exists to reduce or eliminate 355.6 FTE of particular kinds of services offered by the District as set forth in detail in the Factual Findings. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils, within the meaning of Education Code section 44949.

5. Legal cause also exists to accordingly reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services.

### **Hearing Issues**

6. The preliminary notices of layoff issued to the following employees shall be rescinded, and the certificated employees shall be retained for the 2011-12 school year: Gricelda Jaime (Finding 20); Grace Yates and Kimberly Nickel (Finding 62); Matthew Craine and Jennifer Cleland-Brinzer (.8 FTE) (Finding 63); Christopher Gosney, Jason Elkins, and Jose Garcia (Finding 64); Michael Johnston and Elissa Christensen (Finding 65); Kevin Burrill (Finding 68); Thomas Wolthius (Finding 70); Rebekah Campbell and Esmerelda Taipa (Finding 114).

7. The preliminary notices of layoff issued to the following employees shall be rescinded in part, and the certificated employees shall be retained for the 2011-12 school year as indicated: Nadine Nouchi (.8 FTE): laid off .6 FTE, retained .2 FTE (Finding 63); Ryan Varrelman: laid off .6 FTE, retained .4 FTE (Finding 112); Kenneth McPeters: laid off .8 FTE, retained .2 FTE (Finding 113); Laura Brislow: laid off .6 FTE, retained .4 FTE (Finding 114); and Elizabeth Hernandez (.8 FTE): laid off .5 FTE, retained .3 FTE (Finding 116).

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<sup>20</sup> *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.

<sup>21</sup> *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 807-808

8. The District shall update its records to reflect the following information: change the employment classification of Brian Fisher to permanent (Finding 30); Thurrell Sanders is HQ in history (Finding 31); Robert Walters is HQ in M/S, math, and history core (Finding 32); Cassandra Woodruff is HQ in biology (Finding 33); Kenneth McPeters' seniority date shall be changed to August 25, 2004 (Finding 34); and Michael Johnston's seniority date shall be changed to August 14, 2006 (Finding 35).

9. The Priority School skip is upheld for teachers at Oak Ridge Elementary; Father Keith B. Kenney Elementary; Jedediah Smith Elementary; Fern Bacon Basic Middle; and Will C. Wood Middle Schools (Findings 40-45, 48-51).

10. The Priority School skip is not upheld for HJHS teachers (Findings 40-43, 46-50, and 52).

11. The Counselor and Social Worker skip is upheld at all six Priority Schools (Findings 53-54).

12. The evidence did not support skipping the six Priority Schools on the basis of section 44955, subdivision (d)(2) (Findings 55-57).

13. The BCLAD/DLIP skip is upheld (Findings 71-74).

14. The Special Education skip is upheld (Findings 76-79).

15. The S/S Math skip is upheld (Findings 81-85).

16. The Home and Hospital skip is upheld (Findings 88-91).

17. The Waldorf skip is upheld (Findings 92-95). The District shall rescind the preliminary notices of layoff to Philip Roberto, Diana Smith, Bryon Soules, Keith Sabini, Vicky Schroeder, and Scott Preston, and they shall be retained for the 2011-12 school year.

18. The Accelerated Academy skip is upheld (Findings 96-101). The District shall rescind the preliminary notices of layoff to Corey Fukuoka, Jennifer Healey, and Sarah Taylor, and they shall be retained for the 2011-12 school year.

19. The Talent Transfer Initiative skip is upheld (Findings 102-105). The District shall rescind the preliminary notices of layoff to Staci DiSantis, Ryan Fernald, and Lily Ngo, and they shall be retained for the 2011-12 school year.

20. The District shall re-do the tiebreak for teachers with a seniority date of September 4, 2007, with S/S social science credentials, and shall comply with Finding 64.

21. The District shall re-do the tiebreak for teachers with a seniority date of September 2, 2008, with S/S Spanish credentials, and shall comply with Findings 66 and 114.

22. The District shall perform a lottery to break the tie between Sonia Rambo and Patricia Wassum, teachers with S/S music credentials whose seniority date is September 7, 2010 (Finding 109.A).

23. In accordance with Finding 75, the District shall identify and rescind the layoff notice of the respondent with the greatest seniority who is senior to Yee Vang (9/4/07) who is credentialed and competent to perform the services Mr. Vang is providing to the District.

24. In accordance with Finding 117, the District shall identify and rescind the layoff notices of the most senior respondents occupying 3.3 FTE positions after re-doing the tiebreak for teachers with a seniority date of September 4, 2007, with S/S social science credentials (Finding 64 and Legal Conclusion 20).

25. In accordance with Finding 118, the District shall identify and rescind the layoff notices of the most senior respondents occupying 48.6 FTE K-6 positions, after taking into account skipped and retained employees.

