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

In the Matter of the Reduction in Force of Certificated Employees of the Los Angeles Unified School District, Respondents.	OAH No. 2015030703

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on April 27, 28, 29, 30, May 1, 4, 5, 6, 7, 8, 11, 12, 15, 18, 19, 21, 22, and June 4, 2015, in Los Angeles, California.

The Los Angeles Unified School District (District) was represented by Marcos F. Hernandez, Associate General Counsel I, and Meredith M. Karasch, Assistant General Counsel II.[1] Respondent Rebekah Villafana represented herself. The remaining Respondents who are identified in Exhibit 29, and Arturo Lindauer, Armando Salazar, and Keith P. Donahue were represented by Lawrence B. Trygstad, Esq., and Richard J. Schwab, Esq., of Trygstad, Schwab & Trygstad.[2]

After the final day of testimony on May 22, 2015, the matter was continued for oral argument to June 4, 2015. In the interim, by June 1, 2015, the parties submitted closing briefs, addressing issues as ordered by the ALJ. The District's Closing Brief was mared as Exhibit 55 and was lodged; Respondent Rebekah Villafana's Closing Brief was marked as Exhibit 724 and was lodged; and Respondents' Closing Brief was marked as Exhibit 455 and was lodged. The District also lodged the transcripts of the hearing, which were marked collectively as Exhibit 56 and lodged. The record was closed, and the matter was submitted for decision at the close of oral argument on June 4, 2015.

The hearing of this matter was continued from March 27, 2015, until April 27, 2015; from May 13, 2015, until May 15, 2015; from May 20 to May 21, 2015; and from May 22, 2015, until June 4, 2015, as described in more detail on the record and in any written orders

[1] On May 12, Aram Kouyoumdjian, Assistant General Counsel for District appeared in place of Meredith Karasch.

[2] Arturo Lindauer, Armando Salazar, and Keith P. Donahue were excused from timely submitting individual Notices of Participation by ruling of the ALJ after they established good cause by declarations.

granting and confirming the continuances. Pursuant to Education Code sections 44949, subdivision (c), and 44955, subdivision (c), the continuances extended the deadline for submission of the proposed decision until June 22, 2015.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Justo Avila, the District's Chief Human Resources Officer, filed the District's Statement of Reduction in Force in his official capacity.

2. Respondents are certificated District employees.

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

4(a). In March 2015, Mr. Avila recommended to the District's Board of Education (Board) that, pursuant to Education Code sections 44949 and 44955, notice be given to a number of certificated permanent employees in various teaching and support services positions that their services would not be required for the 2015-2016 school year because it was necessary to reduce or discontinue particular kinds of services.[3]

4(b). On March 10, 2015, the Board adopted the recommendations in Board Report Number 371-14/15 (Resolution) to reduce and discontinue particular kinds of services no later than the end of the 2014-2015 school year and to lay off a number of certificated permanent employees due to the reduction or elimination of particular kinds of services. The Board authorized the District's Human Resources Division to send notices to certificated permanent employees informing them that they would be laid off by June 30, 2015, in accordance with Education Code sections 44949 and 44955.

5. On or before March 15, 2015, the District gave notice (layoff notice) to a number of individuals including Respondents that they would be laid off, effective June 30, 2015.

6. At least 215 individuals timely submitted a request for hearing upon receipt of the written layoff notices. Thereafter, they were each timely served with a Statement of Reduction in Force, a blank Notice of Participation in Hearing form, and copies of pertinent provisions of the Government and Education Codes.

[3] Mr. Avila also recommended to the Board that notice be given to non-permanent (probationary) certificated employees in various teaching and support services positions and that they would be laid off, effective June 30, 2015, in accordance with provisions of their collective bargaining agreement (CBA).

7(a). At least 176 individuals timely filed Notices of Defense to determine whether cause exists for not reemploying them for the 2015-2016 school year. Those Respondents are identified in Exhibit 29. The District served these individuals with Notices of Hearing.

7(b). Several individuals did not timely submit Notices of Participation, but were excused from doing so and were granted leave, in the interests of justice, to participate in the hearing, by ruling of the ALJ after they established good cause by declarations. Those Respondents are Arturo Lindauer, Armando Salazar, and Keith P. Donahue.

Reduction or Elimination of Particular Kinds of Services

8(a). The Board's Resolution provides for the reduction/elimination of the following particular kinds of services by the beginning of the 2015-2016 school year:

Particular Kinds of Services	Full-Time Equivalent (FTE) Positions
Adult Career and Education/ Enrichment and Recreation Programs Teachers	
Adults with Disabilities	21
Programs for Older Adults	18
Parent Education	8
Adult Education Teachers Subtotal:	47
Permanent Secondary/Single Subject Teachers	
Business Education	17
Foreign Language:	
German	1
French	2
Japanese	1
Industrial Arts:	
Graphic Arts	3
Drafting	1
Woodworking	2
Secondary /Single Subject Teachers Subtotal:	27
TOTAL Permanent Teachers	74 FTE

8(b). The Resolution provides for the elimination of all services in the Older Adults and Parent Education within the Division of Adult and Career Education (DACE). Additionally, all Adults with Disabilities classes were being discontinued, and adult students with disabilities would be provided with necessary supports and accommodations in any "mainstream" programs/classes offered.

9. The services identified in the Board's Resolution are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. (See also Legal Conclusion 2.)

10. Prior to the adoption of the Board's Resolution, the District considered all known attrition in determining the number of layoff notices to be served on its employees. The District continued to consider positively assured attrition through March 15, and has continued to consider attrition occurring thereafter.[4]

11(a). The decision to reduce or eliminate the particular kinds of services was based on a fiscal solvency problem related to the current state budget crisis. District staff anticipate a budget deficit in the hundreds of millions of dollars for the next school year. To help the District address this anticipated budget deficit in its budget for next school year, the Board determined that the above-described actions in reducing particular kinds of services are necessary.

11(b). The decision to eliminate the DACE Programs for Older Adults and Parent Education services was also based, in part, on recent legislation and the proposed state budget which provided money to create a plan to restructure the provision of adult education services through the community colleges and school districts. The allowable programs include English as a Second Language (ESL) and citizenship, adult basic education and adult secondary education. The Program for Older Adults and Parent Education were not included in the allowed programs. Additionally, DACE understood that the state money and the Workforce Investment Act (WIA) National Emergency Grant Program, a federal program providing money for adult education to supplement state/local funds, focused on education which will lead to the workforce. Consequently, DACE determined that, since separate Adults with Disabilities classes did not specifically lead to the workforce, the services for adults with disabilities would be continued by way of supports and accommodations offered in the "mainstream" workforce development classes.

12. The reduction or elimination of the 74 FTE positions will not reduce services below mandated levels.

13. The Board's decision to reduce or discontinue the identified particular kinds of services was neither arbitrary nor capricious, and constituted a proper exercise of discretion.

14. The reduction or elimination of the identified particular kinds of services relates solely to the welfare of the schools in the District and its students.

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

The Seniority Lists

15(a). The CBA defines an employee's seniority date as "the employee's initial probationary service date," which in turn is defined as "the actual beginning of the probationary assignment and not any date of a substitute or temporary assignment which was later deemed to be probationary service for purposes of acquiring permanent status." (Exhibit 1, p. 1-7.) However, the District's permanent employees are laid off based on their "RIF" seniority dates, which the District defines as the employees' first date of service under a contract of employment.[5] In an effort to comply with *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, the District determines RIF seniority dates by giving credit to employees who previously served under "provisional" contracts so that they receive credit for all of the time they served under contracts of employment.

15(b). In developing the seniority list for layoff of its secondary /single subject permanent teachers and adult education permanent employees (Seniority List), the District used RIF seniority dates. The Seniority List for this proceeding identifies only certificated employees whom the District has identified as permanent. A similar seniority list was developed in the same manner for layoff of its non-permanent certificated employees. The District's Seniority List contains permanent certificated employees' names, employee numbers, RIF seniority dates, current assignments and locations, credentials and authorizations, and other pertinent information.

15(c). The Seniority List was developed using information from the District's electronic database which contains official District personnel records. Staff for the Human Resources (HR) Division maintains, regularly reviews, and audits the information in the database.

15(d). Prior to 2012, DACE maintained its own personnel records. However, this decentralized approach resulted in less ease of access to documents. In order to facilitate access to documents, the HR Division took over the maintenance of the DACE personnel records. Initially, given the fragmentary, non-electronic retention of records in boxes at various sites, HR discovered that many documents were missing. However, HR was able to obtain and compile information from the stored documents and to collect additional information, including documents submitted by employees, in order to correct any inaccuracies. HR staff was instructed that, if no documents existed for a time period of employment which would confirm non-probationary status (e.g. a contract for substitute or temporary service), the employee should be given credit for that time for purposes of any RIF.

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[5] Because the CBA-defined seniority date would continue to be utilized for other purposes under the CBA (e.g., transfer rights and matrix rights), the District uses the term "RIF" seniority date only when referring to the seniority date utilized for reduction in force purposes.

15(e). Each year, the District has offered its employees opportunities to review the information contained in the District's Seniority List and to verify its accuracy. The District sent rosters to each school site, and the principals and/or supervisors were instructed to review the rosters with certificated employees to have them verify or correct the information and sign the roster. The signed rosters were returned to the HR Division.

16. With the exceptions noted below, the information on the Seniority List is deemed accurate.

17. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various particular kinds of services being reduced. The District also used the Seniority List to determine which employees were eligible to "bump" less senior employees assigned to provide services that the senior employees were certificated and competent to render.

18. The District determined that nobody less senior than Respondents was being retained to render services which Respondents are certificated and competent to render.

Tie-Breaking Criterion

19(a). The Board's Resolution also established a tie-breaking criterion to determine the relative seniority of certificated employees who first rendered paid service on the same date. According to the Resolution, the order of layoff in such situations will be based on the employees' seniority numbers, as determined by Article XI, Section 6.2 of the CBA.

19(b). Pursuant to the CBA, the last five digits of an employee's seniority number are computed by a specified formula utilizing the last four numbers of the employee's Social Security Number. When comparing employee numbers, the lower employee number is deemed to be more senior.

19(c). For layoff purposes, the District could have adopted tie-breaking criterion that differed from that set forth in the CBA. However, there is no requirement that it do so, unlike the situation with seniority dates, where the RIF seniority dates differ from the CBA seniority dates in order to comply with *Bakersfield Elementary Teachers Assn. v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260). Although other districts may have tie-breaking criteria which include consideration of the employees' number of credentials and college degrees before a final criterion of a random lottery is used, the District is not required to utilize all of these criteria. Due to the size of the District, there are often ties between hundreds of employees, so the numeric formula is used for efficiency, transparency and certainty. Employees know their tiebreaker number at their time of hire, and their relative seniority is fixed so they can anticipate their standing in any layoff proceeding. Given the foregoing, the tie breaking criterion, as agreed to in the CBA, was an objective and

reasonable exercise of the Board's discretion and is based on the needs of the District and its students.[6]

20. Although the last five digits of employees' seniority numbers were placed on the Seniority List, the District did not apply the tie-breaking criterion to resolve ties among employees with the same seniority date because such a determination was not necessary to determine who was subject to layoff. It was not established that any respondent was included in this layoff proceeding based on the application of the tie-breaking criterion, and the District was not required to apply the tie-breaking criterion prior to the hearing.[7]

Competency Criteria

21. The Board's Resolution also established a definition of competency for purposes of allowing an employee currently assigned in a position subject to layoff to "bump" a less senior employee holding another position not subject to layoff. For bumping purposes, an employee is "competent" to render a service if:

> a. the employee possesses an appropriate credential for 2015-2016 assignment, and
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> b. has at least one (1) year of full-time-equivalent experience within the District within the preceding five (5) years serving in the subject area of the assignment. For purposes of competency, "one (1) year of full-time-equivalent experience" shall mean (a) having had an assignment (i) in the subject area, (ii) for which the employee carried the register, and (iii) in which the employee served at least 75% of days during the qualifying school year; or (b) having served in the position of Instructional Coach in the subject area for at least 75% of days during the qualifying school year. "[W]ithin the preceding five (5) years" shall be calculated back from June 30, 2015 and shall be comprised of the 2010-11, 2011-12, 2012-13, 2013-14, and 2014-15 school years.

(Exhibit 3.)

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

[7] Appellate courts have not required that school districts apply tie-breaking criteria prior to issuing layoff notices. (*Zalac v. Ferndale Unified School District* (2002) 98 Cal.App.4th 838, 855.) At least one court has approved the process of applying the tie-breaking criteria during the hearing when doing so became necessary. (*Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, 143-44.)

22(a). The District's competency criteria, including the five-year recency requirement and the inclusion of the current school year in the five-year recency requirement, are deemed reasonable.[8] Therefore, the District's definition of competency in determining bumping rights (i.e. whether Respondents who received layoff notices may exercise their statutory right to bump into a position held by a less senior employee not subject to layoff) is upheld.[9]

22(b). Respondents argued (without conceding to reasonableness of the competency criteria) that the competency criteria of "one (1) year of full-time-equivalent experience . . . serving in the subject area of the assignment," means that the employees seeking to bump must show "equivalent," but not "the same exact experience in the discipline in which they intend to bump." (Exhibit 455, p. 7, lines 1-2.) This is a misreading of the competency criteria. The word "equivalent" is part of the term "full-time-equivalent" and modifies the words "full-time" (i.e. FTE). In order to meet the competency criteria, the employee must show FTE experience "in the subject area of the assignment." The competency criteria do not define what "in the subject area" means, and this must be determined on a case-by-case basis.

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[8] During the hearing, Respondents sought to establish that the competency criteria was unreasonable/arbitrary by proffering testimony/evidence that the District did not apply the competency criteria in other situations such as re-hiring. The District moved to exclude any evidence regarding specific/individual instances of the District's non-use of its RIF competency criteria for purposes other than this RIF proceeding (such as rehiring individuals) on the grounds that such evidence was irrelevant and would result in an undue consumption of time. The objections to such evidence were sustained, and the District's motion to exclude the proffered evidence was granted.

[9] If a permanent teacher is "certificated and competent" to render a service provided by a more junior employee, the senior teacher is statutorily entitled to bump into the junior employee's position, thus avoiding layoff. (Ed. Code, § 44955, subd. (b).) A school district has the authority and the discretion to establish competency criteria that relate to the skills and qualifications of a teacher for purposes of determining bumping rights. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 563-567.) This discretion is limited only by a reasonableness standard (i.e. the district's criteria must be reasonable, and not fraudulent, arbitrary or capricious). (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 808.) Moreover, courts have held that this reasonableness standard permits "a difference of opinion on the same subject." (*Id*.) A district's competency criteria may include a recency requirement. (*Duax*, *supra*, 196 Cal.App.3d at 567 (approving a recency requirement of "one year of teaching in the last ten").) Additionally, a court has suggested, without directly addressing the point, that a recency requirement of one year experience within the past five years is a valid criterion for determining a teacher's competency. (*Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127.)

Skipping Criteria

23. The Board's Resolution also established criteria for deviation from laying off employees in order of seniority and for retaining less senior employees possessing special training and experience necessary to teach a course or course of study as follows:

a. Certificated employees who have served at Investment Schools during the 2014-2015 school year as classroom teachers at the [37] schools listed in Attachment 1B, pursuant to the settlement agreement (Superior Case number BC432240) between United Teachers Los Angeles (UTLA) and the Los Angeles Unified School District (LAUSD) and who will serve at these schools during the 2015-2016 school year.

b. Certificated employees who have served in Dual Language Immersion programs during the 2014-2015 school year and who will serve in such programs during the 2015-2016 school year, as set forth in the Dual Language Program Resolution adopted on June 14, 2011.

c. Certificated employees who have served in an International Baccalaureate program during the 2014-2015 school year and who will serve in such a program during the 2015-2016 school year.

(Exhibit 3.)

24(a). *Explanation of Skipping Criteria – Reed/Investment School Teachers:* On September 24, 2014, Judge Mary H. Strobel of the Superior Court of the State of California, County of Los Angeles, in case number BC 432420, issued a Judgment approving the terms of the Settlement Agreement in *Reed, et al. v. State of California, et al.* (*Reed* Judgment), pursuant to detailed Findings of Fact and Conclusions of Law. In the *Reed* Judgment, the Court reserved "exclusive and continuing jurisdiction over the Action, Plaintiffs, the Settlement Class Members, LAUSD, the Partnership, and UTLA for purposes of supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Court's Findings of Fact and Conclusions of Law and this Judgment." The Court also noted that the settlement "shall be in force for three years, through LAUSD's 2016-2017 school year." (Ex. 4, p. 4-4.) According to the *Reed* Judgment, the parties entered into the Settlement Agreement to "provide needed support at a number of the District's schools to address the high teacher turnover and/or high student drop-out rates at these schools, which, in turn, may have had an adverse impact on the students at these schools." (Exhibit 4, p. 4-7.) The Settlement Agreement identified 37 LAUSD middle and high schools (Investment Schools) participating in a School Investment Stabilization and Enhancement Program (Program), selected based on their high teacher turnover rates or high student drop-out rates. The Settlement agreement noted that "The primary goal of this settlement is to improve the education provided to students at these schools . . . and promote stability by (1) decreasing teacher turnover; and (2) decreasing student drop-out rates . . ." (exhibit 4, p. 4-7.)

