BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE OF
THE SANTA ANA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	
ROBERT CHAVEZ,	OAH No. 2010090401
Respondent.	

ORDER GRANTING MOTION TO DISMISS

Administrative Law Judge Ralph B. Dash heard Respondent's Motion to Dismiss on October 25, 2010, at Los Angeles, California.

Richard A. Brady, Attorney at Law, represented Santa Ana Unified School District (District), telephonically.

Carlos R. Perez, Attorney at Law, represented Robert Chavez (Respondent).

ISSUE

For purposes of teacher dismissal cases under Education Code Section 44944, when does the 60-day time-period to commence the hearing begin to run.

CONCLUSION

The 60-day period commences to run from the date the teacher first demands a hearing after being served with a notice of intent to dismiss; not at some later point such as 60 days after a Notice of Defense is filed pursuant to Government Code Section 11506. In this matter, the hearing was not commenced within 60 days from Respondent's demand for a hearing, and the Accusation must be dismissed.

BACKGROUND

The District served Respondent with a Notice of Intention to Dismiss/Notice of Intent to Suspend, together with a Statement of Charges, on July 2, 2010. The Statement of Charges set forth in detail the facts upon which the dismissal was sought, together with citations to the Education Code regarding the District's legal authority to effect the dismissal. The Statement of Charges was signed by Jane A. Russo, District Superintendent. Respondent, through his counsel, demanded a hearing on July 12, 2010. The Superintendent filed the Statement of Charges with the governing board on August 24, 2010. The District filed an Accusation with the Office of Administrative Hearings (OAH), pursuant to the

Administrative Procedure Act (Government Code section 11500, *et seq.*) (APA), on September 13, 2010. The Statement of Charges was attached as Exhibit A to the Accusation. The Accusation itself contained no statement of facts nor did it cite any legal authority. The Accusation was based entirely on the Statement of Charges. Also attached to the Accusation was a "Notice of Accusation" dated September 9, 2010, addressed to Respondent. On September 14, 2010, Respondent served the District with an APA Notice of Defense in which he renewed his request for a hearing and objected to the Accusation. Trial is scheduled to commence on November 9, 2010.

CONTENTIONS

Respondent contends that because the hearing on the Accusation did not commence within 60 days of his initial demand for hearing on July 12, 2010, this matter must be dismissed. The District contends that the 60 day period does not begin to run until the Notice of Defense was filed because, although the Superintendent signed and served the Statement of Charges on July 2, 2010, the governing board of the District did not approve them until August 24, 2010. Thus, the District contends, the dismissal proceedings were not "initiated" until that date, and no time limits can begin running until thereafter.

ANALYSIS

It is a fundamental rule of statutory construction that the intent of the enacting authority should be determined so as to give effect to the purpose of the law. (*Chavez v. Civil Service Commission* (1978) 86 Cal. App. 3d 324 at 330.) If possible, effect should be given to the enacted provision as a whole so that no part of it will be useless or meaningless.

A statute must be construed in view of its general purpose, scope and object, so that mere literal construction of a provision will not prevail if it is opposed to the intention of the Legislature. A literal construction that will lead to absurd consequences should be avoided. (See generally 58 Cal. Jur. 3d, Section 99 at pages 466-7.)

Where a statute contains both general and special provisions, effect should be given to both if possible but, in the event of irreconcilable conflict, a general provision is ordinarily controlled by a special provision. (See, Code Civ. Proc. §1859. See also *In re Ricardo A.* (1995) 32 Cal. App. 4th 1190.)

The Legislature is deemed to be aware of statutes already in existence and to have those laws in mind at the time it enacts a new statute. (See, *Schmidt v. Southern California Rapid Transit District* (1993) 14 Cal. App. 4th 23. See also, *People v. McGuire* (1993) 14 Cal. App. 4th 687.)

In determining legislative intent, one must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase, and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must

be construed in context, keeping in mind the statutory purpose. Statutes must be construed so as to give a reasonable and common sense construction that is consistent with the apparent purpose and intention of the lawmakers, that is practical rather than technical, and that leads to wise policy rather than mischief or absurdity. (*People v. Turner* (1993) 15 Cal. App. 4th 1690.)