26. Corrections to the District's tiebreaker matrix set forth in Finding 109 are upheld.

27. Other than the foregoing, no employee with less seniority than any respondent is being retained to render a service which any respondent is certificated and competent to render. Except as set forth above, the Board may give the remaining respondents whose preliminary notices have not been rescinded final notice before May 15, 2011, that their services will not be required for the ensuing school year, 2011-12.

#### ORDER

1. The District shall comply with Legal Conclusions 6 through 26.

2. Except as noted above, notices shall be given to respondents identified in attached Exhibit A that their services will not be required for the 2011-12 school year because of the reduction or discontinuation of particular kinds of services. Notice shall be given to respondents in inverse order of seniority.

3. All other contentions and claims not specifically mentioned were considered and are DENIED.

DATED: May 6, 2011

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CATHERINE B. FRINK  
Administrative Law Judge  
Office of Administrative Hearings

## EXHIBIT A

### LIST OF RESPONDENTS

Respondents marked with an asterisk (\*) received “dual notices” as temporary employees.

1	Aandahl, Heidi	38	Cariveau, Carol
2	Abrahams, Anna Lisa	39	Castaneda, Luz
3	Acton, Chris	40	Catlett, Emily
4	Adams, Tracy	41	Causley, Monique
5	Ahmadzai, Zolaikhs	42	Cazel-Mayo, Michelle
6	Ainslie, Thomas	43	Cerezo, Diana
7	Allison, Christina	44	Chadwell, Norma
8	Anderson, Teresa	45	Chaidez, Luis
9	Androłowicz, Stanley	46	Chang, Edison
10	Angove, Amy	47	Chang, Ying
11	Ashat, Loveleen	48	Chen, Wendy
12	Avis, Heidi	49	Choi, Amie
13	Azevedo, Margaret	50	Choy, David
14	Baker, Jeris	51	Christensen, Elissa
15	Baradat, Nicole	52	Chu, Christopher
16	*Barber, Lindsay	53	Chufar-Comstock, Bonnie
17	Barsotti-Hopson, Rhonda	54	Cleland-Brinzer, Jennifer
18	Bautista, Larisa	55	Cluff, Kristen
19	Beckett, Erik	56	Cochrane, Joan
20	Beutler, Carolyn	57	Cole, Whitney
21	Boe, Jeri	58	Conklin, Beth
22	Boettner, Julie	59	Conner, Brandie
23	Borgman, Christina	60	Cooperman, Jody
24	Borrelli, Hillary	61	Corona, Alejandro
25	Bradshaw, Patricia	62	Craine, Matthew
26	Bristow, Laura	63	*Crumbley, Edward
27	Brown, Amy	64	Cruz, Christel
28	Bruce, Michael	65	Damaso, Nathalie
29	Budge, Peter	66	De Anda, Sandra
30	Bujalski, Lisa	67	DelAgua, Julie
31	Burkhouse, Craig	68	DiSantis, Staci
32	Burrill, Kevin	69	Doll, Lorraine
33	Calderon, Carmen	70	Dresser, J. Michael
34	Campbell, Rebekah	71	Duong, Allie
35	Campos, Ramon	72	Dyer, Monica
36	Cannady, Will	73	Edwards, Camica
37	Carapiet, Arita	74	Eid, Diane

75 Eisner, Adam  
 76 Elkins, Jason  
 77 Ellerman, Jennifer  
 78 Enrico, Teresa  
 79 Erickson, Katherine  
 80 Faughn, Tami  
 81 Feagins, Char  
 82 Feliciano, April  
 83 Ferreira, Amber  
 84 Ferreira, Steve  
 85 Fisher, Bryan  
 86 Fong, Adrienne  
 87 Frishman, Andrew  
 88 Galarza, Maria  
 89 Gallardo-Martinez, Leticia  
 90 Galvan, Katrina  
 91 Garcia, Jose  
 92 Garibay, Pedro  
 93 Gill, Bhupinder  
 94 Goetz, Kristin  
 95 Goodwin, Michelle  
 96 Gordon, Julie Ann  
 97 Gosney, Christopher  
 98 Graser, Jennifer  
 99 Grassinger, Carley  
 100 Graves, Kelly  
 101 Graziano, Jennifer  
 102 Greer, Antawn  
 103 Hack, Brandy  
 104 Hanafee, Jennifer  
 105 Hansen, Barbara  
 106 Hardin, Onisha  
 107 Harding, Donja  
 108 Harris, Kathryn  
 109 Harrison, Courtney  
 110 Heavin, David  
 111 Hensley, Katherine  
 112 Hernandez, Elizabeth  
 113 Hill, Megan  
 114 Horton, Lynda  
 115 Howard, Patricia  
 116 Hunt, Monica  
 117 Hunt, Pamela  
 118 Huynh, Sandra  
 119 Jackson, Adriane