24(b). As set forth in Section 6 of the Settlement Agreement, as part of the Program, the District agreed to provide 40 hours of paid professional development, identified as "special training," to all teachers and non-administrative certificated staff at the Investment schools "in order to promote the goals" of the Settlement Agreement, "including but not limited to special training and skills necessary to teach a specific course or course of study." (Ex. 4, p. 4-10.) The Settlement Agreement, at Section 6, also noted that the parties "agree that the special training being developed shall be designed to be necessary to teach a specific course or course of study to the unique student population at the Investment Schools." (Ex. 4, p. 4-11.) A section of the Settlement Agreement entitled "Future Potential Reduction-In-Force" states:

> The parties understand that the special training described in Section 6 above is intended to provide teachers at the Investment Schools with the training and experience necessary to teach a course of study under California Education Code section 44955(d)(1). Should a certificated reduction- in- force take place during the Program, the District shall utilize the training and experience provided under Section 6 above to maintain staffing stability and continuity of instruction at the Investment Schools pursuant to California Education Code section 44955(d)(1). However, nothing herein shall be deemed to be a waiver of individual teacher rights under California Education Code section 44955(b) and other applicable provisions.

(Ex. 4, p. 4-14.)

24(c). The 37 Investment Schools were identical to those Investment Schools identified in the Board Resolution.

Rescinded Layoff Notices

25(a). During the hearing, the parties entered into the following stipulation: There are only two permanent employees receiving redirected RIF notices and thereby affected by the skipping criteria set forth in the Board Resolution/Exhibit 3. The District shall skip the two employees who have special training and experience in the programs at issue – i.e. the International Baccalaureate Program, the Dual Language Program, and the Investment School Program. Respondents dispute the legitimacy of the skipping at the *Reed*/Investment schools. The District will rescind the RIF notices of the two most senior business teachers who would have otherwise claimed the right to bump into those two positions. The three skipping criteria will no longer remain an issue to be determined in the RIF hearing for permanent certificated employees, OAH Case Number 2015030703, since the remaining redirected notices went only to nonpermanent employees. Neither party waives the right to present evidence and argument on these issues during the non-permanent certificated employee RIF proceeding. This stipulation shall not constitute an adjudication of the issue on its merits.

25(b). Based on the stipulations in Finding 25(a), the two permanent employees and most senior business teachers whose redirected layoff notices the District will rescind are: Gary Wiessner (#692633) and Laurie Holzappel (#617138).

26(a). During the hearing, the parties stipulated that the following Respondents are competent to bump into specified service areas and that they will not remain where they are currently serving but will teach in the new service areas: Pilar Zorrilla (#641189) from Parent Education to ESL; Bernadette Haderlein (#629707) from Program for Older Adults to Academics; May Raquedan (#701456) from Adults with Disabilities to Academics; Ifeadikanwa Anyiam (#715562) from Parent Education to Academics; Laura Sharpe (#572554) from Adults with Disabilities to Academics; Regan Read (#546784) from Program for Older Adults to Academics; Maria De La Galvez (#627169) from Program for Older Adults to ESL; Lisa Andrade (#576771) from Adults with Disabilities to Career Technical Education; Melba Carter (#641945) from Program for Older Adults to Career Technical Education; Tammie Elam (#650216) from Adults with Disabilities to Academics; Kimberly Shirley (#732124) from Parent Education to Career Technical Education; Raymond Terrazas (#545137) from Adults with Disabilities to Academics; Maria Flynn (#585612) from Parent Education to ESL; Paulina McCune (#673973) from Parent Education to Career Technical Education; Sybil Gonzales (#712655) from Design 1 to Older Adults/ Adult Literacy Program and Academics; Yolanda Aquino (#789106) from BUS to CSC; Keith Donahue (#714199) from BUS to CSC; Beatrice Ellis (#697730) from BUS to CSC; Rita Franklin (#742186) from BUS to CSC; Karen Hammock (#677961) from BUS to MAF; Richard Helm (#744508) from BUS to CSC; Jordan Lessem (#779025) from BUS to SST; Dennis Luzon (#707499) from BUS to SST; Andrew Martinez (#737370) from BUS to CSC; John Rush (#788495) from BUS to CSC; Talyn Simonian (#809178) from BUS to CSC; Mehmet Sonmezay (#799785) from BUS to MAF; Kathleen West (#780736) from BUS to HEA; Mary Truitt (#320006) from BUS to CSC; Arthur Lindauer (#515422) from Graphics to Industrial Technology; Elias Contreras (#587870) from Drafting to Computer Science; Carthel Davidson (#328524) from Woodmaking to Cabinetry; Carolyn Jones (#598548) from Adults with Disabilities to Academics; Michael Jacquias (#799993) from BUS to CSC and MAF; Aaron Kahlenberg (#724011) from Graphic Arts to Tech Ed; and Edwin William (#572538) from BUS to SPED.

26(b). In light of the stipulation in Finding 26(a), the District will rescind the layoff notices served on the Respondents listed in Finding 26(a).

27. During the hearing, the parties stipulated that Erica Zavala (#745144) is deemed permanent and that her seniority date is sufficient to bump into an academic course. Given the stipulation, the District agreed to rescind the layoff notice issued to Respondent Zavala.

28. During the hearing, the parties stipulated that Lucy Rosas (#602357) is a permanent academics teacher and that there are employees with less seniority than her who

are serving in positions into which she could bump. Given the stipulation, the District agreed to rescind the layoff notice issued to Respondent Rosas.

Bumping Assertions of Permanent Teachers

29(a). Miriam Caiden. Respondent Caiden (#732140; RIF seniority date 5/17/2000) is a permanent DACE teacher, teaching in the Program for Older Adults. She seeks to bump into a position teaching in the Career Technical Education (CTE) Program. Within the past five years, Respondent Caiden has taught Understanding and Using Technology 2 within the Program for Older Adults. She asserts that she is certificated and competent to teach the CTE course entitled Computer Operations 1. Respondent Caiden holds a Designated Subjects Adult Education Teaching Credential, under which she was authorized to teach Elementary and Secondary Basic Skills, English, English as a Second Language, Hebrew, and Self-Maintenance (Older Adults). In April 2015, she obtained a three-year Preliminary Designated Subjects Credential Recommendation for Career Technical Education from the Los Angeles County Office of Education authorizing her to teach Business and Finance, Education, Child Development and Family Services, and Information and Communication Technologies. She notified the District of this additional authorization in April 2015. Although she now has the requisite credential, since her credential was secured after March 15, she cannot now use it to assert bumping rights.[10]

29(b). Respondent Caiden has never taught any CTE Computer Operations classes. However, Respondent Caiden asserts that she meets the competency criteria, contending that she has served in the "subject area" into which she seeks to bump. Respondent Caiden maintained that, based on the course outlines for the course she teaches and the CTE course, the courses teach the same competencies and test to the same standard. The course outlines offered into evidence do not bear out this contention. Although the competencies were generally similar, the evidence did not establish that they were the same subject matter; the CTE course provided more detailed technical instruction than the "Understanding and Using Technology" course regarding certain aspects of computer operations, including the functions of computer hardware, software, operating systems, virus and spyware protection, and file management. Generally, the "Understanding and Using Technology" course focused

[10] "[C]redentials recorded after March 15 cannot be used by a teacher to assert bumping or reassignment rights." (*Vassallo v. Lowrey* (1986) 178 Cal.App.3d 1210, 1217 (citing *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 815).) The reasoning behind the March 15 deadline was the districts' requirement to consider credentials in determining to whom to send layoff notices. The *Vassallo* Court noted that, although the employee had a credential which would have entitled her to bump into another assignment, the credential was not recorded with the county board of education in time for the school district to consider it. Pursuant to statute, districts were required to "send all termination notices by March 15 of the preceding academic year. Since such districts cannot add to the layoff list after March 15, sometime before that date such districts must consider the seniority and credentials of all employees to be laid off, reassigned, or 'bumped.'" (*Id*. at pp. 1216-1217.)

on the utilization of the computer technology for personal growth and workplace application, whereas the CTE "Computer Operations" course focused on mastering the technical aspects of computer operations for employment as a computer operator. Consequently, Respondent Caiden did not establish that she meets the competency criteria to bump into a CTE Computer Operations position.

30(a). Steven Steinberg. Respondent Steinberg (#541269; RIF seniority date 11/18/1983) is a permanent DACE teacher, teaching in the Program for Older Adults. He seeks to bump into a position teaching in the CTE Program. Within the past five years, Respondent Steinberg has taught "Understanding and Using Technology," Levels 1 and 2, within the Program for Older Adults. He asserts that he is certificated and competent to teach the CTE course entitled Computer Operations 1. Respondent Steinberg holds a Designated Subjects Adult Education Teaching Credential, under which he is authorized to teach Arts/Crafts, Basic Education, Gerontology, and Home Economics. In May 2014, he also obtained a three-year Preliminary Designated Subjects Credential for Career Technical Education, authorizing him to teach Information Technology.

30(b). Although he has the requisite credential, Respondent Steinberg has never taught any CTE Computer Operations classes. However, Respondent Steinberg asserts that he meets the competency criteria, contending that he has served in the "subject area" into which he seeks to bump. Respondent Steinberg maintained that, based on the course outlines for the courses he teaches and the CTE course, the courses are equivalent and teach the same curriculum and competencies. However, as noted above (Factual Finding 29(b)), the course outlines offered into evidence do not bear out this contention. Although the listed competencies were generally similar, they were not the same subject matter, and the CTE course provided more detailed technical instruction than the "Understanding and Using Technology" course regarding certain aspects of computer operations, including the functions of computer hardware, software, operating systems, virus and spyware protection, and file management. Generally, the "Understanding and Using Technology" course focused on the utilization of the computer technology for personal growth and workplace application, whereas the CTE "Computer Operations" course focused on mastering the technical aspects of computer operations for employment as a computer operator. Consequently, Respondent Steinberg did not establish that he meets the competency criteria to bump into a CTE Computer Operations position.

31(a). Doris Shima-Luke. Respondent Shima-Luke (#770418; RIF seniority date 9/3/02) is a permanent DACE teacher, teaching Parent Education. She holds a Designated Subjects Adult Education Teaching Credential, under which she was authorized to teach Elementary and Secondary Basic Skills, Social Sciences, and Parent Education. Respondent Shima-Luke seeks to bump into a position teaching "Academics." In the 2012-2013, 2013-2014, and 2014-2105 school years, Respondent Shima Luke taught Parent Education/Distance Learning for at least 75 percent of the days during the qualifying school years. During the 2011-2012 school year, she taught "Academics" in an Individualized Instruction (II) Lab setting, wherein the students were taught a variety of subjects to earn credits to meet high school graduation requirements. These subjects included English,

History, American Literature, Economics, Psychology, Health, and Parent Education. However, Respondent Shima-Luke served less than 75 percent of the school days teaching the II Lab "Academics" class, and admitted that she does not meet the competency criteria using the II Lab assignment.

31(b). Respondent Shima-Luke seeks to meet the competency criteria based on her Parent Education/Distance Learning assignments. She asserts the Parent Education taught in "Academics" is equivalent to the Parent Education/Distance Learning which she teaches. She asserted that Distance Learning is an "academic program," and that she carries a roster for her classes and issues grades to her students who receive five credits to meet their high school graduation requirements. However, other than her broad assertions, Respondent Shima-Luke provided no evidence to substantiate that the "Academics" Parent Education class/subject matter is equivalent to the subject matter in the Parent Education/Distance Learning which she teaches. Consequently, the evidence did not establish specifically into which "Academics" position she seeks to bump and whether the position is comprised of subject matter equivalent to, or different from, the Parent Education course curriculum she currently teaches. Additionally, although she identified several junior employees being retained to teach "Academics," Respondent Shima-Luke did not establish that any junior employee was being retained to teach a Parent Education class/component in an "Academics" class during the 2015-2016 school year. Consequently, the evidence did not establish that Respondent Shima-Luke meets the competency criteria to bump into an "Academics" position.

32(a). Caron Salazar. Respondent Salazar (#633996; RIF seniority date 4/4/92) is a permanent DACE teacher, currently assigned to teach Parent Education and to serve as the Family Literacy Program Coordinator. She is also a teacher advisor in Academics. She holds a Designated Subjects Adult Education Teaching Credential, under which she is authorized to teach Parent Education and Gerontology. She also holds a Children's Center Instruction Permit, authorizing her to perform service in the care, development and instruction of children in a child development program. On March 6, 2015, Respondent Salazar obtained a three-year Preliminary Designated Subjects Credential Recommendation for Career Technical Education from the Los Angeles County Office of Education authorizing her to teach Education and Child Development and Family Services. She notified the District of this additional authorization on March 16. Respondent Salazar seeks to bump into a CTE position. Although she now has the requisite CTE credential, her credential was reported to the District after March 15, and she cannot now use it to assert bumping rights.[11]

[11] Respondent Salazar argued that, since March 15, 2015 fell on a Sunday, the statutory deadline was moved to March 16, 2015, and she timely notified the District. This argument was not persuasive. This case is unlike cases where filing deadlines, calculated by calendar days, fall on a weekend and are moved to the next business day. This case involves a specified deadline of "no later than March 15." (Ed. Code, § 44949, subd. (a)(1); *Vassallo, supra*.) (See, fn. 10.)

32(b). Respondent Salazar has never taught any CTE classes. She nonetheless asserts that she meets the competency criteria based on her experience in the Family Literacy Program. The parents in the Family Literacy Program must spend time in a child care program and participate in child development and activities promoting literacy. Respondent Salazar provides supervision and guidance to the Family Literacy Program. She noted that she has the credential and expertise to, and has in fact, supervised child development students who come to the Family Literacy Program's child care center as part of their practical internship to obtain their requisite hours in a child care center observing children and their curriculum. The child development students are enrolled in CTE classes, community colleges, or universities. Respondent Salazar asserted that her work in the Family Literacy Program parallels classes in CTE. However, she did not know the names of the classes and could not speak to their content. Instead, she stated that CTE offered three classes in Child Care Operations in the field of child development which she believed had "a lot of overlap." She understood that these three classes provided instruction for students interested in pursuing careers in the field of early childhood education and that the purpose of the classes was to train students to become teacher assistants. The Family Literacy Program provided information about child development and how to create positive communities for children and families to focus on literacy.

32(c). Respondent Salazar offered insufficient evidence to substantiate that the CTE classes/subject matter was equivalent to the subject matter in the Parent Education/Family Literacy Program. Consequently, the evidence did not establish specifically into which position Respondent Salazar sought to bump and whether that position is comprised of subject matter equivalent to, or different from, the curriculum she currently teaches. Consequently, the evidence did not establish that Respondent Salazar meets the competency criteria to bump into a CTE position.

33(a). Maria Pike. Respondent Pike (#533230; RIF seniority date 4/6/92) is a permanent DACE teacher and, since 2008, has been assigned as a Teacher Advisor in Parent Education, serving in the Family Literacy Program. Although she works over 75 percent of the school days as a Teacher Advisor, she does not carry a register. Additionally, although she asserted that the position of Teacher Advisor and Instructional Coach are the same, she provided no evidence to substantiate that assertion.

33(b). Respondent Pike holds a Designated Subjects Adult Education Teaching Credential, under which she is authorized to teach Parent Education and Gerontology. As of April 8, 2015, she had an additional authorization on file with the District, authorizing her to teach Elementary and Secondary Basic Skills. It was unclear from her testimony whether she sought to bump into an "Academics" position. She asserted that her "program is parallel to" an academic program, but the remainder of her testimony focused on her CTE experience. Assuming she seeks to bump into an "Academics" position, since her "Academics" credential was not on file with the District until after March 15, she cannot now use it to assert bumping rights into an "Academics" position. (See, fn. 10.)