The quest for legislative intent in statutory construction is not unbounded. There can be no intent in a statute not expressed in its words, and there could be no intent on the part of the framers of such a statute which does not find expression in their words. The meaning of a statute is to be sought in the language used by the Legislature. Words may not be inserted in a statute under the guise of interpretation. (*City of Sacramento v. Public Employee's Retirement System* (1994) 22 Cal. App. 4th 786.)

Wherever possible, potentially conflicting provisions should be reconciled in order to carry out the overriding legislative purpose as gleaned from a reading of the entire act. A construction that makes sense of an apparent inconsistency is to be preferred. (*Viking Insurance Co. v. State Farm Mut. Auto. Ins. Co.* (1993) 17 Cal. App. 4th 540.)

Statutes *in pari materia* are those which relate to the same person or thing, or to the same class of persons or things. In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law. (*Isobe v. Unemployment Ins. Appeals Bd.* (1974) 12 Cal. 3d 584, 590.)

As the Supreme Court noted in *Meijia v. Reed* (2003) 31 Cal.4th 657 at 663:

> Under well-established rules of statutory construction, we must ascertain the intent of the drafters so as to effectuate the purpose of the law. [Citation.] Because the statutory language is generally the most reliable indicator of legislative intent, we first examine the words themselves, giving them their usual and ordinary meaning and construing them in context." (Esberg v. Union Oil Co. (2002) 28 Cal.4th 262, 268 [121 Cal. Rptr. 2d 203, 47 P.3d 1069].) "[E]very statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect." (Moore v. Panish (1982) 32 Cal.3d 535, 541 [186 Cal. Rptr. 475, 652 P.2d 32].) "Where as here two codes are to be construed, they 'must be regarded as blending into each other and forming a single statute.' [Citation.] Accordingly, they 'must be read together and so construed as to give effect, when possible, to all the provisions thereof.' [Citation.]" (Tripp v. Swoap (1976) 17 Cal.3d 671, 679 [131 Cal. Rptr. 789, 552 P.2d 749].)
>
> When the plain meaning of the statutory text is insufficient to resolve the question of its interpretation, the courts may turn to rules or maxims of construction "which serve as aids in the sense that they express familiar insights about conventional language usage." (2A Singer, Statutes and

> Statutory Construction (6th ed. 2000) p. 107.) Courts also look to the legislative history of the enactment. "Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent." (Dyna-Med, Inc. v. Fair Employment & Housing Com. (1987) 43 Cal.3d 1379, 1387 [241 Cal. Rptr. 67, 743 P.2d 1323].) Finally, the court may consider the impact of an interpretation on public policy, for "[w]here uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation.

With the foregoing in mind, the statutes in question are next examined. Elementary and secondary school teacher dismissal actions are governed by the California Education Code, Title 2, Division 3, Part 25, Chapter 4, Article 3 (Resignations, Dismissals and Leaves of Absence).

Education Code section 44934 states, in pertinent part:

> Upon the filing of written charges, duly signed and verified by the person filing them, with the governing board of the school district, or upon a written statement of charges formulated by the governing board, charging that there exists cause, as specified in Section 44932 or 44933, for the dismissal or suspension of a permanent employee of the district, the governing board may, upon majority vote, except as provided in this article if it deems the action necessary, give notice to the permanent employee of its intention to dismiss or suspend him or her at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article. Suspension proceedings may be initiated pursuant to this section only if the governing board has not adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code. Any written statement of charges of unprofessional conduct or unsatisfactory performance shall specify instances of behavior and the acts or omissions constituting the charge so that the teacher will be able to prepare his or her defense. It shall, where applicable, state the statutes and rules which the teacher is alleged to have violated, but it shall also set forth the facts relevant to each occasion of alleged unprofessional conduct or unsatisfactory performance.

Before dismissing a teacher, the district must notify the teacher:

> The notice of dismissal or suspension in a proceeding initiated pursuant to Section 44934 shall not be given between May 15th and September 15th in any year. It shall be in writing and be served upon the employee personally or by United States registered mail addressed to him at his last known address. A copy of the charges filed, **containing the information required by Section**

> **11503 of the Government Code,**[1] together with a copy of the provisions of this article, shall be attached to the notice.[2]
>
> Any written statement of charges of unprofessional conduct or unsatisfactory performance shall specify instances of behavior and the acts or omissions constituting the charge so that the teacher will be able to prepare his or her defense. It shall, where applicable, state the statutes and rules which the teacher is alleged to have violated, but it shall also set forth the facts relevant to each occasion of alleged unprofessional conduct or unsatisfactory performance.[3]

After receiving the notice, the teacher may request a hearing.