120 Jaime, Griceldo  
 121 Jarvis, Lisa  
 122 Jensen, Erika  
 123 Johnson, Audrey  
 124 Johnson, Cristopher  
 125 Johnson-Bidwell, Maria  
 126 Johnston, Michael  
 127 Jones, Phillip, Marc  
 128 Jones, Rory  
 129 \*Kadry, Jennifer  
 130 Keating, Nancy  
 131 Kerns, Patricia  
 132 Kirk, Aundrea  
 133 Krier, Miles  
 134 Lam, Christina  
 135 Lanzaro, Christina  
 136 Lee, Danny  
 137 Lee, Mary  
 138 Lim, Jade  
 139 Liow, Joe  
 140 Lobese, Robert  
 141 Lofton, Kristi  
 142 Lofton, Louise  
 143 Lopez, Maria  
 144 Maestas, Frank  
 145 Main, Davin  
 146 Manuel, Brent  
 147 Marquez, Tomás  
 148 Martin, Danielle  
 149 Martinez, Juan  
 150 Mashinini-Nigl, Siphwe  
 151 Matoba, Margie  
 152 Matolo, Hazel  
 153 McCord, Yvonne  
 154 McGee, Jim  
 155 McPeters, Kenneth  
 156 \*Means, Dale  
 157 Middleton, Juliana  
 158 Miller, Kristie  
 159 Mitchell, Brian  
 160 Moore, Brian  
 161 Mora, Carolina Avina  
 162 Moua, Si  
 163 Moua-Yang, Mai  
 164 Nakamura, Howard



165	Navarette, David	210	Shirley, Laura
166	Navarrete, Ray	211	Simonsen, Nicole
167	Nazari, Jaymee	212	Sims, Cheryl
168	Nevarez, Jackie	213	Slagle, Antonia
169	Newman, Jean	214	Smith, Diana
170	Newman, Minden	215	Smith, Nicole
171	Nguyen, Phuong	216	Smith, Philip
172	Nickel, Kimberly	217	Soules, Bryon
173	Noma, Lisa	218	Springmeyer, Shannon
174	Norris, Claire	219	Stafford, David
175	Nouchi, Nadine	220	Stephens, Joyce
176	Olivares, Julio	221	Stincelli, David
177	Patterson, Pamela	222	Tapia, Esmeralda
178	Pattow-Vigil, Barbara	223	Taylor, Christopher
179	Peltz-Planchon, Tiffany	224	*Taylor, Kathryn
180	Pérez, Mirna	225	Teweles, Benjamin
181	Perez, Rafael	226	Thao, Shoua
182	Philipps, Theresa	227	*Thompson, Kelly
183	Pickering-Pick, Sara	228	Thomson, Gregory
184	Power, Deborah	229	Tran, Linda
185	Prentice, Gary	230	Turko, Kamala
186	Preston, Scott	231	Udell, Bertha
187	Pullano, Jacquelyn	232	Vanderklay, Beth
188	Rambo, Sonia	233	Vang, Ching
189	Reilly, Patrick	234	Vang, Chong
190	Reinke, Jennie	235	Vang, Jade
191	Reyes, Kim	236	Vang-Her, Yee
192	Roberto, Philip	237	Varrelman, Ryan
193	Roberts, Matthew	238	Vidovich, Peter
194	Roberts, Steven	239	Viggiano, Linda
195	Rocha, Araceli	240	Voss, Lisa
196	Ruftus, Raelyn	241	Vue, Vanessa
197	Rule, Daniel	242	Wagers, Heather
198	Ryan, Kelly	243	Wagner, Sarah
199	Sabini, Keith	244	Walker, Bonita
200	Saldana, Juanita	245	Walters, Robert
201	Salk, Heidi	246	Webb, Terri
202	Samaan, Lynne	247	Weis, Mary
203	Sánchez, Debra	248	Wells-Artman, Christine
204	Sanders, Thurrell	249	Wenell, Nital
205	Saxton, Joycelyn	250	White, David
206	Schlager, Matthew	251	White-Andrews, Rhiannon
207	Schlenker, Michelle	252	Williams, Gavin
208	Schon, Julie	253	Willover, Valerie
209	Selseleh, Mary	254	Willow, Ellen

255 Winick, Judy  
256 Wolthuis, Thomas  
257 Woodruff, Cassandra  
258 Yaangh, Stacy  
259 Yang, Chong  
260 Yang, Hlao

261 Yang, Julia  
262 Yang, Ka  
263 Yates, Grace  
264 \*Yun, Elsie  
265 Zierenberg, Carolyn  
266 Schroeder, Vicky