33(c). Respondent Pike seeks to bump into a CTE position. Although she has a Preliminary CTE Credential, she has never taught any CTE classes. Nevertheless, she asserts that she meets the competency criteria based on her experience in the Family Literacy Program. She noted that her position requires her to train Family Literacy Program teachers, to help them with lesson-planning, and to work with parents running a preschool program. She further noted that the Family Literacy Program puts into practice what CTE instructors are teaching, which is training potential employees for child care occupations. She pointed out that CTE students come to observe the Family Literacy Program and "put in hours" at the program to get credit for their CTE program. Respondent Pike maintained that the Family Literacy Program is similar to CTE courses in child care occupations or child development and that "only the course number is different." Respondent Pike offered no evidence, such as course outlines, to substantiate her contention.

33(d). Given the foregoing, the evidence did not establish that Respondent Pike meets the competency criteria to bump into a CTE position.

34. Arlene Torluemke. Respondent Torluemke (#537315; RIF seniority date 9/12/83) is a permanent DACE teacher, assigned as a Teacher Advisor in the Program for Older Adults. She holds a Designated Subjects Adult Education Teaching Credential, under which she was authorized to teach Elementary and Secondary Basic Skills, Social Sciences, Physical Science (including General Science), Communication Skills (Older Adults), Health (Older Adults), Public Affairs (Older Adults), and Home Economics. Although she has taught Understanding and Using Technology, she does not seek to bump into a CTE position, since she does not have a CTE credential. Respondent Torluemke seeks to bump into an "Academics" position based on her assignment as a Teacher Advisor. However, the evidence did not establish that she has worked over 75 percent of the school days as a Teacher Advisor or carried a register for more than part of a year. Additionally, although she asserted that the position of Teacher Advisor and Instructional Coach are the same, she provided no evidence to substantiate that assertion. Furthermore, the evidence did not establish specifically in which "Academics" position she sought to bump and whether it was comprised of subject matter equivalent to, or different from, the curriculum for which she acts as Teacher Advisor. Consequently, the evidence did not establish that Respondent Torluemke meets the competency criteria to bump into an "Academics" position.

35. David Fritz. Respondent Fritz (#572014; RIF seniority date 8/16/91) is a permanent DACE teacher, assigned to teach in the Program for Older Adults. He holds a Designated Subjects Adult Education Teaching Credential, under which he is authorized to teach Basic Education, Gerontology and Social Science. He seeks to bump into an ESL position. Respondent Fritz taught ESL classes in summers of 2010 and 2011, and taught a full semester of ESL approximately 15 years ago. In the 2010-2011 school year, he taught Cultural Studies in the Program for Older Adults for more than 75 percent of the days in the school year. He asserts that the Cultural Studies class is similar to ESL because they have "the same curriculum," such as practicing sounds of vowels and consonants. However, he provided no evidence to substantiate that assertion. Given the foregoing, the evidence did

not establish that Respondent Fritz meets the competency criteria to bump into an ESL position.

36(a). Adrienne Omansky. Respondent OMansky (#265564; RIF seniority date 1/31/77) is a permanent DACE teacher, assigned to teach Commercial Acting and Physical Fitness in the Program for Older Adults. She holds a Designated Subjects Adult Education Teaching Credential, under which she is authorized to teach Gerontology, Handicapped, Social Science, and Activity Leadership Training. She also holds a Designated Subjects Credential Recommendation for Career Technical Education, authorizing her to teach Arts, Media and Entertainment. She taught a CTE class, entitled The Performing Artist, one day per week, during the 2011-2012 school year. She understands that course has been "deactivated," and she does not know anyone who is currently teaching it.

36(b). Respondent Omansky seeks to bump into a CTE position teaching a Video Production course which she asserts has the same content as the Commercial Acting course she currently teaches. She admitted that the Video Production class is not identical to what she teaches in her course, which focuses on the "front of the camera" aspect. However, she noted that her class includes a "behind the camera" aspect, and she teaches video production as part of her course. She also noted that the goal of both courses is to help students get jobs in the entertainment industry. The foregoing was insufficient to establish that Respondent Omansky has sufficient experience serving in the subject area of the assignment into which she seeks to bump. Consequently, Respondent Omansky did not establish that she meets the competency criteria to bump into a CTE position.

Non-Permanent DACE Teachers Asserting Permanent Status

37(a). The District sent "precautionary" layoff notices to numerous certificated employees whom the District had identified as non-permanent employees (and subject to different layoff and termination procedures under the Education Code and CBA, depending on their status as either probationary or temporary). The precautionary notices were sent because concerns had been expressed that classification of these employees as temporary was inaccurate. The employees were allowed to request participation in this hearing.

37(b). The precautionary notices sent to the employees whom the District classified as probationary stated:

> [A]s a non-permanent employee [and per the CBA], you are not entitled to request or attend any hearing conducted in accordance with Education Code sections 44949 and 44955. . . .
> Although the District believes you are properly classified as a probationary employee, you may believe otherwise. Therefore, you are being given the following notices which apply to permanent employees who are to be laid off pursuant to the layoff provisions of Education Code sections 44949 and 44955. You are also being offered all of the rights and duties set forth in those notices. . . . [¶] It is the District's

> position that the following layoff notice does not change your classification from probationary to permanent in any way.

(Exhibit 21.)

37(c). The precautionary notices sent to the employees whom the District classified as temporary stated:

> You are employed as a temporary (limited part-time) employee in accordance with the Education Code and [CBA]. Such employees may be released without regard to other requirements of the Education Code pertaining to the layoff of permanent or probationary certificated employees. This letter is notification that your 2014-2015 Temporary Assignment will end no later than June 30, 2015.
>
> The District has initiated formal proceedings to lay off the services of a number of probationary and permanent employees effective the close of June 30, 2015 . . . Although the District believes you are properly classified as a temporary employee, you may believe otherwise. Therefore, you are being given the following notices which apply to permanent employees who are to be laid off pursuant to the layoff provisions of Education Code sections 44949 and 44955 or probationary employees who are to be terminated pursuant to [the CBA]. You are also being offered all of the rights and duties set forth in those notices.
>
> It is the District's position that the following layoff notice does not change your classification from temporary to probationary or permanent in any way.

(Exhibits 22 and 23.)

37(d). Numerous non-permanent employees submitted requests for hearing and notices of participation. They participated in the hearing and asserted, citing various theories, that they should have been classified as permanent employees. Their theories will be addressed both generally (Findings 38 through 43), and then as applied to each individual who participated in the hearing (Findings 44 through 67). Contrary to Respondents' assertion, the findings regarding generalized legal principles cannot be applied to "similarly situated" unidentified certificated employees who did not participate in the hearing because the facts of each individual's employment with the District differ, and the legal principles must be applied on a case-by-case basis.

Framework for Analysis of Permanent Classification:[12]

38(a). *Achieving Permanent Status*: Several non-permanent employees argue that they have met the requirements to be classified as permanent employees. This classification is governed by statute, which provides that probationary employees who are employed by the District for two complete consecutive school years and who are reelected for the next succeeding school year shall, at the commencement of the succeeding school year, be classified as permanent employees. (See Legal Conclusion 9(a).)

38(b). *75 Percent of Days Required for a "Complete" Probationary Year*: A "complete" probationary year under Education Code section 44908 requires that a probationary employee serve "at least 75 percent of the number of days" of the school year, not 75 percent of the hours. Respondents argued that the 75 percent requirement should be based on hours, not days.[13] However, this argument was not supported by the applicable statutes and case law. (See Legal Conclusion 9(a) through 9(h).)[14]

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[12] For the sake of continuity in reading this decision, this section of Factual Findings contains some legal analysis and legal conclusions, with reference to more detailed Legal Conclusions set out in a separate section below.

[13] At the hearing, Respondents asserted that DACE teachers are paid on an hourly basis. However, the evidence did not support this contention. Moreover, case law has established that "the adult education teachers are paid on a "salary basis." (*Kettenring v. Los Angeles Unified School Dist.* (2008) 167 Cal.App.4th 507, 514.)

[14] Respondents' counsel noted that several Respondents have served 75 percent of hours of a full-time teacher, but have not served 75 percent of the days. The parties stipulated that: "If the analysis in *Vittal v. Long Beach Unified School Dist.* (1970) 8 Cal.App.3d 112 (*Vittal*) is applied and an individual does meet 75 percent of the hours of a full-time teacher, they will have obtained the necessary time to acquire permanent status. However, if the holding in *Vittal* is rejected or if a different standard via case law or statute is followed, the individuals would not have acquired permanent status by 75 percent of the hours as opposed to 75 percent of the days. The District would have to review each individual case to determine if the individual meets the 75 percent of the hours as opposed to 75 percent of the days. The parties will jointly provide a list of individuals who have met 75 percent of the hours but not 75 percent of the days, which will be provided at the time briefing." No list of individuals meeting the 75 percent of hours was provided at the time of briefing. However, given the rejection of the *Vittal* analysis and the application of the 75 percent of the days standard via Education Code section 44908 and *Cox v. Los Angeles Unified School District* (2013) 218 Cal.App.4th 1441 (See Legal Conclusion 9(e) through 9(g)), there is no need for a list of employees who have served 75 percent of the hours of a full-time teacher. The analysis of whether the "75 percent of the days" standard has been met will be applied to each individual Respondent's evidence presented at hearing.

39. *Employees Cannot Obtain Permanent Classification based on District Mistake*: During the hearing, non-permanent employees (identified individually below) asserted that at some point they were classified by the District as being permanent, but that the District later notified them that it had changed their classification to temporary. The District maintains that the permanent classification of these employees was a mistake which was corrected after an audit of the employees' files revealed that they had not met the statutory requirements for achieving permanent status. If an employee is classified as permanent by mistake, the employee's claim of permanent status must fail. The District cannot classify an employee as permanent unless the employee meets the statutory requirements for achieving permanent status.[15] Whether any individual Respondent meets the statutory requirements for achieving permanent classification will be addressed in reference to each individual Respondent's evidence presented at hearing.

40. *The District must comply with the Education Code in classifying employees as temporary*. Numerous Respondents were classified as temporary based on employment agreements with the District. The District cannot classify an employee as temporary unless the statutory requirements are met for placing the employee in a temporary classification. (See Legal Conclusion 10(b)(2). As discussed more fully below, the District was operating within its statutory authority to enter into temporary employment agreements with employees. However, in doing so, the District must comply with the requirements of the applicable statutes and case law in order to properly classify employees as temporary.

41(a). *Education Code section 44909 employment requirements extend the terms of the signed contract*: Several Respondents entered into temporary employment agreements with the District which identified the authority for the temporary employment agreement as Education Code section 44909.

41(b). The employment agreements specified the "Name of Categorically Funded Program," and that they were contracts of employment "under the provisions of Education Code section 44909." (See, e.g., Exhibit 39.) The employment agreements also specified: "Services under this contract shall be in Limited-Temporary status . . . as set out in the District-UTLA Agreement. . . . [¶] . . . The employee also understands that employment under this contract is in accordance with Education Code Section 44909, and that service hereunder shall not result in or contribute to probationary or permanent status . . ." (See, e.g., Exhibit 39.)

41(c). In order for the District to appropriately categorize employees as temporary under section 44909, the District is required: (1) to show that the employees were hired to perform services conducted under contract with public or private agencies or categorically

[15] The District cannot be estopped from correcting the employee's classification because estoppel cannot be used to require the District to do what it is not legally authorized to do under the Education Code. (*Fleice v. Chualar Union Elementary School Dist*. (1988) 206 Cal.App.3d 886, 893 -895.)

funded projects which are not required by federal or state statutes; (2) to identify the particular contract or project for which services were performed; (3) to show that the particular contract or project expired; and (4) to show that the employee was hired for the term of the contract or project. (See Legal Conclusion 10.)

41(d). *Distance Learning is a "Categorically Funded Project."* Several Respondents' employment agreements listed "Distance Learning" as the categorically funded project for which they were employed. The teacher does not teach "Distance Learning" as a subject matter, but teaches one or more subjects via a method wherein the students are not required to attend classroom sessions.[16] Distance Learning is funded via application for, and State approval of, specified programs which include Distance Learning. If the State approves the District's application, the District may expend a specified percentage of its "adult block entitlement" funding on its approved programs. Respondents argued that Distance Learning is a method of instructional delivery rather than a categorically funded project. However, it was not established that a "categorically funded project" must be limited to a specific subject as opposed to a project involving a specific modality for delivery of instruction of one or more subjects. Respondents also argued that Distance Learning is not "categorically funded." However, the evidence established that Distance Learning fits within the definition of a "categorically funded project" and aligns with the purpose of Education Code 44909. (See Legal Conclusion 11.)

41(e). *WIA is a "Categorically Funded Project"*: Several Respondents' employment agreements listed "WIA" as the categorically funded project for which they were employed. The evidence established that each year, the District must await notification of funding from the WIA (See Factual Finding 11(b)). The funding amount varies each year. Given the foregoing, the WIA Program fits within the definition of a "categorically funded project" and aligns with the purpose of Education Code 44909. (See Legal Conclusion 11.)

42(a). *Education Code section 44910 requirements met via signed contracts*: Several Respondents entered into temporary employment agreements with the District, which identified the authority for the temporary employment agreement as Education Code section 44910. In order for the District to appropriately categorize an employee as temporary under section 44910, the District is required to show that the employee was serving as an instructor in classes conducted at a regional occupational center (ROC) or regional occupational program (ROP). There was no statutory requirement that specific funding had to be identified in order to comply with Education Code section 44910 (unlike Education Code section 44909). The classes conducted at ROCs/ROPs varied and included "academic and skill instruction in specific occupational fields," and courses which "may be applied toward

[16] Pursuant to Education Code section 51865**,** "Distance Learning" means "instruction in which the pupil and instructor are in different locations and interact through the use of computer and communications technology. Distance learning may include video or audio instruction in which the primary mode of communication between pupil and instructor is instructional television, video, telecourses, or any other instruction that relies on computer or communications technology."

fulfillment of requirements for a high school diploma." (See Legal Conclusion 12.) The wide scope of ROC/ROP includes classes through the Alternative Education Work Center (AEWC) Program, which focuses on high school drop-out recovery and "provides these students with educational opportunities leading to a high school diploma or equivalency and career technical education training programs." (Exhibit 444.) Indeed, AEWC locations included several listed occupational centers. (Exhibit 444.) The inclusive scope of ROCs/ROPs also encompasses ESL classes as well as classes offered via Distance Learning. (See Legal Conclusion 12.) Several Respondents testified that they never worked at a ROC or in a ROP. The evidence established that due to the nature and scope of the ROC/ROP programs, ROC/ROP classes were not necessarily segregated into specified ROC/ROP locations, nor were the assignments classified specifically as ROC/ROP in any document in evidence other than the employment agreements.

42(b). The employment agreements specified that they were contracts of employment for a "Regional Occupational Contract Teacher" and that the employee was to teach a specified subject in the "ROC/ROP Program" at a specified location "under the provisions of education code section 44910." (See, e.g., Exhibit 38.) The employment agreements also specified: "Services under this contract shall be in Limited-Temporary status . . . as set out in the District-UTLA Agreement. . . . [¶] . . . The employee also understands that employment under this contract is in accordance with Education Code Section 44910, and that service hereunder shall not result in or contribute to probationary or permanent status . . ." (See, e.g., Exhibit 38.)

42(c). Given the totality of the evidence and the statutory framework, these contracts were sufficient to establish that employees who signed them were serving in a ROC/ROP program.

43. *Education Code 44919 employment requirements*: Some Respondents were employed for only a few months at a time. Section 44919 allows an employee to be classified as temporary if the employee is employed for not more than four school months of any school term to teach temporary classes. If the classes continue beyond the first four months of the term, the employee must be classified as probationary. The school year consists of only two school terms, so an employee can be employed under only two Section 44919 contracts per year. (See Legal Conclusion 13.)

Individual Non-Permanent DACE Teachers Asserting Permanent Status

44(a). Andrew Horowitz. Respondent Horowitz (#693385; RIF seniority date 8/27/97) is a DACE teacher whom the District has classified as probationary. He disagrees with that classification. Respondent Horowitz signed several contracts of employment with the District as a "Regional Occupational Contract Teacher" to teach "Distance Learning in the ROC/ROP Program." The contracts specified that Respondent Horowitz would be teaching at the following locations with the specified start and termination dates: at Westside Community Adult School, from November 7, 2005 to June 23, 2006 (28 hours); at Westside Community Adult School from September 5, 2006 through June 22, 2007 (28 hours), and at

Westside Employment Career Center from September 4, 2007, through June 20, 2008 (starting at 30 hours, but increased to 34 hours from October 1, 2007 through June 20, 2008). (Exhibit 38.) All of his contracts contained the language specified in Factual Finding 42(b).