> When any employee who has been served with notice pursuant to Section 44934 of the governing board's intention to dismiss or suspend him or her demands a hearing, the governing board shall have the option either (a) to rescind its action, or (b) schedule a hearing on the matter.[4]

If the teacher demands a hearing and the board does not rescind its notice of intention to dismiss, the hearing must "commence" within 60 days of the date of that demand.

> In a dismissal or suspension proceeding initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing. [5]

The hearing uses the APA for its structure:

> The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.[6]

Powers v. Commission on Professional Competence (1984) 157 Cal. App. 3d 560 and *Wilmot v. Commission on Professional Competence* (1998) 64 Cal. App. 4th 1130, hold

---

[1] Emphasis added. Note, the code section requires the **information** required of an 11503 Accusation to be contained in the notice; there is no requirement that a formal Accusation be filed.

[2] Education Code § 44936. (Service of notice and attachments.)

[3] Education Code § 44934. (Written statement of charges and notice of intent to dismiss or suspend employee.)

[4] Education Code § 44943. (Action of governing board after demand for hearing.)

[5] Education Code § 44944, subdivision (a).

[6] Education Code § 44944, subdivision (a).

that commencing the hearing purely to establish jurisdiction is acceptable, as is stipulating to the "necessary ceremonial" (*Powers*, *supra* at 569).[7] A teacher might not agree to such a stipulation and demand the hearing commence within the 60-day timeline, but OAH has the authority to open a hearing and then grant a continuance for the substantive taking of evidence. *Governing Board of the Palos Verdes Peninsula Unified School District v. Felt* (1976) 55 Cal. App. 3d 156, implies that missing the 60 day timeline may be excused due to the tribunal's needs, but not counsel's delay or misunderstanding.

The statutory requirements of an Accusation filed under Government Code Section 11503 are virtually identical to the requirements for a written statement of charges under Education section 44934. As noted above, if the board's intention to dismiss is accompanied by a "written statement of charges," it must reference the statutes or regulations alleged to have been violated together with specific factual allegations supporting the charges.

Similarly, Government Code Section 11503 provides, in part, as follows:

> The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules.

A properly prepared statement of charges under Education Code section 44934 effectively functions as the Accusation in an APA hearing, but need not be the actual Accusation filed under Government Code Section 11503. The following recitation from *Wilmot* (*supra* at pages 1140-1142) gives very strong support to the determination that the 60 period runs from the date of the initial demand for hearing, not from a date post-filing of the Accusation:

> Section 44944, subdivision (a), states in part that ". . . if a hearing is requested by employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing." Appellant's first argument is that this 60-day time period "is jurisdictional" and that "if the hearing is not conducted by a Commission within 60 days from the date of the employee's demand, the Commission has no jurisdiction to conduct the hearing . . . ." Although appellant's argument is not clearly articulated, he appears to contend that under no circumstance can the hearing take place more than 60 days after the employee has demanded the hearing unless the commission has begun to take evidence within 60 days of the employee's demand for a hearing. Appellant is mistaken.

---

[7] *Wilmot v. Commission on Professional Competence* (1998) 64 Cal. App. 4th 1130, 1139-1148; ("the parties may 'stipulate that the necessary ceremonial has been observed' and may thereby satisfy the 60-day requirement").