44(b). Respondent Horowitz claims that the 2005-2006 and 2006-2007 school years constituted his probationary years, and that the 2007-2008 school year was his first year of permanent classification. However, as set forth in Factual Finding 42, the evidence established that Respondent Horowitz was employed to teach distance learning in a ROC/ROP. Consequently, the District properly classified him as temporary under Education Code section 44910 during the 2005-2006, 2006-2007, and 2007-2008 school years. No evidence was presented to establish Respondent Horowitz's classification for school years after 2007-2008, nor was there any explanation of his current probationary classification. Consequently, Respondent Horowitz did not establish that his probationary classification by the District was incorrect or that it should be changed to a permanent classification.

45(a). Christopher Petrini. Respondent Petrini (#770419; RIF seniority date 8/22/02) is a DACE teacher whom the District has classified as probationary. He disagrees with that classification. Respondent Petrini signed several contracts of employment with the District as a "Regional Occupational Contract Teacher" to teach "Reading Lab AEWC in the ROC/ROP Program." The contracts specified that Respondent Petrini would be teaching at A Place Called Home (APCH) with the following specified start and termination dates: from September 5, 2006, to June 22, 2007 (25 hours); from September 4, 2007 through June 20, 2008 (30 hours), and from September 2, 2008, through June 27, 2009 (30 hours). (Exhibit 417.) All of his contracts contained the language specified in Factual Finding 42(b).

45(b). Respondent Petrini claims that the 2006-2007 and 2007-2008 school years constituted his probationary years, and that the 2008-2009 school year was his first year of permanent classification. He testified that he worked 75 percent of the days during those three school years. As set forth in Factual Finding 42, the evidence established that Respondent Petrini was employed to teach Reading Lab AEWC in a ROC/ROP. Consequently, the District properly classified him as temporary under Education Code section 44910 during the 2006-2007, 2007-2008 and 2008-2009 school years. No evidence was presented to establish Respondent Petrini's classification for school years after 2008-2009, nor was there any explanation of his current probationary classification. Consequently, Respondent Petrini did not establish that his probationary classification by the District was incorrect or that it should be changed to a permanent classification.

46(a). Philip Leeman. Respondent Leeman (#712723; RIF seniority date 12/1/98) is a DACE teacher whom the District has classified as probationary. He disagrees with that classification. Under his current non-permanent status, he is being laid off as an ESL teacher. No permanent ESL teachers are subject to layoff. Respondent Leeman asserts that his proper classification is permanent.

46(b). Respondent Leeman began employment with the District in 1998. Respondent Leeman signed several contracts of employment with the District under Education Code

section 44909. The contracts specified that the "Name of Categorically Funded Program" was "Distance Learning," with the following specified start and termination dates: from September 3, 2002, to June 23, 2003 (12 hours); from September 2, 2003, through June 21, 2004 (12 hours), from September 2, 2003, through June 21, 2004 (16 hours); and from January 5, 2004, through January 8, 2004 (12 hours). (Exhibit 39.) All of his contracts contained the language specified in Factual Finding 41(b). There were no additional contracts submitted as evidence.

46(c). Respondent Leeman contends that he became a permanent employee in the 2004-2005 school year, based on his service during the2002-2003 and 2003-2004 school years. However, the evidence established that: Respondent Leeman was hired to teach Distance Learning, which constituted services under a categorically funded project; the project expired annually; and Respondent Leeman was hired for the term of the project (i.e. for the school year). Consequently, the District properly classified him as temporary under Education Code section 44909 during the 2002-2003 and 2003-2004 school years.

46(d). Respondent Leeman also asserted that the District had previously classified him as permanent. On August 8, 2012, on a Verification of Teacher Assignments, Respondent Leeman checked the line indicting that his status was permanent. The September 2012 Certificated Teacher Assignment (Form 1000) which indicated that it was "Processed by the Personnel," included a handwritten indication of his status as "R1," which is the code for permanent status. (Exhibit 418, p. 12.) There was no evidence to establish whether, between the 2005-2006 and 2012-2013 school years, Respondent Leeman obtained probationary status and served the requisite two probationary years to obtain permanent status.

46(e). On November 4, 2013, the District sent him a letter stating:

> On behalf of the [District], we wish to welcome you to the 2013-2014 school year.
>
> As a regular part of an audit conducted by Human Resources, the results indicated your current employment status is Probationary year two. Probationary is the District status while you are serving the two school year probationary period necessary to attain permanent (tenure) status with the District. In an effort to ensure that appropriate documentation is applied to your current status, a Probationary contract is necessary.
>
> A Probationary contract will be available for your review and signature at your Service Area. . . .
>
> If you would like to review your district records before signing your Probationary contract, an appointment will be scheduled.

> I would like to thank you for the services you have provided as an instructor for [DACE] during the 2012-2013 school year and the continuous service to the students of [the District].

(Exhibit 39, p. 9.)

46(f). There was no evidence to establish whether, during the 2013-2014 school year, Respondent Leeman completed his requisite second probationary year necessary to obtain permanent status by the beginning of the 2014-2015 school year.

46(g). Although the 2012 Form 1000 indicated Respondent Leeman's as permanent, on November 4, 2013, the District informed him that this was a mistake and that, following an audit, his employment status correctly documented as "probationary year two." As set forth in Factual Finding 39, employees cannot obtain permanent classification based on District mistake. The evidence did not establish that Respondent Leeman served the requisite two complete probationary years to have obtained permanent status. Consequently, Respondent Leeman did not establish that his probationary classification by the District was incorrect or that it should be changed to a permanent classification.

47(a). Bita Malekahmadi. Respondent Malekahmadi (#701275; RIF seniority date 7/11/02) is a DACE teacher whom the District has classified as probationary. She disagrees with that classification. Respondent Malekahmadi signed several contracts of employment with the District as a "Regional Occupational Contract Teacher" to teach "GED Distance Learning" (2009-2010 and 2011-2012) and "Distance Learning/Individualized Instruction (II Lab)" (2010-2011) in the "ROC/ROP Program." The contracts specified that Respondent Malekahmadi would be teaching at West Valley Occupational Center with the following specified start and termination dates: from September 8, 2009, to June 26, 2010; from September 7, 2010 through June 25, 2011; and from September 6, 2011, through June 25, 2012. (Exhibit 419.) All of her contracts contained the language specified in Factual Finding 42(b). Respondent Malekahmadi worked over 18 hours per week and at least 75 percent of the school days for each of those years. On March 30, 2013, she began service under a probationary contract. She is currently classified as being in probationary year two.

47(b). Respondent Malekahmadi believes that she is a permanent employee, based on her service in the 2009-2010, 2010-2011, and 2011-2012 school years. However, as set forth in Factual Finding 42, the evidence established that Respondent Malekahmadi was employed to teach Distance Learning in a ROC/ROP. Consequently, the District properly classified her as temporary under Education Code section 44910 during the 2009-2010, 2010-2011, and 2011-2012 school years. Therefore, Respondent Malekahmadi did not establish that her probationary classification by the District was incorrect or that it should be changed to a permanent classification.

48(a). Raphik Ovasapians. Respondent Ovasapians (#702380; RIF seniority date 9/8/98) is a DACE teacher whom the District has classified as probationary. He disagrees with that classification. Respondent Ovasapians signed several contracts of employment

with the District as a "Regional Occupational Contract Teacher" to teach "ESL Distance Learning" in the "ROC/ROP Program." The contracts specified that Respondent Ovasapians would be teaching at Kennedy-San Fernando Community Adult School with the following specified start and termination dates: from September 7, 2004, to June 27, 2005; from September 6, 2005 through June 23, 2006; from September 5, 2006, through June 23, 2007; and from September 4, 2007, through June 21, 2008. (Exhibit 41.) All of his contracts contained the language specified in Factual Finding 42(b). Respondent Ovasapians worked over 18 hours per week during each of the years set forth above.

48(b). A Form 1000 from the 2013-2014 school year indicated that his status was "B2," or probationary year two, and he worked 20 hours per week that year. However, a Form 1000 from the 2014-2015 school year indicated that his status was "B2," but that was crossed out and "B1" was handwritten above it. There was no evidence to establish why this handwritten change occurred. During the 2014-2015 school year, Respondent Ovasapians taught 20 hours per week of ESL at the North Valley Service Area. There were no probationary contracts submitted as evidence to establish when Respondent Ovasapians was given probationary status, whether the Form 1000 from 2013-2014 or the Form 1000 from 2014-2015 was correct, and whether he had completed his second probationary year necessary to obtain permanent status by the beginning of the 2014-2015 school year.

48(c). Respondent Ovasapians asserts that, based on his service in the 2004-2005, 2005-2006, and 2007-2008 school years, he is a permanent employee. However, as set forth in Factual Finding 42, the evidence established that Respondent Ovasapians was employed to teach ESL Distance Learning in a ROC/ROP. Consequently, the District properly classified him as temporary under Education Code section 44910 during the 2004-2005, 2005-2006, and 2007-2008 school years. Therefore, Respondent Ovasapians did not establish that his probationary classification by the District was incorrect or that it should be changed to a permanent classification.

49(a). Chrystal Mendez (formerly Rozsa). Respondent Mendez (#788190; RIF seniority date 6/21/05) is a DACE teacher whom the District has classified as non-permanent. She disagrees with that classification and asserts that her proper classification is permanent.

49(b). Respondent Mendez signed several contracts of employment with the District as a "Regional Occupational Contract Teacher" to teach "Distance Learning" in the "ROC/ROP Program." The contracts specified that Respondent Mendez would be teaching at Van Nuys Community Adult School with the following specified start and termination dates: from February 6, 2006, through June 23, 2006, and from September 5, 2006, through June 23, 2007. (Exhibit 42.) All of her ROC/ROP contracts contained the language specified in Factual Finding 42(b). Respondent Mendez also signed several contracts of employment with the District under Education Code section 44909. The contracts specified that the "Name of Categorically Funded Program" was "WIA," with the following specified start and termination dates: from September 4, 2007, to June 20, 2008; from September 2, 2008, through June 20, 2009; and from September 8, 2009, through June 26, 2010. (Exhibit

42.) All of her contracts contained the language specified in Factual Finding 41(b). There were no additional contracts submitted as evidence. Respondent Mendez worked over 18 hours per week and over 75 percent of the days during each of the years set forth above.

49(c). Respondent Mendez contends that she became a permanent employee as a result of her service in the during the 2006-2007 and 2007-2008 school years. However, the evidence established that Respondent Mendez was employed to teach Distance Learning in a ROC/ROP. Consequently, the District properly classified her as temporary under Education Code section 44910 during the 2006-2007 school year. Additionally, the evidence established that: Respondent Mendez was hired to teach as part of the WIA-funded program, which constituted services under a categorically funded project; the project expired annually; and Respondent Mendez was hired for the term of the project (i.e. for the school year). Consequently, the District properly classified her as temporary under Education Code section 44909 during the 2007-2008, 2008-2009, 2009-2010 and 2010-2011 school years. Given the foregoing, Respondent Mendez did not establish that her classification by the District was incorrect or that it should be changed to a permanent classification.

50(a). Carolina Vicencio. Respondent Vicencio (#809037; RIF seniority date 10/3/06) is a DACE teacher whom the District has classified as non-permanent. She disagrees with that classification and asserts that her proper classification is permanent. Respondent Vicencio signed several contracts of employment with the District under Education Code section 44909. The contracts specified that the "Name of Categorically Funded Program" was "WIA," with the following specified start and termination dates: from September 4, 2007, to June 20, 2008, and from September 2, 2008, through June 20, 2009. (Exhibit 43.) All of her contracts contained the language specified in Factual Finding 41(b). There were no additional contracts submitted as evidence. Respondent Vicencio worked over 18 hours per week and over 75 percent of the days during each of the years set forth above.

50(b). Respondent Vicencio contends that she became a permanent employee as a result of her service in the during the 2007-2008 and 2008-2009 school years. However, the evidence established that: Respondent Vicencio was hired to teach as part of the WIA-funded program, which constituted services under a categorically funded project; the project expired annually; and Respondent Vicencio was hired for the term of the project (i.e. for the school year). Consequently, the District properly classified her as temporary under Education Code section 44909 during the 2007-2008 and 2008-2009 school years. Given the foregoing, Respondent Vicencio did not establish that her classification by the District was incorrect or that it should be changed to a permanent classification.

51(a). Cori Villalobos-Morrow. Respondent Villalobos-Morrow (#672262; RIF seniority date 2/22/05) is a DACE teacher whom the District has classified as non-permanent. She disagrees with that classification and asserts that her proper classification is permanent.

51(b). Respondent Villalobos-Morrow signed several contracts of employment with the District as a "Regional Occupational Contract Teacher" to teach Parent Education Distance Learning in the "ROC/ROP Program." The contracts specified that Respondent Mendez would be teaching with the following specified start and termination dates: from September 2, 2008, through June 20, 2009 (3 hours); from September 22, 2008, through December 12, 2008 (3 hours); from January 27, 2009, through April 3, 2009 (3 hours); from April 13, 2009, through June 19, 2009 (3 hours); from April 14, 2009, through June 20, 2009 (3 hours); and from September 8, 2009, and June 26, 2010 (3 hours). (Exhibit 44.) All of her ROC/ROP contracts contained the language specified in Factual Finding 42(b). Respondent Villalobos-Morrow worked over 18 hours per week and over 75 percent of the days during each of the years set forth above.

51(c). In 2010-2011, Respondent Villalobos was employed as an advisor under multiple short term contracts. She signed several contracts of employment with the District under Education Code section 44909. The contracts specified that the "Name of Categorically Funded Program" was Beyond the Bell, with specified start and termination dates (with varying hours per week) of: September 7, 2010, through December 17, 2010; December 5, 2010, through December 16, 2010; December 7, 2010, through December 16, 2010; from January 10, 2011, through April 1, 2011; from January 25, 2011, through March 31, 2011; from February 1, 2011, through April 1, 2011; from May 16, 2011, through May 20, 2011; from April 4, 2011, through June 10, 2011; from April 5, 2011, through June 10, 2011. (Exhibit 44.) All of her contracts contained the language specified in Factual Finding 41(b). The contracts from 2010-2011 documented employment which Respondent Villalobos-Morrow conceded was categorically-funded, and they were apparently not offered to establish her claim that her first probationary year was in 2007-2008. There was no evidence to establish the terms of any contract(s) under which Respondent Villalobos-Morrow was employed during the 2011-2012 school year.

51(d). Respondent Villalobos-Morrow contends that she became a permanent as a result of her service during the 2007-2008 and 2008-2009 school years. However, the evidence did not establish that Respondent Villalobos was employed as a probationary employee in the 2007-2008 school year. Additionally, the evidence established that Respondent Villalobos-Morrow was employed to teach Parent Education Distance Learning in a ROC/ROP during the 2008-2009 and 2009-2010 school years. Consequently, the District properly classified her as temporary under Education Code section 44910 during the 2008-2009 and 2009-2010 school years.

51(e). Respondent Villalobos-Morrow also asserted that the District previously classified her as permanent. On January 29, 2013, she sent an email to Alonzo Cienfuegos, with the District's HR Division, asking him to review her employee records and confirm her tenure status. She informed him that she had recently applied for a position requiring permanent status and that she was told that she did not qualify because she was not a permanent employee. Mr. Cienfuegos replied the same day, informing her that "Although our records show that your current advisor assignment is not a permanent assignment, you are deemed as a permanent teacher. All advisor assignments are limited and are not subject

to permanent status. Your permanent status is from the Parent Education Subject area." (Exhibit 421, p. 2.) On May 28, 2013, Respondent Villalobos-Morrow signed a form entitled "Temporary Assignment Form for Certificated Permanent Employees" (Form 1732) indicating that Respondent Villalobos-Morrow was a permanent employee accepting a limited/temporary assignment in an area for which she was not tenured. (Exhibit 421, p. 12a.)

51(f). On June 19, 2013, Mr. Cienfuegos sent Respondent Villalobos-Morrow a letter stating:

> The District wishes to thank you for the services you have provided to the students of the [District] during the 2012-2013 school year.
>
> Pursuant to the terms of the temporary contract that you signed with the [District], this is notice that the temporary contract will expire no later than June 30, 2013.
>
> As a regular part of an audit recently conducted by [HR], the results indicated that your current employment status is limited non-permanent.
>
> This letter is also to notify you that the offer of employment for the 2013-2014 school year issued by your administrator with [DACE] will become effective August 12, 2013, or as indicated on the employment contract.

(Exhibit 44, p. 1.)

51(g). Although the January 29, 2013 email and Form 1732 indicated Respondent Villalobos-Morrow was a permanent employee, on June 19, 2013, the District informed her that this was a mistake and that, following an audit, her employment status was "limited non-permanent." As set forth in Factual Finding 39, employees cannot obtain permanent classification based on District mistake. The evidence did not establish that Respondent Villalobos-Morrow served the requisite two complete probationary years to have obtained permanent status. Consequently, Respondent Villalobos-Morrow did not establish that her probationary classification by the District was incorrect or that it should be changed to a permanent classification.