The Education Code prescribes a detailed procedure to be followed when a school district desires to dismiss an employee. Section 44932 states that "[n]o permanent employee shall be dismissed except for one or more of the following causes . . . ." Among the causes listed are dishonesty (subd. (a)(3)) and evident unfitness for service (subd. (a)(5)). The dismissal process begins in the manner described in section 44934. As pertinent here, that section states "upon a written statement of charges formulated by the governing board, charging that there exists cause, as specified in Section 44932 . . ., for the dismissal . . . of a permanent employee of the district, the governing board may, upon majority vote . . . give notice to the permanent employee of its intention to dismiss him or her at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article." The section 44934 notice of intention to dismiss "shall be in writing and be served upon the employee personally or by United States registered mail addressed to him at his last known address." (§ 44936.) Certain other written information "shall be attached to" the notice of intent to dismiss. (§ 44936.) This includes a "copy of the charges filed, containing the information required by Section 11503 of the Government Code." (§ 44936.) Section 11503 of the Government Code is one provision of the legislation more commonly known as the Administrative Procedures Act (Gov. Code, § 11500 et seq.). It describes the required content of a charging document known as an "accusation." The "information required by Section 11503 of the Government Code" (§ 44936) includes "a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense." (Gov. Code, § 11503.) There must also be a specification of "the statutes and rules which the respondent is alleged to have violated," but this information "shall not consist merely of charges phrased in the language of such statutes and rules." (Gov. Code, § 11503.) If the employee does not demand a hearing within 30 days of being served with the notice of intent to dismiss, the school district may dismiss the employee at the end of the 30-day period. (Ed. Code, § 44937.) If the employee demands a hearing, ". . . the governing board shall have the option either (a) to rescind its action, or (b) schedule a hearing on the matter." (§ 44943.) As we have already noted, ". . . if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing." (§ 44944, subd. (a).) "The hearing shall be initiated, conducted, and a decision made in accordance with" Government Code section 11500 et seq. (the Administrative Procedures Act). (*Ibid.*) . . . . . appellant's hearing "commenced within 60 days" within the meaning of section 44944, subdivision (a). The procedural facts pertinent to this issue have never been in dispute. They are as follows. **On May 10, 1993, the district's board of trustees adopted a written statement of charges alleging that cause existed for appellant's dismissal. On May 12 appellant was personally served with**

> **a notice of intent to dismiss. On May 14 appellant demanded a hearing. An accusation was filed on July 7** and was served on appellant's legal representative at that time, Attorney Richard J. Papst. On July 7 Mr. Papst, on behalf of appellant, and Attorney Frank J. Fekete, on behalf of the district, entered into a stipulation stating that "[t]he hearing in this matter shall commence on July 9, 1993 before an Administrative Law Judge of the Office of Administrative Hearings," that "[t]he hearing shall be opened for jurisdictional purposes only on that date and no appearance by the parties or their counsel is required," that "[t]he hearing shall be reconvened on September 7, 1993," that "[t]he jurisdiction of Commission to proceed is established as of July 9, 1993," and that "[t]he parties agree that the terms of this Stipulation satisfy the jurisdictional and other requirements of Education Code Section 44944." …….**Even if we assume that the administrative agency's jurisdiction would end if no hearing was "commenced" within 60 days of an employee's request for a hearing and if no continuance was granted (§ 44944, subd. (a)), the agency unquestionably had jurisdiction to commence the hearing "within 60 days from the date of the employee's demand for a hearing." (§ 44944, subd. (a).) Here, appellant made his request on May 14 and thus the hearing had to "be commenced" not later than July 13 ("within 60 days"). (§ 44944, subd. (a).) It commenced on July 9, within the 60 day period.** It is true that no evidence was presented on July 9 and that appellant was not present on that date, but that is what he agreed to. The agreement was not an agreement to confer jurisdiction by consent, but rather was an agreement to exercise the jurisdiction which existed by virtue of section 44944. (emphasis added)

There was no question in either the court's mind or the minds of counsel that the 60 day period ran from the time the first demand for hearing was made, and not some point later in the proceedings.[8]

Education Code section 44944 was enacted in 1976, with a complete reorganization of the Education Code. The new section 44944 did not have any new provisions enacted, but was rather a reordering and restructuring of previous provisions.

Derivation of current Education Code sections:

The Education Code of 1959 was a reorganization of the entire code. The Statutes of 1959 (Chapter 2, from SB 2) created Article 5 – Resignation, Dismissal and Leaves of Absence (13401-13469, in single whole number increments):

> 13403 covered grounds for dismissal.
> 13404 was the filing of written charges to give notice of the intention to dismiss.

[8] In that case, trial was not completed until almost one year after the original notice of intent to dismiss was served.