52(a). Steven Rothblatt. Respondent Rothblatt (#620325; RIF seniority date 1/29/97) is a DACE teacher whom the District has classified as non-permanent. He disagrees with that classification and asserts that his proper classification is permanent, with a first probationary year in 2005-2006, second probationary year in 2006-2006, and permanent status in 2007-2008. Respondent Rothblatt worked over 18 hours per week and over 75 percent of the days during each of the school years set forth above.

52(b). Several forms entitled Verification of Adult Teacher's Assignments (Form 1145) for the 2005-2006 school year indicated that Respondent Rothblatt was working in a "Limited" position. No contracts were produced for the Fall of the 2005-2006 school year. Form 1145's for the 2005-2006 school year indicated that Respondent Rothblatt continued to work in a "Limited" position. For the Spring of the 2005-2006 school year, and for the 2006-2007 school year, Respondent Rothblatt signed contracts of employment with the District under Education Code section 44909. The contracts specified that the "Name of Categorically Funded Program" was "WIA," with the following specified start and termination dates: from March 13, 2006, until June 30, 2006 (6 hours); from April 3, 2006, through June 30, 2006 (9 hours); from September 5, 2006, through June 30, 2007 (9 hours); (Exhibit 45.) All of his contracts contained the language specified in Factual Finding 41(b). Additionally, Respondent Rothblatt signed contracts of employment with the District as a "Regional Occupational Contract Teacher" to teach ESL Distance Learning in the "ROC/ROP Program." The contracts specified that Respondent Rothblatt would be teaching with the specified start and termination dates: from November 27, 2006, through January 28, 2007 (1 hour); and from January 31, 2007, through June 23, 2007 (1 hour). (Exhibit 45.) The ROC/ROP contracts contained the language specified in Factual Finding 42(b).

52(c). Respondent Rothblatt contends that he became a permanent as a result of his service during the 2005-2006 and 2006-2007 school years. However, the evidence did not establish that Respondent Rothblatt was employed as a probationary employee during those school years. The evidence established that: Respondent Rothblatt was hired to teach as part of the WIA-funded program, which constituted services under a categorically funded project; the project expired annually; and Respondent Rothblatt was hired until the expiration of the project (i.e. the end of the school year). Additionally, the evidence established that Respondent Rothblatt was employed to teach ESL Distance Learning in a ROC/ROP during the 2006-2007 school year. Consequently, the District properly classified him as temporary under Education Code section 44909 in the Spring of the 2005-2006 school year and under Education Code sections 44909 and 44910 during the 2006-2007 school year. Given the foregoing, Respondent Rothblatt did not establish that his classification by the District was incorrect or that it should be changed to a permanent classification.

53(a). Karla Galleguillos (formerly Paredes). Respondent Galleguillos (#638203; RIF seniority date 9/3/96) is a DACE teacher, assigned in Academics, whom the District has classified as non-permanent. She disagrees with that classification.

53(b). Respondent Galleguillos signed several contracts of employment with the District as a "Regional Occupational Contract Teacher" to teach "ESL Distance Learning" in the "ROC/ROP Program." The contracts specified that Respondent Galleguillos would be teaching ESL Distance Learning at Kennedy-San Fernando Community Adult School with the following specified start and termination dates: from September 17, 2002, through June 23, 2003 (3 hours); from September 8, 2003, through June 21, 2004 (3 hours); from March 22, 2004, through June 21, 2004 (6 hours); and from September 7, 2004, to June 27, 2005 (6 hours); and September 6, 2005, through June 23, 2006 (5 hours). (Exhibit 46.) All of her contracts contained the language specified in Factual Finding 42(b).

53(c). However, Respondent Galleguillos did not teach only Distance Learning during those years. The additional hours she worked, outside of the Section 44910 temporary contract hours, during the 2002-2003 and 2003-2004 school years were: 18 hours of ESL (not distance learning), in addition to the three hours of ESL Distance Learning, for a total of 21 hours per week, working Monday, Tuesday, Wednesday and Thursday. For the 2004-2005 and 2005-2006 school years, she worked only Monday, Tuesday and Wednesday. Respondent Galleguillos established that she worked over 18 hours per week, and over 75 percent of the days, during each of the 2002-2003 and 2003-2004 school years set forth above.

53(d). Respondent Galleguillos asserts that, based on her service in the 2002-2003, 2003-2004, and 2004-2005 school years, she is a permanent employee. As set forth in Factual Finding 42, the evidence established that Respondent Galleguillos was employed to teach ESL Distance Learning in a ROC/ROP. However, Respondent Galleguillos taught additional assignments during those school years, and there were no contracts in evidence to indicate that her classification under these assignments would fall under Education Code sections 44909 or 44910, or any other statutory temporary classification. These assignments, separate from the ROC/ROP section 44910 assignment hours, totaled 18 hours per week (60 percent of full-time hours), which was sufficient to avoid temporary classification. Consequently, based on these assignment hours alone, Respondent Galleguillos' default classification should have been probationary during the 2002-2003 and 2003-2004 school years. The evidence established that Respondent Galleguillos served the requisite two complete probationary years to obtain permanent status in 2004-2005. (See Legal Conclusions 9 and 10(b)(2).) Consequently, Respondent Galleguillos' current classification by the District is incorrect and should be corrected to reflect her permanent classification.

53(e). Respondent Galleguillos is currently assigned in an Academics position. Respondent Galleguillos was issued a layoff notice under her incorrect probationary classification. The permanent RIF does not include a PKS reduction in Academics, and no permanent Academics teachers are subject to layoff. Consequently, Respondent Galleguillos should not be issued a final layoff notice.

54(a). Sofia Mayoral. Respondent Mayoral (#616182; RIF seniority date 7/5/03) is a DACE teacher whom the District has classified as probationary (B2). She disagrees with that classification, and she asserts that, based on her probationary service in school years 2004-2005 and 2005-2006, her proper classification is permanent.

54(b). Respondent Mayoral signed several forms entitled "Acceptance of Assignment as Adult Teacher – Temporary Classes" (Form 1146), which continued the following language above her signature:

> My signature affirms that I have been advised of the following special characteristics of assignments as Adult Teacher – Temporary Classes, Class Code 0810 [also called "H" assignments]:

1. The class to which I am being assigned will not exceed four school months (16 weeks) in duration, and my exist for a shorter period.

2. I may receive only one such assignment during a semester, and such assignment must be inclusive within that semester (Summer Sessions are excluded). Should I receive a second assignment during a school year, an interval of one pay period (or 4 weeks) is required between the two assignments.

(Exhibit 47.)

54(c). The Form 1146's were for H assignments during the following time frames: September 7, 2004, through December 16, 2004 (10 hours); January 31, 2005, though May 27, 2005 (10 hours); September 6, 2005, through December 16, 2005 (8 hours); January 30, 2006, through May 20, 2006 (10 hours); and September 5, 2006, through December 15, 2006 (8 hours). The H assignments complied with the requirements of Education Code section 44919. (See Factual Finding 43.)

54(d). Respondent Mayoral taught additional assignments during those school years, including: from September 7, 2004, through June 27, 2005 (18 hours ESL- Class Code 0801); from September 6, 2005, through June 23, 2006 (18 hours ESL- Class Code 0801); and from September 5, 2006, through June 22, 2007 (18 hours ESL- Class Code 0801). These were not H-assignments, nor were there any contracts submitted which would indicate her classification under these assignments would fall under Education Code section 44909 or 44910 temporary classification. These assignments, separate from the H-assignments, totaled 18 hours per week (60 percent of full-time hours), which was sufficient to avoid temporary classification. Consequently, based on these assignments alone, Respondent Mayoral's default classification should have been probationary in 2004-2005 and 2005-2006, resulting in her permanent classification in 2006-2007. (See Legal Conclusions 9 and 10(b)(2).)

54(e). Respondent Mayoral asserted that the District previously classified her as permanent. In a Form 1000 for August 13, 2012, through June 5, 2013, her status was listed at "R1," indicating permanent classification, and a handwritten note stating "automatic tenureship" appeared in the remarks section. (Exhibit 428, p. 5.) However, on subsequent Form 1000's for the 2013-2014 and 2014-2015 school years, status "Perm" and "R1" were crossed out, and "B1" and B2," respectively, were handwritten. (Exhibit 428, pp. 7 and 8.)

54(f). On January 5, 2015, the District's HR Division sent Respondent Mayoral a letter stating, "Certificated Employment Operations has conducted an audit of records related to your employment status and seniority. . . . Your employment status B2 with the District was accurate. Because of this determination, your employment records will remain unchanged." (Exhibit 47, p. 14.)

54(g). As set forth in Factual Finding 39, employees cannot obtain permanent classification based on District mistake if this would result in a violation of the law. Conversely, a District may not mistakenly deny an employee permanent classification to which that employee is statutorily entitled. Although the Form 1000's for the 2013-2014 and 2014-2015 school years and the January 5, 2015 letter indicated that Respondent Mayoral's status was probationary, they were incorrect. The evidence established that Respondent Mayoral served the two complete probationary years necessary to obtain permanent status. Consequently, Respondent Mayoral's current probationary classification by the District is incorrectly documented and should be corrected to reflect her permanent classification.

54(h). Respondent Mayoral is currently teaching an ESL assignment. The probationary employees' RIF includes a PKS reduction in ESL, and Respondent Mayoral was issued a layoff notice as an ESL teacher under her incorrect probationary classification. The permanent RIF does not include a PKS reduction in ESL, and no permanent ESL teachers are subject to layoff. Consequently, Respondent Mayoral should not be issued a final layoff notice.

55(a). Holly Clearman. Respondent Clearman (#680091; RIF seniority date 9/6/96) is a DACE teacher whom the District has classified as non-permanent. She disagrees with that classification. Respondent Clearman signed several contracts of employment with the District as a "Regional Occupational Contract Teacher" to teach Individualized Instruction Lab, and I.I. Lab/AEWC in the "ROC/ROP Program." The contracts specified that Respondent Clearman would be teaching with the following specified start and termination dates: September 3, 2002, through June 23, 2003; September 2, 2003, through June 21, 2004; September 7, 2004, through June 27, 2005; September 19, 2005, through June 23, 2006; September 5, 2006, through June 22, 2007; September 4, 2007, through June 20, 2008; (Exhibits 48 and 427.) All of her contracts contained the language specified in Factual Finding 42(b). Respondent Clearman worked over 18 hours per week during each of the years set forth above.

55(b). Respondent Clearman also provided services under other contracts for less than the school year, signing several contracts of employment with the District under Education Code section 44909. Two of contracts specified that the "Name of Categorically Funded Program" was Beyond the Bell, with specified start and termination dates (with varying hours per week) of: April 26, 2003, through June 30, 2003 (8 hours); and October 30, 2004, through June 30, 2005 (6 hours). (Exhibit 48). She also signed a contract identifying the "Name of Categorically Funded Program" as "0970-AEWC," with the start and termination dates of October 9, 2006, through June 22, 2007 (30 hours). (Exhibit 427.) All of her contracts contained the language specified in Factual Finding 41(b). Although the evidence established that Beyond the Bell is a categorically funded project, the evidence did not establish whether AEWC was a categorically funded project.

55(c). Respondent Clearman contends that she became a permanent as a result of her service during the 2002-2003 through 2006-2007 school years. However, the evidence established that Respondent Clearman was employed in ROC/ROP during the 2002-2003

through 2007-2008 school years. Based on those contracts, Respondent Clearman was employed as a temporary employee in the 2003-2004, 2004-2005 and 2007-2008 school years, and the District properly classified her as temporary under Education Code section 44910 during those years. As set forth in Factual Finding 41(c), the District's failure establish compliance with Education Code section 44909 in the 2006-2007 employment agreement (i.e. its failure to show that Respondent Clearman was hired to perform services under a categorically funded project) meant that the District improperly classified her as temporary under that contract. However, she was correctly characterized as temporary under the ROC/ROP contract for that same school year. Additionally, in 2007-2008, her service as an instructor in ROC/ROP could not be included in computing the service required to attain permanent classification. Consequently, Respondent Clearman did not establish that she had served as a probationary employee for two complete consecutive school years in order to attain permanent classification. Therefore, Respondent Clearman did not establish that her non-permanent classification by the District was incorrect or that it should be changed to a permanent classification.

56(a). Jill Quinn Harmon-Kelley. Respondent Harmon-Kelley (#577963; RIF seniority date 11/21/2000) is a DACE teacher in an Academics assignment whom the District has classified as non-permanent. She disagrees with that classification. Respondent Harmon-Kelley asserts that her proper classification is permanent.

56(b). Respondent Harmon-Kelley signed a contract of employment with the District as a "Regional Occupational Contract Teacher" to provide services as ESL Teacher Advisor in the "ROC/ROP Program." The contract specified that Respondent Harmon-Kelley would be teaching from September 2, 2008, through June 20, 2009 (2 hours). The contract contained the language specified in Factual Finding 42(b). Respondent Harmon-Kelley also signed several contracts of employment with the District under Education Code section 44909. The contracts specified the "Name of Categorically Funded Program," the number of hours per week, and the specified start and termination dates as follows: March 16, 2009, through June 19, 2009 (4 hours- WIA- ESL Conversion); September 8, 2009, through June 25, 2010 (2 hours- ESL Teacher Advisor); April 19, 2010, through June 25, 2010 (2 hours- ESL); September 7, 2010, through June 24, 2011 (4 hours- Teacher Advisor ESL); May 16, 2011, through June 25, 2011 (10 hours - ESL); October 3, 2011, through June 25, 2012 (32 hours - WIA); March 1, 2012, through June 19, 2012 (36 hours - WIA); August 13, 2012, through June 5, 2013 (one contract for 25 hours - WIA, another for 5 hours – Perkins grant); February 21, 2013, through June 10, 2013 (30 hours - WIA); August 12, 2013, through June 6, 2014 (20 hours - WIA); January 13, 2014, through June 6, 2014 (one contract for 10 hours - WIA, another for 20 hours - WIA); August 11, 2014, through June 5, 2015 (22 hours - WIA); October 1, 2014, through June 5, 2015 (22 hours - WIA); and March 9, 2015, through June 5, 2015 (25 hours- WIA). All of these contracts contained the language specified in Factual Finding 41(b). The evidence did not establish whether ESL was a categorically funded project. No other contracts were submitted as evidence.

56(c). Respondent Harmon-Kelley testified credibly that she never worked less than 20 hours per week from the 2008-2009 school year to the present, and that she served at least

75 percent of the days school was in session. She pointed out that ESL is not a specially-funded program like WIA. She asserted that by the 2011-2012 school year, she was a permanent employee.

56(d). The evidence established that Respondent Harmon-Kelley was employed to teach ROC/ROP during the 2008-2009 school year. Consequently, the District properly classified her as temporary under Education Code section 44910 during the 2008-2009 school year. However, as set forth in Factual Finding 41(c), the District's failure establish compliance with Education Code section 44909 in the 2009-2010 and 2010-2011 employment agreements (i.e. its failure to show that Respondent Harmon-Kelley was hired to perform services under a categorically funded project) meant that the District improperly classified her as temporary under those contracts, and there were no other contracts from those years which established temporary classification. Consequently, Respondent Harmon-Kelley's default classification should have been probationary during the 2009-2010 and 2010-2011, resulting in her permanent classification when she began employment in 2011-2012. (See Legal Conclusions 9 and 10(b)(2).) Respondent Harmon-Kelley established that she served as a probationary employee for two complete consecutive school years in order to attain permanent classification at the beginning off the 2011-2012 school year.

56(e). Respondent Harmon-Kelley also asserted that the District had previously classified her as permanent, but later changed that determination. On June 19, 2013, the District sent her a letter stating:

> As the school year draws to a close, the District would like to thank you for the services you have provided to the students of the [District] during the 2012-2013 school year.
>
> Pursuant to the terms of the temporary contract that you signed with the [District], this is notice that the temporary contract will expire no later than June 30, 2013.
>
> As a regular part of an audit recently conducted by [HR], the results indicated that your current employment status is limited non-permanent.
>
> This letter is also to notify you that the offer of employment for the 2013-2014 school year issued by your administrator with [DACE] will become effective August 12, 2013, or as indicated on the employment contract.

(Exhibit 49, p. 1.)

56(f). As set forth in Factual Finding 39, employees cannot obtain permanent classification based on District mistake which would be a violation of the law. Conversely, a

District may not mistakenly deny an employee permanent classification to which that employee is statutorily entitled. Although the June 19, 2013 letter indicated that Respondent Harmon-Kelley's status was limited non-permanent, this determination was incorrect. The evidence established that, Respondent Harmon-Kelley served the requisite two complete probationary years to have obtained permanent status. Consequently, Respondent Harmon-Kelley's current non-permanent classification by the District is incorrect and should be corrected to reflect her permanent classification.