13405 was the bar on giving notice between May 15th through September 15th of any year.
13406 was the waiver of hearing.
13410 covered the mailing of notice.
13412 was the employee's right to demand a hearing.
13413 was the filing of a complaint. The district could either rescind the notice or file a complaint within 30 days of the employee's demand for a hearing.
13414 was the employee's answer or time to file a demurrer, due within 10 days of the service of the complaint.
13415 was the procedure for demurrers.
13416 was the setting for trial, after the answer to the complaint had been filed.

After giving notice to dismiss, and an employee's demand for hearing, the district could file a complaint within 30 days. The employee had 10 days to respond. After that, either party could, with 5 days' notice to the other side, request that the matter be set for hearing.

1959 Statutes:

> When any employee who has been served with notice of the governing board's intention to dismiss him demands a hearing, the governing board shall have the option either (a) to rescind its action, or (b) to file a complaint in the superior court of the county in which the school district or the major part thereof is located, setting forth the charges against the employee and asking that the court inquire into the charges and determine if the charges are true, and if true, whether or not they constitute sufficient grounds for the dismissal of the employee, under the provisions of this code, and for judgment pursuant to its findings (former section 13412).
>
> If the board elects to file a complaint, the complaint shall be filed within 30 days from the date of the employee's demand for hearing. If the complaint is not filed within such period the board's action shall be deemed to be rescinded and all charges dismissed (former section 13413).
>
> The employee within 10 days after service upon him of the summons and a copy of the complaint may demur to the complaint or may file an answer, to which the governing board may demur. If the employee fails to answer or demur within the 10-day period, or any extension thereof, made by stipulation or order of the court, his default shall be entered and judgment shall be entered by the court declaring the right of the governing board to dismiss the employee (former section 13414).
>
> Both the complaint and the answer shall be verified. Demurrers to the complaint or answer may be upon any of the grounds specified in the Code of Civil Procedure for demurrer to a complaint or answer, and procedure on the demurrer shall be the same as in any civil proceeding (former section 13415).

> When the employee has filed his answer to the complaint, either party may, upon five days' notice to the other, move the court to set the matter for trial. The proceeding shall be set for trial at the earliest possible date and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence is given by law (former section 13416).

Amendments:

In 1971, Chapter 361 (AB 293, Stull & Ryan) section 13413 was repealed and added as part of John Stull's Competent Teacher Protection Act. It represented "the first major changes to our tenure procedures since their inception in 1931." [9] Hearings were removed from Superior Court to OAH to reduce civil court congestion, delay, and expense. The Stull Act provided, in part:

> . . . . [H]earing to be commenced within 60 days of the employee's demand for hearing, according to the APA, and the Commission shall have all the power granted to an agency therein.

In 1972, Chapter 1013 (AB 1153) modified only section 13413, reinserting the discovery provisions that had been applicable in superior court, even though the hearing itself was administrative. This bill, authored by Assemblyman Maddy, was not connected to the Education Committee, but instead was reviewed only in the Judiciary Committees of the Assembly and Senate. It was suggested by the California Teachers Association to "restore" the broad discovery rights for teachers as had been provided previous to the 1971 Stull bill. It added to the last sentence above, on the commission's powers:

> . . . except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court. In all cases, discovery shall be completed prior to one week before the date set for hearing.

In 1974, Chapter 856 (AB 4092, Berman) again modified only section 13413. The Senate Committee on Education Staff Analysis indicated that the rights and duties of the parties are akin to a civil action. The bill's change provided that all of the remedies of section 2034 of the Code of Civil Procedure shall be available when discovery is denied by either party and prohibits application of specified time limits so as to deny discovery rights. To enforce this prohibition, the bill authorized the superior court to suspend such hearings, upon motion of the party seeking discovery. The bill added the following language, to the above:

---

[9] Speech to Professional Educators of Los Angeles, March 27, 1971, and added to the Assembly Education Committee files of AB 293.

If the right of discovery granted under the preceding paragraph is denied by either the employee or the governing board, all the remedies in Section 2034 of the Code of Civil Procedure shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his motion, shall be the superior court of the county in which the hearing will be held.

The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 5 of the Code of Civil Procedure shall not be applied so as to deny discovery in a hearing conducted pursuant to this section.

The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of the preceding paragraph.