56(g). Respondent Harmon-Kelley is currently teaching an Academics assignment. The probationary employees' RIF includes a PKS reduction in Academics, and Respondent Harmon-Kelley was issued a layoff notice as an Academics teacher under her incorrect non-permanent classification. The permanent RIF does not include a PKS reduction in Academics, and no permanent Academics teachers are subject to layoff. Consequently, Respondent Harmon-Kelley should not be issued a final layoff notice.

57(a). Matthew Matich. Respondent Matich (#627227; RIF seniority date 11/4/96) is a DACE teacher in an Academics assignment whom the District has classified as a Probationary 2 for the 2014-2015 school year. He disagrees with that classification and asserts that his proper classification is permanent.

57(b). Respondent Matich signed several contracts of employment with the District as a "Regional Occupational Contract Teacher" to provide services in AEWC in the "ROC/ROP Program." The contract specified that Respondent Matich would be teaching with the following specified start and termination dates: February 4, 2002, through June 24, 2002; September 3, 2002, through June 23, 2003; and October 31, 2005, through June 23, 2006. The contracts contained the language specified in Factual Finding 42(b). Respondent Matich testified credibly that he signed individual contracts each year which stated that he was serving in a ROC/ROP position and that he was not entitled to become tenured. On October 24, 2013, Respondent Matich signed a contract of employment as a probationary teacher in Adult Academic Instruction, with service commencing September 13, 2013. He served the entire 2013-2014 school year, and he was reemployed during the current 2014-2015 school year as a probationary teacher. He has continued in AEWC positions during 2013-2014 and 2014-2015 school years.

57(c). Respondent Matich contends that he became a permanent in the 2005-2006 school year. However, the evidence established that Respondent Matich was employed in ROC/ROP during that year and during the prior and subsequent school years, until he signed his probationary contract in 2013-2014. Consequently the District properly classified him as temporary under Education Code section 44910 during the years prior to 2013-2014. Therefore, Respondent Matich did not establish that his probationary classification by the District was incorrect or that it should be changed to a permanent classification.

58(a). Oscar Rodriguez. Respondent Rodriguez (#785321; RIF seniority date 10/9/07) is a DACE teacher in an Academics assignment whom the District has classified as

a Probationary 2 for the 2014-2015 school year. He disagrees with that classification and asserts that his proper classification is permanent.

58(b). Respondent Rodriguez signed contracts of employment with the District as a "Regional Occupational Contract Teacher" to provide services in AEWC in the "ROC/ROP Program." The contracts submitted as evidence specified that Respondent Rodriguez would be teaching with the following specified start and termination dates: September 8, 2009, through June 25, 2010; and September 6, 2011, through June 25, 2012. [17] The contracts contained the language specified in Factual Finding 42(b).

58(c). The evidence established that Respondent Rodriguez was employed in ROC/ROP during the 2009-2010 and 2011-2012 school years. Consequently the District properly classified him as temporary under Education Code section 44910 during those years. Respondent Rodriguez did not establish that he had served as a probationary employee for two complete consecutive school years in order to attain permanent classification. Therefore, Respondent Rodriguez did not establish that his non-permanent classification by the District was incorrect or that it should be changed to a permanent classification.

59(a). Beatrice James. Respondent James (#612122; RIF seniority date 9/11/89) is a DACE teacher, assigned in ESL, whom the District has classified as non-permanent. She disagrees with that classification.

59(b). Respondent James signed several contracts of employment with the District as a "Regional Occupational Contract Teacher" to teach "ESL Distance Learning" in the "ROC/ROP Program." The contracts specified that Respondent James would be teaching with the following specified hours and start and termination dates: from September 5, 2006, through June 22, 2007 (6 hours); from September 4, 2007, through June 20, 2008 (6 hours); and from September 2, 2008, through June 20, 2009 (7 hours). (Exhibit 51.) All of her contracts contained the language specified in Factual Finding 42(b).

59(c). Respondent James' teaching was not restricted to Distance Learning during those years. She worked additional hours, outside of the Section 44910 temporary contract hours, as follows: during the 2006-2007 school year, 18 hours of ESL (not distance learning), in addition to the six hours of ESL Distance Learning, working Monday, Tuesday, Wednesday, Thursday and Friday; and during the 2007-2008 school year, 18 hours of ESL (not distance learning), in addition to the 6 hours of ESL Distance Learning, working 16 hours over Monday, Tuesday, Wednesday, and Thursday, and 2 hours on Fridays. Respondent James established that she worked over 18 hours per week, and over 75 percent of the days, during each of the 2006-2007 and 2007-2008 school years.

[17] Respondent Rodriguez's contract from the 2012-2013 school year was not presented in evidence, but the District's classification for him, according to a Form 1000 was "L1," and the Form 1145 for that year indicates that he was a substitute.

59(d). Respondent James asserts that, based on her service in the 2006-2007 and 2007-2008 school years, she is a permanent employee. As set forth in Factual Finding 42, the evidence established that Respondent James was employed to teach ESL Distance Learning in a ROC/ROP. However, Respondent James taught additional assignments during those school years, and there were no contracts in evidence to indicate that her classification under these assignments would fall under Education Code section 44909 or 44910, or any other statutory temporary classification. These assignments, separate from the ROC/ROP section 44910 assignment hours, totaled 18 hours per week (60 percent of full-time hours), which was sufficient to avoid temporary classification. Consequently, based on these assignment hours alone, Respondent James' default classification should have been probationary during the 2006-2007 and 2007-2008 school years. The evidence established that Respondent James served the requisite two complete probationary years to obtain permanent status in 2008-2009. (See Legal Conclusions 9 and 10(b)(2).) Consequently, Respondent James' current classification by the District is incorrect and should be corrected to reflect her permanent classification.

59(e). Respondent James is currently assigned in an ESL position. Respondent James was issued a layoff notice under her incorrect classification. The permanent RIF does not include a PKS reduction in ESL, and no permanent ESL teachers are subject to layoff. Consequently, Respondent James should not be issued a final layoff notice.

60(a). Kathleen Garske. Respondent Garske (#625499)[18] is a DACE teacher, currently assigned to teach ESL and Adult Independent Studies, whom the District has classified as non-permanent. She disagrees with that classification.

60(b). Respondent Garske signed contracts of employment with the District as a "Regional Occupational Contract Teacher" to teach ESL Distance Learning in the "ROC/ROP Program." The contracts specified that Respondent Garske would be teaching with the following specified hours and start and termination dates: from September 4, 2007, through June 21, 2008 (2 hours); and from September 2, 2008, through June 21, 2009 (2 hours). (Exhibit 52.) All of her contracts contained the language specified in Factual Finding 42(b).

60(c). Respondent Garske's teaching was not limited to ESL Distance Learning during those years. She worked additional hours, outside of the Section 44910 temporary contract hours, during the 2007-2008 and 2008-2009 school years, as follows: 18 hours of Parent Education, in addition to the two hours of ESL Distance Learning, working Monday, Tuesday, Wednesday, Thursday and Friday. Respondent Garske established that she worked over 18 hours per week, and over 75 percent of the days, during each of the 2007-2008 and 2008-2009 school years set forth above.

[18] Respondent Garske's name was omitted from the non-permanent RIF seniority list, so her RIF seniority date and RIF subject could not be confirmed. However, she testified that she began employment with the District on August 30, 1994.

60(d). Respondent Garske asserts that, based on her service in the 2007-2008 and 2008-2009 school years, she is a permanent employee. As set forth in Factual Finding 42, the evidence established that Respondent Garske was employed to teach ESL Distance Learning in a ROC/ROP. However, Respondent Garske taught additional assignments during those school years, and there were no contracts in evidence to indicate that her classification under these assignments would fall under Education Code section 44909 or 44910, or any other statutory temporary classification. These assignments, separate from the ROC/ROP section 44910 assignment hours, totaled 18 hours per week (60 percent of full-time hours), which was sufficient to avoid temporary classification. Consequently, based on these assignment hours alone, Respondent Garske's default classification should have been probationary in 2007-2008 and 2008-2009. The evidence established that Respondent Garske served the requisite two complete probationary years to obtain permanent status in 2009-2010. (See Legal Conclusions 9 and 10(b)(2).) Consequently, Respondent Garske's current classification by the District is incorrect and should be corrected to reflect her permanent classification.

60(e). Respondent Garske is currently assigned in an ESL position. Respondent Garske was issued a layoff notice under her incorrect classification. The permanent RIF does not include a PKS reduction in ESL, and no permanent ESL teachers are subject to layoff. Consequently, Respondent Garske should not be issued a final layoff notice.

61(a). Delia Grant. Respondent Grant (#705685)[19] is a DACE teacher in an ESL assignment whom the District has classified as non-permanent. She disagrees with that classification and asserts that her proper classification is permanent.

61(b). Respondent Grant signed numerous contracts of employment with the District as a "Regional Occupational Contract Teacher" to provide services in ESL Distance Learning in the "ROC/ROP Program" during the 2008-2009 and 2009-2010 school years. The contracts contained the language specified in Factual Finding 42(b). Respondent Grant testified that she continued to work in the same capacity for the 2010-2011 and 2011-2012 school years and that she was laid off at the end of the 2011-2012 school year.

61(c). Based on the documentary evidence admitted at hearing, Respondent Grant was employed in ROC/ROP during the 2008-2009 and 2009-2010 school years. Consequently the District properly classified her as temporary under Education Code section 44910 during those years. Respondent Grant did not establish that she had served as a probationary employee for two complete consecutive school years in order to attain permanent classification. Therefore, Respondent Grant did not establish that her non-

[19] Respondent Grant's name was omitted from the non-permanent RIF seniority list, so her RIF seniority date and RIF subject could not be confirmed. However, she testified that her RIF seniority date was September 4, 2007.

permanent classification by the District was incorrect or that it should be changed to a permanent classification.

62(a). Ewa Lichwa. Respondent Lichwa (#924968)[20] is a DACE teacher in an ESL assignment whom the District has classified as non-permanent. She disagrees with that classification and asserts that her proper classification is permanent.

62(b). Respondent Lichwa signed numerous contracts of employment with the District as a "Regional Occupational Contract Teacher" to provide services in ESL Distance Learning in the "ROC/ROP Program" during the 2009-2010, 2010-2011 and 2011-2012 school years. The contracts contained the language specified in Factual Finding 42(b). Respondent Lichwa taught additional ESL (non-distance learning) assignments, totaling less than 18 hours per week, during those school years. She credibly testified that she was laid off at the end of the 2011-2012 school year and that she had no assignment again until January 2013. Although she worked 18 hours per week during the 2013-2014 school year, no documentary evidence was submitted to establish her specific assignment(s). She is currently working 10 hours per week teaching ESL (non-distance learning) for the 2014-2105 school year.

62(c). Based on the documentary evidence admitted at hearing, Respondent Lichwa was employed in ROC/ROP during the 2009-2010, 2010-2011 and 2011-2012 school years. Consequently the District properly classified her as temporary under Education Code section 44910 during those years. Respondent Lichwa did not establish that she had served as a probationary employee for two complete consecutive school years in order to attain permanent classification. Therefore, Respondent Lichwa did not establish that her non-permanent classification by the District was incorrect or that it should be changed to a permanent classification.

63(a). Elizabeth Kitching. Respondent Kitching (#712834)[21] is a DACE teacher in an ESL assignment whom the District has classified as non-permanent. She disagrees with that classification and asserts that her proper classification is permanent.

63(b). Respondent Kitching signed several contracts of employment with the District as a "Regional Occupational Contract Teacher" to provide services in ESL Distance Learning in the "ROC/ROP Program" during the 2011-2012 school year. The contracts contained the language specified in Factual Finding 42(b). Respondent Kitching also taught

[20] Respondent Lichwa's name was omitted from the non-permanent RIF seniority list, so her RIF seniority date and RIF subject could not be confirmed. However, she testified that her RIF seniority date was February of 2007.

[21] Respondent Kitching's name was omitted from the non-permanent RIF seniority list, so her RIF seniority date and RIF subject could not be confirmed. However, she testified that her RIF seniority date was July 1, 2000.

ESL (non-distance learning) assignments in the 2010-2011 school year totaling 18 hours per week, and additional ESL (non-distance learning) assignments during the 2011-2012 school year totaling less than 18 hours per week. She credibly testified that she was laid off at the end of the 2011-2012 school year and that she had no assignment again until the Spring of 2013. In the 2013-2014 school year, she began working as a long-term substitute, with assignments totaling 10 hours per week. She began the 2014-2015 school year working 10 hours per week as a long-term substitute, but her assignment was later increased to 20 hours per week.

63(c). Based on the documentary evidence admitted at hearing, Respondent Kitchng was employed in ROC/ROP during the 2011-2012 school year. Consequently the District properly classified her as temporary under Education Code section 44910 during that year. Respondent Kitching did not establish that she had served as a probationary employee for two complete consecutive school years in order to attain permanent classification. Therefore, Respondent Kitching did not establish that her non-permanent classification by the District was incorrect or that it should be changed to a permanent classification.

64(a). Svitlana Kovalyova. Respondent Kovalyova (#774109; RIF seniority date 1/27/03) is a DACE teacher whom the District has classified as non-permanent. She disagrees with that classification and asserts that her proper classification is permanent, based on her service in the 2007-2008, 2008-2009 and 2009-2010 school years.

64(b). Respondent Kovalyova was given the following H assignments during the following time frames: September 4, 2007, through December 15, 2007 (10 hours – I.I. Lab, Class Code 0810); February 4, 2008, though May 23, 2008 (10 hours – I.I. Lab, Class Code 0810); September 2, 2008, through December 20, 2008 (10 hours – I.I. Lab, Class Code 0810); and February 8, 2009, though May 28, 2009 (10 hours – I.I. Lab, Class Code 0810). The H assignments complied with the requirements of Education Code section 44919. (See Factual Finding 43.)

64(c). Respondent Kovalyova taught additional assignments during those school years including: September 4, 2007, through June 30, 2008 (10 hours – I. I. Lab, Class Code 0801); September 4, 2007, through June 20, 2008 (3 hours – GED Prep/ Distance Learning, Class Code 0829); September 2, 2008, through June 19, 2009 (8 hours – A.I.S., Code 0801); September 2, 2008, through June 19, 2009; (2 hours – GED Prep/ Distance Learning, Class Code 0829); and September 8, 2009, through June 26, 2010 (15 hours – I. I. Lab, Class Code 0801). These were not H-assignments, nor were there any contracts submitted at hearing which would indicate her classification under these assignments would fall under Education Code section 44909 or 44910 temporary classification. These assignments, separate from the H-assignments, did not total 18 hours per week (60 percent of full-time hours), which was insufficient to avoid temporary classification.

64(d). Based on the documentary evidence admitted at hearing, the District properly classified Respondent Kovalyova as temporary during the 2007-2008, 2008-2009, and 2009-2010 school years. Respondent Kovalyova did not establish that she had served as a

probationary employee for two complete consecutive school years in order to attain permanent classification. Therefore, Respondent Kovalyova did not establish that her non-permanent classification by the District was incorrect or that it should be changed to a permanent classification.

65(a). Nataliya Kugel. Respondent Kugel (#713410; RIF seniority date 5/20/99) did not testify at the hearing. However, the parties entered into the following factual stipulation: During the 2011-2012 school year, Respondent Kugel had one 12- hour assignment at one work site for which there was no contract, and additional hours at another work site for which the District and she entered into ROC/ROP contracts for ESL Distance Learning. She worked 171 days that year, which is more than 75 percent of the school days. During the 2012-2013 school year, she was a probationary employee and completed a "good" probationary year. The 2013-2014 school year was not a "good" probationary year for completion of the required 75 percent of days.

65(b). Based on this stipulation, Respondent Kugel did not establish that she had served as a probationary employee for two complete consecutive school years in order to attain permanent classification. (See Factual Finding 42).

66(a). Gloria Gonzales. Respondent Gonzales (#618071) did not testify at the hearing. However, the parties entered into the following factual stipulation:
During the 2010-2011 school year, Respondent Gonzales was assigned to work 25 hours per week at Venice Skills Center teaching I.I. Lab-AEWC under a ROC/ROP contract. She worked 171 days that year, which is more than 75 percent of the school days. During the 2011-2012 school year, she was assigned to work 25 hours per week at Venice Skills Center teaching I.I. Lab-AEWC under a ROC/ROP contract. She served 167 days that year, which is more than 75 percent of the school days. The 2012-2013 school year was her first probationary year (probationary year one). Neither the 2013-2014 or 2014-2015 school years constituted "good" probationary years.

66(b). Based on this stipulation, Respondent Gonzales did not establish that she had served as a probationary employee for two complete consecutive school years in order to attain permanent classification. (See Factual Finding 42).

67(a). Rebekah Villafana. Respondent Villafana (#785499; RIF seniority date 6/21/07) is a DACE teacher who is listed on the non-permanent RIF seniority list as teaching an ESL assignment this school year. The District has classified her as non-permanent. She disagrees with that classification and asserts that her proper classification is permanent based on her service in the 2010-2011 and 2011-2012 school years.

67(b). Respondent Villafana signed several contracts of employment with the District as a "Regional Occupational Contract Teacher" to provide services teaching ESL Distance Learning in the "ROC/ROP Program." The contracts specified that Respondent Villafana would be teaching the specified hours with the specified start and termination dates as follows: January 17, 2011, though June 24, 2011 (2 hours); from September 6, 2011,

through June 25, 2012, (2 hours); and September 6, 2011, through June 25, 2012, (5 hours) . The contracts contained the language specified in Factual Finding 42(b).

67(c). Respondent Villafana also signed several contracts of employment with the District under Education Code section 44909. The contracts specified the "Name of Categorically Funded Program," the number of hours per week, and the specified start and termination dates as follows: from September 7, 2010, through February 12, 2011 (WIA - 2 hours); from February 14, 2011 through June 24, 2011 (WIA - 2 hours); from September 6, 2011, through June 25, 2012, (WIA 2 hours); and from September 6, 2011, through June 25, 2012, (S779-CBET Community Based English Tutoring - 10 hours). All of these contracts contained the language specified in Factual Finding 41(b).

67(d). Respondent Villafana had additional assignments during those school years including the following: September 7, 2010, through February 12, 2011 (8 hours ESL - Class Code 0801); September 7, 2010, through June 24, 2011 (10 hours ESL - Class Code 0801); September 6, 2011, through June 25, 2012, (8 hours ESL – Class Code 0801); and from September 6, 2011, through June 25, 2012, (10 hours ESL – Class Code 0801). These were not H-assignments, nor were there any contracts submitted at hearing which would indicate her classification under these assignments would fall under Education Code section 44909 or 44910 temporary classification.

67(e). The evidence established that five-hour ROC/ROP ESL Distance Learning class (under the September 6, 2011, through June 25, 2012 contract) was closed, effective October 26, 2011, and it does not appear that it was replaced. Additionally, the 10- hour specially-funded CBET assignment, which was assigned to Respondent Villafana in June 2011 for the following school year, was changed in August 2011 (for the same time slot) to the 10-hour ESL assignment for which there was no temporary contract. There was no evidence that Respondent Villafana ever performed services under the contracts for the five-hour ROC/ROP ESL Distance Learning or the 10- hour specially-funded CBET assignment.

67(f). Respondent Villafana testified credibly that, in 2010-2011, her teaching assignments totaled 22 hours per week, during which she taught ESL at several locations, Monday through Friday. Two those hours were distance learning, and two of those hours were WIA-funded. Consequently, the remainder of her non-temporary contract assignments, separate from the assignments listed in Factual Findings 67(b) and 67(c), totaled 18 hours per week (60 percent of full-time hours), which was sufficient to avoid temporary classification. Based on these assignments alone, Respondent Villafana's default classification should have been probationary during the 2010-2011 and 2011-2012 school years, thus resulting in her permanent classification at the commencement of the 2012-2013 school year if she were reemployed. (See Legal Conclusions 9 and 10(b)(2).)

67(g). Respondent Villafana was laid off at the end of the 2011-2012 school year, and was classified by the District as a non-permanent employee.

67(h). Respondent Villafana was reemployed in February of 2013 and classified as a probationary year one employee.

67(i). On November 22, 2013, the District sent her a letter stating:

> On behalf of the [District], we wish to welcome you to the 2013-2014 school year.
>
> As a regular part of an audit conducted by Human Resources, the results indicated your current employment status is Probationary Year One. Probationary is the District status while you are serving the two school year probationary period necessary to attain permanent (tenure) status with the District. In an effort to ensure that appropriate documentation is applied to your current status, a Probationary contract is necessary.
>
> A Probationary contract will be available for your review and signature at your Service Area. . . .
>
> If you would like to review your district records before signing your Probationary contract, an appointment will be scheduled.
>
> I would like to thank you for the services you have provided as an instructor for [DACE] during the 2012-2013 school year and the continuous service to the students of [the District].

(Exhibit 714, p. 2.)

67(j). The District's classification of Respondent Villafana was incorrect. The evidence established that Respondent Villafana served the requisite two complete probationary years to have obtained permanent status in 2012-2013. (See Legal Conclusions 9 and 10(b)(2).) Consequently, Respondent Villafana's current classification by the District is incorrect and should be corrected to reflect her permanent classification.

67(k). Respondent Villafana is currently assigned in an ESL position. Respondent Villafana was issued a layoff notice under her incorrect classification. The permanent RIF does not include a PKS reduction in ESL, and no permanent ESL teachers are subject to layoff. Consequently, Respondent Villafana should not be issued a final layoff notice.

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Miscellaneous Stipulations

68. During the hearing, the parties stipulated that:

(a). Lorena Tong (#770434) is a probationary year two employee, and assuming that she does not miss days during this school year to place her under the 75 percent of days requirement, if she is rehired in an adult education position and not rehired as substitute or temporary employee, she would become a permanent employee on first day of her rehire, as long as she is rehired is within the next 39 months.

(b). Carlos Gomez (#774154) is a probationary year two employee, but because he has not served at least 75 percent of the days this (2014-2015) school year, if he is rehired in a position other than as a substitute or temporary employee, he will become a probationary year two employee if he is rehired in the next 39 months. He must serve 75 percent of the days of the school year and then would become a permanent employee the following school year.

(c). Jason Hinojosa (#924555) is a probationary year two employee, and assuming that he does not miss days during this school year to place him under the 75 percent of days requirement, if he is rehired in an adult education position and not rehired as substitute or temporary employee, he would become a permanent employee on first day of his rehire, as long as she is rehired is within the next 39 months.

LEGAL CONCLUSIONS

Jurisdiction and General Legal Conclusions

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The services identified in the Board's Resolution are particular kinds of services that can be reduced or discontinued pursuant to Education Code section 44955.

3. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of the Board's discretion.

4. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and students within the meaning of Education Code sections 44955.

5. Services will not be reduced below mandated levels.

6. Cause exists to reduce the number of certificated employees in the District due to the reduction and discontinuation of particular kinds of services.

///

7. Education Code section 44955, subdivision (b), provides, in pertinent part:

> [T]he services of no permanent employee may be terminated . . . while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

Non-permanent Respondents Not Precluded from Asserting Arguments of Permanent Status

8. Respondents in this case cannot be precluded from asserting their arguments of permanent status in this matter. The District argued that non-permanent employees asserting permanent status are barred from making such assertions in this case because they failed to challenge their status in the 2012 reduction in force (RIF) hearing. The District based its contention on the "failure to exhaust administrative remedies, failure to exhaust judicial remedies, and res judicata[/collateral estoppel]." However, there has been no evidence to establish that any of these doctrines is applicable. The District points out that res judicata/collateral estoppel prevent "relitigation of issues argued and decided in prior proceedings." (Exhibit 55, p. 17, lines 16-18 (citing *Lucindo v. Superior Court* (1990) 51 Cal.3d 335, 341).) According to the authority cited by the District, collateral estoppel is applicable if: "the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. (Exhibit 55, p. 17, lines 18-25 (citing *Basurto v. Imperial Irrigation Dist*. (2012) 211 Cal.App.4th 866, 877-878).) In 2012, the entire DACE was eliminated and all DACE teachers were laid off regardless of their classification. The evidence did not establish that the issue of each Respondent's non-permanent status was "actually litigated" or "necessarily decided" in the 2012 proceeding. Additionally, there was no evidence to establish that any of the Respondents failed to exhaust their administrative or judicial remedies. The District also argued that in choosing not to challenge their status in the 2012 RIF hearing, they waived these claims. However, the District did not establish that any Respondent made a voluntary and knowing waiver of a claim to permanent status which, in 2012, was not a material fact to be determined regarding the propriety of the layoff notices. Given the foregoing, Respondents in this case cannot be precluded from asserting their arguments of permanent status in this matter.

Time Requirements for DACE teachers to obtain Permanent Classification

9(a). Education Code section 44929.21, subdivision (b) (permanent employee classification and notice of reelection for districts with daily attendance of 250 or more) provides:

> Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been

> employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.
>
> The governing board shall notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.
>
> This subdivision shall apply only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter.

9(b). Education Code section 44929.25 (pertaining to adult class teachers), provides, in pertinent part:

> When a teacher of classes for adults serves sufficient probationary time as provided in Sections 44929.20 to 44929.23, inclusive, and Section 44908 to be eligible for election to permanent classification in that district, his or her tenure shall be for the service equivalent to the average number of hours per week that he or she has served during his or her probationary years. . . .
>
> [¶] . . . [¶]
>
> Notwithstanding any other provision to the contrary, any person who is employed to teach adults for not more than 60 percent of the hours per week considered a full-time assignment for permanent employees having comparable duties shall be classified as a temporary employee, and shall not become a probationary employee under the provisions of Section 44954.
>
> (Emphasis added.)

9(c). As indicated by section 44929.25, teachers of adult classes are eligible to attain permanent classification after serving "sufficient probationary time" as defined by Education Code section 44908. The final paragraph of section 44929.25 does not define the "sufficient probationary time" required in order "to be eligible for election to permanent classification," as used in the first paragraph of that statute. The final paragraph of 44929.25 precludes a

teacher of adults classes from being classified as probationary if that teacher has not worked at least 60 percent of hours of what is considered a "full-time employment." In the District, that number would be 60 percent of 30 hours, or 18 hours required in order to avoid being classified as a temporary employee and precluded from becoming a probationary employee.

9(d). Education Code section 44908 (defining complete school year for probationary employees) – to which Education Code section 44929.25 cites – provides, in pertinent part:

> A probationary employee who, in any one school year, has served for at least 75 percent of the number of days the regular schools of the district in which he is employed are maintained shall be deemed to have served a complete school year. In case of evening schools, 75 percent of the number of days the evening schools of the district are in session shall be deemed a complete school year.

(Emphasis added.)

9(e). Recently, in a case interpreting Education Code section 44908, the Court of Appeal confirmed the plain language of the statute, finding:

> Education Code section 44908 defines a "complete school year" as "at least 75 percent of the number of days the regular schools of the district in which [the employee] is employed are maintained. . . ." A probationary employee . . . must serve "two complete consecutive school years in a position or positions requiring certification qualifications" prior to becoming classified as a permanent employee. (Educ.Code, § 44929.21(b).)

(*Cox v. Los Angeles Unified School District* (2013) 218 Cal.App.4th 1441, 1445.)

9(f). In *Cox*, the Court found that extra hours that a high school counselor worked on school days could not be aggregated and counted as additional days in calculating whether the counselor worked 75 percent of the number of the days the schools were maintained. The *Cox* Court noted:

> It must be stressed that section 44908 states "at least 75 percent of the number of days... ." There is no reference therein to "hours" or to "rounding up." We cannot substitute "hours" for "days" on nothing more than the argument of counsel. The same applies to "rounding up." Additionally, the statute itself belies Cox's claim. The Legislature expressly said "at least 75 percent of the number of days." We cannot hold that it really meant something else (e.g., "hours" or slightly less, i.e., 74.7 percent).
>
> Cox relies upon [*Vittal v. Long Beach Unified School Dist.* (1970) 8 Cal.App.3d 112] or [*Griego v. Los Angeles Unified School Dist.* (1994)

> 28 Cal.App.4th 515 (*Griego*)], but neither supports her expansive interpretations or provides a basis for rejecting a "literal" approach in interpreting key statutes. Indeed, *Griego* commands: "In construing a statute ... significance should be given to every word, phrase, sentence and part; a construction making some words surplusage is to be avoided." (*Griego*, supra, 28 Cal.App.4th at pp. 518–519, 33 Cal.Rptr.2d 556.) In short, we cannot overlook section 44908's clear language.

(*Id*. at 1447.)

9(g). In *Vittal v. Long Beach Unified School District* (1970) 8 Cal.App.3d 112, the Court interpreted the phrase "complete consecutive school years" as set forth in Education Code section 13328, which stated "'A probationary employee who, in any one school year, has served for at least 75 percent of the number of days the regular schools of the district in which he is employed are maintained shall be deemed to have served a complete school year.'" (*Id*. at 119.) Although the *Cox* Court refused to apply the reasoning in *Vittal* to its interpretation of Education Code section 44908, Respondents argue that the facts in *Vittal* are more analogous to DACE teachers than *Cox*. Respondent's note the language in *Cox* where the Court distinguishes Cox, a high school counselor, from Vittal, a junior college teacher, as follows:

> In *Vittal*, the school district's employee was assigned to work at a junior college. The appellate court evaluated an Education Code section (since repealed, with no current comparison), providing that a probationary employee in a junior college district could complete a school year with 75 percent of the number of hours. The use of hours there, though, applied only from 1956 to 1968 when the plaintiff taught different hours, sometimes three or four days a week. (*Vittal*, supra, 8 Cal.App.3d at p. 117, 87 Cal.Rptr. 319.) We decline to apply that situation to this dispute. Moreover, in considering why the Legislature did what it did with respect to the statute in question, *Vittal* made reference to the "usual and general prevailing situation in elementary and secondary schools in which teachers are assigned to classes taught five days a week. Thus, the requirements of the section [with respect to such teachers] were expressed in terms of days." (Id., at p. 120, 87 Cal.Rptr. 319.)

(*Id*. at 1447-1448.)

9(h). Respondents' assertion that the holding in *Vittal* controls in this case is unpersuasive. *Vittal* is a 1970 case involving an employee who worked on hourly rate contracts at a junior college. In this case, the evidence did not establish that DACE teachers are paid on hourly rate contracts (see fn. 13); the evidence established that DACE teachers are paid on a salary basis. *Cox* is a more recent case interpreting the Education Code section

applicable to DACE teachers (Section 44908). Although Cox involves a high school counselor with a regular work day of six hours, the evidence established that DACE teachers serve under the same school year as high school counselors (and other K-12 certificated employees) and that full-time employment is the same for DACE and K-12 teachers (i.e. 30 hours), although DACE teachers need only serve 60 percent of those hours in order to avoid temporary classification (see 9(b) and 9(c), above). Even though many DACE may not work all five days of the school week, they need only work four days to attain the 75 percent mark (and they need not even work full six-hour days to avoid temporary classification). Respondents have not shown that Education Code section 44908 should be interpreted in a manner other than its clear language. The consistent application of 75 percent of days is what is required by statute and by prevailing case law.

Temporary Classification - Education Code sections 44909, 44910 and 44919

Education Code section 44909

10(a). Education Code section 44909 (employment to perform services under categorically funded projects) provides, in pertinent part:

> The governing board of any school district may employ persons possessing an appropriate credential as certificated employees in programs and projects to perform services conducted under contract with public or private agencies, or categorically funded projects which are not required by federal or state statutes. The terms and conditions under which such persons are employed shall be mutually agreed upon by the employee and the governing board and such agreement shall be reduced to writing. Service pursuant to this section shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee unless (1) such person has served pursuant to this section for at least 75 percent of the number of days the regular schools of the district by which he is employed are maintained and (2) such person is subsequently employed as a probationary employee in a position requiring certification qualifications. Such persons may be employed for periods which are less than a full school year and may be terminated at the expiration of the contract or specially funded project without regard to other requirements of this code respecting the termination of probationary or permanent employees other than Section 44918.

10(b)(1). The application of Section 44909 in determining temporary classification was recently analyzed in *Stockton Teachers Association. v. Stockton Unified School District* (2012) 204 Cal App.4th 446. In S*tockton*, the employees at issue were hired for the full school year pursuant to section 44909, and they signed employment agreements with the District. The agreements stated that they were offers of temporary employment and indicated the employees were hired pursuant to section 44909 "as a certificated employee assigned to a

categorical program or as the replacement of a certificated employee who has been as-signed to a categorical program." (*Id*. at 451.) The agreements further stated that the temporary employee's service "shall be deemed terminated no later than the date listed in paragraph 4, or the date on which funding for the categorical program is no longer available, whichever occurs earlier. Additionally, the District expressly reserves the right to dismiss you as a temporary employee at any time during the period in this paragraph based on the determination of the governing board." (*Id*. at 451-452.) The District sent "precautionary" notices before March 15 to each of the certificated employees it identified as temporary. These precautionary notices were sent because of concerns expressed by Stockton Teachers Association's counsel that characterization of the section 44909 employees as temporary was inappropriate.