In 1975, Chapter 1216 (SB 777, Stull & Greene) amended sections 13405, 13410, 13413, 13485, and 13486, and repealed and added section 13487. The intent of the bill was to modify the hearing procedure so that the hearing date would be established after consultation with the employee and the governing board or its representative, so that discovery would be completed 7 calendar days prior to the set hearing date, and that a continuance extends the statutory limit for commencement of the hearing (60 days) but the extension cannot include time attributable to an unlawful refusal by either party to allow discovery.

In the enrolled bill memorandum to the Governor, Senator Stull noted that one of the principal amendments to the current law was that the notice of dismissal and statement of charges is required to be, in substance, an Accusation within the meaning of the APA, thereby guaranteeing employees that they woul be fully informed of the specific charges being made by the district.

DISCUSSION

The overriding intent of the statutory scheme, based on its language and its prior history, is to give a school district the right to quickly and unilaterally dismiss a teacher, while at the same time preserving the teacher's right to a fast and fair hearing on the merits. That scheme would be frustrated if the 60-day period was considered to run from any point in time than other than the initial demand for hearing. There is no time limit set forth in the Education Code as to <u>when</u> an Accusation must be filed. If the 60 day period were to run only after the Accusation was filed and a Notice of Defense and Demand for Hearing was made, there would be no guarantee of this right to a speedy trial. In fact, it would place in the hands of the school district, and not the teacher, the time frame in which the trial must be held. A plain reading of the statute shows that it is the teacher who must demand a hearing

30 days after being served with a notice of intent to dismiss to avoid being summarily dismissed (Education Code section 44937).

Once the demand for a hearing is made, the district then has the option of either rescinding its action, or scheduling a hearing (Education Code section 44943). This section would make no sense if the statutes were to be construed as requiring a hearing 60 days from the filing of the Notice of Defense. The teacher has already demanded a hearing; it is now up to the district to decide whether to rescind its notice or to go ahead with the proceedings. If it chooses the latter, it must then file an Accusation under Government Code Section 11503 in order to schedule a hearing. Reading this statute in any other manner would have the anomalous result of requiring the district to file an Accusation then, only after a Notice of Defense is filed, determine whether to proceed or not. Surely the Legislature did not mean to further congest the OAH calendar by requiring meaningless filings.

It is the teacher who is given the right to a trial within 60 days after demanding a hearing. There is a de facto statute of limitations (4 years from the filing of the notice of intent to dismiss) which forms the time frame from which a teacher's conduct may be examined. The longer the start of the hearing is delayed, the longer both sides will find increased difficulty in providing evidence in support of their respective positions. Theoretically, given the District's reading of the statutes, filing of the Accusation could be postponed indefinitely, a result clearly not intended by the Legislature. The entire statutory scheme is one that is based on the need for a prompt resolution of the proceedings. Permitting the start of the hearing to be unilaterally delayed by the District (by delaying the filing of the Government Code Section 11503 Accusation) is totally contrary to the grant of the right to a prompt resolution of accusatory allegations.

Also of note is the continued use of the word "demand" in the statutory scheme. It is the demand for hearing which sets everything in motion and from which all rights spring. These rights, as noted above, accrue well before any pleadings are filed with OAH, including the right to rescind the notice of intent to dismiss. Thus, the use of the word "demand" in Education Code section 44944, subdivision (a), can only mean the original demand for hearing.

It is of no moment that the governing board of the District had not formally approved the Statement of Charges before they were served on Respondent. It ratified the Superintendent's conduct when, on August 24, 2010, it adopted her recommendation that Respondent should be dismissed based on the Statement of Charges the Superintendent filed with it, the same charges the Superintendent had served on Respondent on July 2, 2010. After its adoption of the Statement of Charges, the District gave none of the notices required by Education Code sections 44934 or 44944, because the Superintendent had already given those notices on July 2, 2010. To uphold the notion that the governing board did not have to give the notices required by the Education Code, but rather was required only to give the notices required by the Administrative Procedure Act, would mean the procedures set forth

in the Administrative Procedure Act supersede the requirements of the Education Code, an outcome the Legislature clearly did not intend.[10]

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's Motion to Dismiss the Accusation is granted.

Date:_____

_____
RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

[10] At the hearing of this matter, counsel for the District conceded the APA did not supersede the provisions of the Education Code.