10(b)(2). The *Stockton* Court noted that "even if an employee agrees in writing to be hired as a temporary employee, such a written agreement is not determinative unless the classification is authorized by statute. A school district may not classify a person as a temporary employee unless the position in which he or she is employed is 'a position the law defines as temporary.'" (*Id*. at p. 457 (citing *Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist*. (2006) 145 Cal.App.4th 1260, 1277).) "If a teacher does not satisfy the statutory grounds for a temporary classification, the default or catch-all provision of [Education Code] section 44915 mandates the district classify the teacher as a probationary employee." (*Vasquez v. Happy Valley Union School Dist.* (2008) 159 Cal.App.4th 969, 983. (citing *California Teachers Assn. v. Vallejo City Unified School Dist., supra,* and *Bakersfield, supra.*).) As pointed out in *Stockton*, the Education Code specifically authorizes a temporary classification in only a few instances. (*Id*. at 456.) The purpose of the Education Code's classification scheme is "to limit rather than to enlarge the power of school districts to classify teachers as temporary employees." (*Id*. at 457 (citing *Bakersfield, supra*.).) This limitation prevents a district from subordinating "the rights of teachers in secure employment to its own administrative needs." (*Id*. at 451 (citing *Haase v. San Diego Community College Dist.* (1980) 113 Cal.App.3d 913, 918).) Thus, temporary classifications are narrowly defined by the Legislature and must be strictly construed. (*Id*. (citing *Zalac v. Governing Bd. Of Ferndale Unified School Dist*. (2002) 98 Cal.App.4th 838, 843).) Consequently, a school district may not circumvent the law through practices designed to "frustrate the valid expectations of reemployment established by the tenure statutes." (*Id*. at 457.)

10(b)(3). Specifically addressing Education Code section 44909, the *Stockton* Court noted that the purpose of that section is "'to prevent a person from acquiring probationary status solely through teaching in a categorically funded program. This permits the hiring of qualified persons for categorically funded programs of undetermined duration without incurring responsibility to grant tenured status based on such teaching services alone.' [Citation] The section 'was intended to give school districts flexibility in the operation of special educational programs to supplement their regular program and to relieve them from having a surplus of probationary or permanent teachers when project funds are terminated or cut back.' [Citation]." (*Id*. at 457-458 (citing *Zalac, supra*, at p. 845.) "It also protects

employees by preventing a district from hiring temporary employees for a term that has no relation to the term of the program for which they are hired." (*Id*. at p. 464.)

10(b)(4): Given its purpose and its narrow construction, Education Code section 44909 "allows temporary classification of employees only if its terms are strictly followed. . . . [T]his means that employees may be treated as temporary only if they are hired for the term of the categorically funded project and are terminated at the expiration of the categorically funded project for which they were hired. Otherwise, the employees must be treated as probationary employees." (*Id*. at p. 451.)

10(b)(5). In *Stockton*, the District conceded it had the burden of proving compliance with the layoff statutes. The Court held that, "to prove that its employees were temporary under section 44909, [the] District was required: (1) to show that the employees were hired to perform services conducted under contract with public or private agencies or categorically funded projects which are not required by federal or state statutes; (2) to identify the particular contract or project for which services were performed; (3) to show that the particular contract or project expired; and (4) to show that the employee was hired for the term of the contract or project." (*Id*. at p. 465.) The *Stockton* Court found that, "because there was no evidence that the employees at issue were terminated at the expiration of a categorically funded project they must be treated as probationary employees." (Id. at p. 451.)

11(a). *Definition of "Categorically Funded Project":* In order to meet the one of the requirements of Education Code section 44909 for temporary classification, employees must have been hired to perform services conducted under "categorically funded projects." As noted in *Zalac*, supra, "In applying [Education Code section 44909], one would hope to find a definition of the term 'categorically funded project,' but one hopes in vain. Although the term has been present in the Education Code since 1973 . . . nowhere in the code is the term defined." (*Zalac*, supra, at p. 844.) The *Zalac* Court reviewed the history of 44909 and other portions of the Education Code to determine the meaning of "categorically funded project." The Court noted "'[c]ategorical education programs are programs funded to address specified needs.' [Citation] There is a distinction 'between revenues provided for general operating purposes and revenues reserved for particular, specifically designated uses, such as . . . the provision of a special curricula for vocational or compensatory education.'" (*Id*. at p. 847.) The Court further noted, "a categorically funded project need not involve the creation of special classes divorced from the normal curriculum, but may augment the curriculum in whatever manner is specified in the particular program. . . . The defining characteristics are that the program be financed outside the base revenue limit with funds designated for a use specified by the particular program." (*Id*. at p. 848.) However, "[d]efining categorical programs as those that are funded outside the base revenue limit 'includes as 'categorical' some programs that are funded as part of the revenue limit appropriation but in fact are 'add-ons' that operate as separate programs.'" (*Id*. at p. 847.) In *Zalac*, the Court reasoned that the Class Size Reduction Program was a categorically funded project because the "[f]unds for this program are obtained by a special application not part of the base revenue limit and are designated for a particular use defined by the program (§ 52122)." (*Id*. at p. 850.)

11(b). *Distance Learning is a "Categorically Funded Project":*

(1). Pursuant to Education Code section 52522, a district must apply for and obtain State approval of its plans for "adult education innovation and alternative instructional delivery" to be addressed by programs including "Distance learning, as defined by [Education Code] Section 51865." Districts which obtain approval under Section 52522 "may claim and expend up to 5 percent of their block entitlement for implementation of approved programs." (Ed. Code, § 52522, subds. (a) and (b).)

(2). The funding for Distance Learning is a hybrid situation where funding is not automatically accessible via the base revenue limit, but is in essence an "add on" separate program as described in *Zalac*. Additionally, similar to the categorically funded project in *Zalac*, the Distict must apply for funds to implement its programs which include Distance Learning. This applied for and authorized apportionment of funds for Distance Learning constitutes a form of categorical funding.

(3). Additionally, as the *Stockton* Court noted, Education Code section 44909 was intended to give school districts flexibility in the operation of special programs and to relieve them from having a surplus of probationary or permanent teachers when project funds are terminated or cut back. Under section 52522, the approval of the District's annual application is not automatic, and Distance Learning funding is not guaranteed to continue each year. Consequently, Distance Learning is the type of "project" envisioned by Education Code section 44909 where funds could be terminated or cut back, and characterization of Distance Learning as a categorically funded project squares with the intent Education Code section 44909. Additionally, if a district does not obtain approval of its Distance Learning program, it would have a surplus of teachers who had previously taught Distance Learning. Even assuming, arguendo, that the percentage of funds remains available as part of DACE's "general fund" and could be funneled to a different portion of DACE to fund classroom assignments, the evidence did not establish that those funds would necessarily be used to fund classroom assignments in the subjects the teachers previously taught via Distance Learning. Nor was there was evidence to establish that the percentage previously anticipated for Distance Learning could adequately fund classroom assignments in the subjects previously taught via Distance Learning.

(4). Given the foregoing, Distance Learning fits within the definition of a "categorically funded project" and aligns with the purpose of Education Code 44909.

Education Code section 44910

12(a)(1). Education Code section 44910 (service at regional occupational centers or programs) provides, in pertinent part:

> Service by a person as an instructor in classes conducted at regional occupational centers or programs, as authorized pursuant to Section 52301, shall not be included in computing the service required as a

> prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district.
>
> This section shall not be construed to apply to any regularly credentialed teacher who has been employed to teach in the regular educational programs of the school district and subsequently assigned as an instructor in regional occupational centers or programs . . .

12(a)(2). Unlike the requirements of Section 44909, Education Code section 44910 does not require that the District utilize specified funds (i.e. there is no prohibition of the use of general fund) to fund the regional occupational center or regional occupational program.

12(b). Pursuant to Education Code section 52303, **"**Regional occupational program" means "a sequence of career technical or technical training programs that meet the criteria and standards of instructional programs in regional occupational centers and are conducted in a variety of physical facilities that are not necessarily situated in one single plant or site."

12(c). Education Code section 52302.5 provides, in pertinent part:

> A regional occupational center or regional occupational program shall do all of the following:
>
> (a) Provide individual counseling and guidance in career technical matters.
>
> (b) Provide a curriculum that includes a sequence of academic and skill instruction in specific occupational fields leading to an approved skill certificate and vocational degree, apprenticeship, or postsecondary certificate program pursuant to paragraph (2) of subdivision (b) of Section 52302, or provide an opportunity for pupils to acquire entry-level career technical skills. . . .

12(d). Pursuant to Education Code section 52310:

> Credits earned from courses completed in a regional occupational center or regional occupational program may be applied toward fulfillment of requirements for a high school diploma. A governing board of a district maintaining a regional occupational center may confer a high school diploma upon any pupil who attends a regional occupational center maintained by the district full time and has satisfactorily completed the prescribed course of study of the school district of residence or the course of study prescribed by the county superintendent of schools, school district, or school districts, as the case may be, maintaining such center.

12(e). Pursuant to Education Code section 51865, subdivision (c),

> [A] coordinated distance learning system should be developed to serve the following high priority education needs:
>
> (1) The enhancement of work force skills and competency in the adult population.
>
> (2) The expansion of adult education classes in English as a second language, in response to the growing level of unmet need for that instruction.
>
> (3) The enhancement of curriculum to meet the needs of high-risk pupils who would be likely to drop out of traditional classroom programs.

12(f). Although the Education Code did not specifically list all of the classes which could be offered at regional occupational centers or regional occupational programs, it is clear from the statutory framework that regional occupational centers or regional occupational programs could offer a wide spectrum of classes, focusing on academic as well as occupational instruction, and including delivery of instruction through Distance Learning.

Education Code section 44919

13(a). Education Code section 44919, subdivision (a), provides:

> (a) Governing boards of school districts shall classify as temporary employees those persons requiring certification qualifications, other than substitute employees, who are employed to serve from day to day during the first three school months of any school term to teach temporary classes not to exist after the first three school months of any school term or to perform any other duties which do not last longer than the first three school months of any school term, or to teach in special day and evening classes for adults or in schools of migratory population for not more than four school months of any school term. If the classes or duties continue beyond the first three school months of any school term or four school months for special day and evening classes for adults, or schools for migratory population, the certificated employee, unless a permanent employee, shall be classified as a probationary employee. The school year may be divided into not more than two school terms for the purposes of this section. (Emphasis added.)

13(b). Section 44919 allows an employee to be classified as temporary when the employee is employed for not more than four school months of any school term to teach temporary classes that will not exist after the first four school months of the term. Should the classes or duties continue beyond the first four months of the term, the employee must be

classified as probationary. The school year consists of only two school terms, so an employee can be employed under only two section 44919 employment contracts per year.

14(a). Pursuant to stipulation between the parties, the layoff notices issued to the following individuals are rescinded:

(1). Gary Wiessner (#692633) and Laurie Holzappel (#617138), who are the two permanent employees and most senior business teachers who redirected layoff notices as a result of the District's application of skipping criteria.

(2). The following Respondents who are competent to bump into, and have agreed to teach in, the specified service areas: Pilar Zorrilla (#641189) from Parent Education to ESL; Bernadette Haderlein (#629707) from Program for Older Adults to Academics; May Raquedan (#701456) from Adults with Disabilities to Academics; Ifeadikanwa Anyiam (#715562) from Parent Education to Academics; Laura Sharpe (#572554) from Adults with Disabilities to Academics; Regan Read (#546784) from Program for Older Adults to Academics; Maria De La Galvez (#627169) from Program for Older Adults to ESL; Lisa Andrade (#576771) from Adults with Disabilities to Career Technical Education; Melba Carter (#641945) from Program for Older Adults to Career Technical Education ; Tammie Elam (#650216) from Adults with Disabilities to Academics; Kimberly Shirley (#732124) from Parent Education to Career Technical Education; Raymond Terrazas (#545137) Adults with Disabilities to Academics; Maria Flynn (#585612) from Parent Education to ESL; Paulina McCune (#673973) from Parent Education to Career Technical Education; Sybil Gonzales (#712655) from Design 1 to Older Adults/ Adult Literacy Program and Academics; Yolanda Aquino (#789106) from BUS to CSC; Keith Donahue (#714199) from BUS to CSC; Beatrice Ellis (#697730) from BUS to CSC; Rita Franklin (#742186) from BUS to CSC; Karen Hammock (#677961) from BUS to MAF; Richard Helm (#744508) from BUS to CSC; Jordan Lessem (#779025) from BUS to SST; Dennis Luzon (#707499) from BUS to SST; Andrew Martinez (#737370) from BUS to CSC; John Rush (#788495) from BUS to CSC; Talyn Simonian (#809178) from BUS to CSC; Mehmet Sonmezay (#799785) from BUS to MAF; Kathleen West (#780736) from BUS to HEA; Mary Truitt (#320006) from BUS to CSC; Arthur Lindauer (#515422) from Graphics to Industrial Technology; Elias Contreras (#587870) from Drafting to Computer Science; Carthel Davidson (#328524) from Woodmaking to Cabinetry; Carolyn Jones (#598548) from Adults with Disabilities to Academics; Michael Jacquias (#799993) from BUS to CSC and MAF; Aaron Kahlenberg (#724011) from Graphic Arts to Tech Ed; and Edwin William (#572538) from BUS to SPED.

(3). Erica Zavala (#745144), who is deemed permanent, with a seniority date sufficient to bump into an academic course.

(4). Lucy Rosas (#602357), who is a permanent academics teacher who could bump into a position being taught by employees with less seniority.

14(b). The Statements of Reduction in Force against the individuals listed in Legal Conclusion 14(a) shall be dismissed.

15(a). The following Respondents established that their non-permanent classification was incorrect, and that their correct classification is permanent: Karla Galleguillos (#638203); Sofia Mayoral (#616182); Jill Quinn Harmon-Kelley (#577963); Beatrice James (#612122); Kathleen Garske (#625499); and Rebekah Villafana (#785499).

15(b). The layoff notices issued to the individuals listed in Legal Conclusion 15(a) shall be rescinded and the Statements of Reduction in Force against these individuals shall be dismissed.

16. Except as set forth in the Legal Conclusions above and the resulting orders below, no junior certificated employee will be retained to perform services that a more senior employee is certificated and competent to render.

17. Cause exists within the meaning of Education Code section 44955 for terminating or reducing the remaining Respondents' employment for the 2015-2016 school year, as set forth in Factual Findings 1 through 68, and Legal Conclusions 1 through 16.

ORDER

1. The Statements of Reduction in Force are dismissed against Respondents Gary Wiessner (#692633) and Laurie Holzappel (#617138), and their layoff notices shall be rescinded.

2. The Statements of Reduction in Force are dismissed against the following Respondents, whose layoff notices shall be rescinded: Pilar Zorrilla (#641189); Bernadette Haderlein (#629707); May Raquedan (#701456); Ifeadikanwa Anyiam (#715562); Laura Sharpe (#572554); Regan Read (#546784); Maria De La Galvez (#627169); Lisa Andrade (#576771); Melba Carter (#641945); Tammie Elam (#650216); Kimberly Shirley (#732124); Raymond Terrazas (#545137); Maria Flynn (#585612); Paulina McCune (#673973); Sybil Gonzales (#712655); Yolanda Aquino (#789106); Keith Donahue (#714199); Beatrice Ellis (#697730); Rita Franklin (#742186); Karen Hammock (#677961); Richard Helm (#744508); Jordan Lessem (#779025); Dennis Luzon (#707499); Andrew Martinez (#737370); John Rush (#788495); Talyn Simonian (#809178); Mehmet Sonmezay (#799785); Kathleen West (#780736); Mary Truitt (#320006); Arthur Lindauer (#515422); Elias Contreras (#587870); Carthel Davidson (#328524); Carolyn Jones (#598548); Michael Jacquias (#799993); Aaron Kahlenberg (#724011); and Edwin William (#572538).

3. The Statements of Reduction in Force are dismissed against Respondents Erica Zavala (#745144) and Lucy Rosas (#602357), and their layoff notices shall be rescinded.

4. The Statements of Reduction in Force are dismissed against the following Respondents, whose layoff notices shall be rescinded and whose classification shall be corrected to reflect their permanent status: Karla Galleguillos (#638203); Sofia Mayoral (#616182); Jill Quinn Harmon-Kelley (#577963); Beatrice James (#612122); Kathleen Garske (#625499); and Rebekah Villafana (#785499).

5. The Statements of Reduction in Force are sustained against the remaining Respondents who have not yet had their layoff notices rescinded. Notice shall be given to those Respondents that their services will not be required for the 2015-2016 school year, and such notice shall be given in inverse order of seniority.

Dated: June 16, 2015

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings