

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

In the Matter of the Reduction in Force of
Certain Certificated Employees of the Los
Angeles Unified School District,

OAH No. 2012020830

Respondents.

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on April 16-19, April 23-26, April 30-May 3, May 7-10, May 14, May 17, and June 4, 2012, in Los Angeles, California.

The Los Angeles Unified School District (District) was represented by Marcos F. Hernandez, and Aram Kouyoumdjian, both Assistant General Counsel with the District.

Respondents Victoria Bareghamyan and Gregory Calvert appeared on the first day of hearing to represent themselves, and subsequently appeared to testify on the days noted on the record. Respondent Roger Wilson also appeared on the first day of the hearing, but was subsequently dismissed as described herein. Respondents Lorcan Kilroy, Carole Sielaff, David Frankenthal, Darin Gray, Carlos Madrigal, Marcy Drexler, Justin Lauer, and Cynthia Diaz also represented themselves, and appeared on the days noted on the record to testify. Respondents Rosana Jeronymo, Arlene Waszczak, Hing Kee Chow, and Laurie Carter initially appeared on their own behalf to request a continuance of the hearing, but thereafter did not appear at any time during the hearing.

The Respondents identified in exhibit 402 were represented by Lawrence B. Trygstad, Esq., and Richard J. Schwab, Esq., of Trygstad, Schwab & Trygstad.

After the final day of testimony on May 17, 2012, the matter was continued for oral argument to June 4, 2012. In the interim, the following parties submitted closing briefs on May 25, 2012, and some submitted response briefs on or about May 30, 2012, marked as indicated: the District's closing and response briefs collectively as exhibit M; the majority of Respondents' closing brief as exhibit N; Respondent Gray's closing and response briefs collectively as exhibit O; Respondent Bareghamyan's response brief as exhibit P; Respondent Sielaff's closing brief as exhibit Q; Respondent Kilroy's closing brief as exhibit R; and other documents submitted by Respondent Kilroy, and described on the record during oral argument, marked as exhibits S (subject to a sealing order marked as exhibit X), T, U and W. The ALJ issued an order requesting the parties to discuss certain issues during oral argument, marked as exhibit V. The record was closed and the matter was submitted for decision at the close of oral argument on June 4, 2012.

The hearing of this matter was continued various times and for reasons described in more detail in the written orders granting 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 such that it is timely issued.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Vivian K. Ekchian, the District's Chief Human Resources Officer, made and filed the Accusations in her official capacity.

2. Respondents at all times relevant were certificated District employees.

3. The District serves approximately 600,000 students and employs approximately 40,000 certificated employees.

4. On February 14, 2012, Ms. Ekchian recommended to the District's Board of Education (Board) that it authorize the following reductions in force of permanent certificated employees and that notice be given to a corresponding number of employees that their services will not be required for the 2012-2013 school year:¹

A. To discontinue the Adult and Career Education (ACE) program in its entirety, no later than the beginning of the 2012-2013 school year.

B. To discontinue the Early Education (ECE) program in its entirety, no later than the beginning of the 2012-2013 school year.

C. To reduce or discontinue particular kinds of services of certified, permanent employees, in various teaching and support services positions, pursuant to Education Code sections 44949 and 44955, no later than the beginning of the 2012-2013 school year.

5. On February 14, 2012, as reflected in Board Report Number 148-11/12 (Resolution), the Board adopted Ms. Ekchian's recommendations and directed the District's Human Resources (HR) Division to send notices to all affected certificated permanent employees.

¹ It was also recommended to the Board that all certificated administrators, supervisory employees, and confidential employees be released and/or reassigned due to reasons including, but not limited to, funding, restructuring, loss of confidence or for cause, in accordance with Education Code section 44951; and that all ACE and ECE program non-permanent certificated employees be laid off.

6. On or before March 15, 2012, the individuals who are identified in exhibits 32-57 (with the exceptions noted below), including Respondents, were given written notice pursuant to Education Code sections 44949 and 44955 that their services would not be required for the 2012-2013 school year (lay off notice).

7. A total of 4,296 individuals timely submitted a request for hearing upon receipt of the written lay off notices, and were thereafter timely served with an Accusation, a Notice of Defense, and copies of pertinent provisions of the Government and Education Codes. Those individuals are identified in exhibit 60.

8. Of the Respondents, 2,726 timely submitted a Notice of Defense, which contained a request for the hearing that ensued. Those Respondents are identified in exhibit 61. Thirty six other Respondents did not timely submit Notices of Defense, but were excused from doing so by ruling of the ALJ after they established good cause by declarations. Those 36 Respondents are identified in exhibit 401. Three other Respondents, Victoria Bareghamyan, Graciela Ortiz and Susan Martinez, were also excused from timely submitting Notices of Defense by ruling of the ALJ after they established good cause.

9. The District misidentified the following Respondent science teachers as performing assignments that are subject to lay off when, in actuality, science teachers are not being laid off. Therefore, the Accusations against these Respondents are dismissed and they shall not be laid off: Lynn Aafedt; Tove Aitchison; Nicole Allison; William Gabriel; Jennifer Horton; Nadezhda Kostritskaya; Petra Krumland; Susan Smith; Haikaz Vardavarian; Roger Wilson; and James Womack. These Respondents are identified in exhibit 70.

10. The District inadvertently failed to send lay off notices to the following Respondents, who are also identified in exhibit 73: John Beilock; Monica Hein; Lisa Jordan; Shelley Lee; and Heidi Nariman. Pursuant to Education Code section 44949, subdivision (a), the Accusations against those individuals shall be dismissed and they shall not be laid off.

11. The District sent to each employee one lay off notice by regular mail and one by certified mail, for a total of almost 24,000 pieces of mail. However, the District discovered after the March 15th lay off notice deadline that the lay off notice sent by certified mail to Respondent Aide Valenzuela had been returned by the United States Postal Service (USPS) because it was missing postage. The lay off notice sent to Respondent Valenzuela by regular mail was not returned to the District. No evidence was presented indicating that Respondent Valenzuela did not receive her lay off notice.

12. At or about the time of the March 15th lay off notice deadline, the following Respondents (identified in exhibit 74) changed their address of record with the District: Stefanie Barbee; Matthew Burger; Lorraine Bustos; Stephanie Kmiec; Kristy Lee; Anna Martinez-Mollica; Dalia Rodriguez; Hazel Sanchez; and Alexandria Wagner. The District did not discover those address changes in time, so the lay off notices issued to these Respondents were mailed to their former addresses of record with the District. No evidence was presented indicating that these Respondents did not receive their lay off notices.

13. As to the five Respondents listed in Factual Finding 10, there are no teachers being retained by the District junior to Heidi Nariman and Shelley Lee in their subject areas. The most senior Respondents corresponding to the subject areas of the other three Respondents in question are James Pulliam, Rene Fuentes, and Seanean Shanahan.

Reduction and Elimination of Particular Kinds of Services

14. The Resolution provides for the reduction or elimination of the following particular kinds of services:

<u>Particular Kinds of Services (PKS)</u>	<u>Full-Time Equivalent (FTE) Positions</u>
Permanent Elementary Teachers	2,645
Permanent Secondary/Single Subject Teachers	871
* Art	95
* Business Education	11
* Computer Science	27
* English	263
* Foreign Language	
Spanish	74
French	17
* Health	67
* Home Economics	10
* Industrial Arts	
Graphic Arts	5
Auto Mechanics	3
Drafting	2
Electronics	2
Woodworking	5
* Music	66
* Physical Education	111
* Social Studies	113
Permanent Support Services Personnel	589
* Elementary Counselors	19
* Secondary Counselors	118
* Pupil Services & Attendance Counselors	90
* Librarians	50
* Psychologists	188
* Psychiatric Social Workers	49
* Nurses	75
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Total FTE Positions	4,105

15. The Resolution also provides for the complete elimination of all positions in the ACE and ECE programs. The total number of positions being eliminated was not established.

16. The services identified in the Resolution are particular kinds of services as described in Education Code section 44955.

17. Prior to adoption of the Resolution, the District considered all known positively assured attrition in determining the number of lay off notices to be served on its employees. In so doing, the Board considered attrition that is projected to occur through June 30, 2012, based on historical data from prior school years.² Thus, the District has actually accounted for attrition that was expected to occur through March 15th.

18. The decision to eliminate the ACE and ECE programs and to reduce the above-described particular kinds of services was based on a fiscal solvency problem related to the current state budget crisis. District staff anticipated a budget deficit in the hundreds of millions of dollars for the next school year. To help the District create a balanced budget for next school year, the Board determined that the above-described actions are necessary. The Board wants to avoid having an unbalanced budget next school year for various reasons, including that doing so may subject the District to penalties and intervention from the State of California and the Los Angeles County Office of Education (LACOE), as well as lowering its credit rating and making it more expensive to borrow money from open markets.

19. The decision to eliminate the ACE and ECE programs and to reduce the above-described particular kinds of services will not reduce services below mandated levels.

20. The Board's decision to eliminate the ACE and ECE programs and to reduce the above-described particular kinds of services was neither arbitrary nor capricious, and was a proper exercise of its discretion. The reduction and elimination of the above-described services relates solely to the welfare of the schools in the District and its students.

Eliminating the ACE program

21. Some Respondents contend that the District will not completely eliminate the ACE program, but rather will resuscitate it to some extent by providing funding through a Fiscal Stabilization Plan created by the District and Board. Some Respondents also argue that the Board decided to eliminate funding for the ACE program before completing procedural requirements imposed by law. The involved Respondents include David Frankenthal, Cynthia B. Diaz, and Darin Gray. Some Respondents who work in the ACE Division also made arguments as to their individual situations, which are discussed below.

² In a PKS lay off, a governing board need only consider positively assured attrition that occurred prior to the March 15th lay off notice deadline, not thereafter. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 635.)

22. Some Respondents, primarily Respondent Gray, presented evidence indicating that the Board and/or District has created a Fiscal Stabilization Plan which could result in the restoration of money into the ACE budget. According to those scenarios, some money may be restored into the budgets of the Regional Occupational Center Program (RCOP) and the Alternative Education and Work Center (AEWC), which are both part of ACE. However, Respondents did not establish that these proposals have become final. Moreover, the evidence indicated that the proposed funding restoration is based on the occurrence of future events, such as a better state funding outlook in the Governor's May Budget Revision, and the successful outcome of an arbitration matter between the District and the union representing the District's certificated staff. While it appears that the District was successful in the arbitration matter, it was not established that the Governor's May Budget Revision was more favorable in terms of public education funding. In fact, official notice is taken that the May Budget Revision is bleak. According to the District's Chief Financial Officer, Megan Reilly, an unfavorable May Budget Revision could actually make the District's financial position more untenable, which would make a funding restoration of ACE more doubtful. Under these circumstances, Respondents did not establish that the Board anticipated restoring ACE funding when it passed the Resolution, or that it currently intends to do so.

23. Respondent Diaz argued that state law (AB 189) requires a public hearing must take place before categorical funding (including adult education) in Tier 3 is taken for general fund use. She did not cite the particular provisions in question or show that AB 189 has been violated. In any event, the District has scheduled a public hearing regarding the elimination of the ACE program in June, and the issue was vigorously discussed when the Board adopted the Resolution in February 2012.

24. Respondent Diaz also argues that Education Code section 52540 requires the District to continue funding adult education for those who request English as a Second Language courses. However, that provision applies to high school districts, not to unified school districts such as the District.

25. David Frankenthal. He is a substitute teacher in the adult school division. He also proposed other arguments against the Board's decision to eliminate ACE funding but was precluded from doing so because the ALJ does not have jurisdiction in this matter to decide such issues, for the reasons stated on the record during the hearing. As a day-to-day substitute teacher in the adult school division, who is not a permanent certificated employee, Respondent Frankenthal failed to establish that he has a seniority or RIF date with the District, so his proposed testimony concerning his teaching career with the District was not relevant and therefore precluded for the reasons also discussed on the record. He has not established cause to be retained next school year.

26. Cynthia Diaz. She is an assistant principal at an adult school. Her testimony regarding her return rights to the adult education division should its funding be restored in the future is beyond the jurisdiction of this proceeding. She has credentials allowing her to teach at an adult school. Those credentials do not allow her to bump into a K-12 position.

27. Darin Gray. He is a limited part-time employee of the AEW. He has been with the District in this capacity for 22 years. He testified that if funding for any portion of ACE or AEW will be restored, there would be no cause to lay him off. As discussed above, it was not established that such is the case. In any event, as a non-permanent employee of the District, Respondent Gray is not entitled to the protections of the lay off provisions of the Education Code. (Ed. Code, § 44949, subd. (a).) He was given a lay off notice as a precaution in case he attempted to argue he is a permanent certificated employee of the District. He did not do so. Under these circumstances, no cause was established for him to be retained next school year.

The Seniority List

28. The collective bargaining agreement (CBA) between the District and its certificated staff 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." 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. 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 time served under contracts of employment.

29. In developing the Seniority List for lay off of its permanent employees, the District used RIF seniority dates. The District's Seniority List contains certificated employees' names, employee numbers, RIF seniority dates, current assignments and locations, credentials and authorizations, and other pertinent information. The Seniority List was developed using information from the District's electronic database which contains official District personnel records. Staff for the HR Division maintains, regularly reviews and audits the information in the database. For the past few years, the District offered employees opportunities to review the information contained in the Seniority List and to verify its accuracy. The District sent rosters to each school site, and the principals and/or supervisors reviewed 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.

30. Except as noted below, the information on the Seniority List is accurate.

31. The District acknowledges that Respondents James Alaniz, April Arteaga, Edna Briseno, and Selene Marin (identified in exhibit 72) have temporary contracts with the District and were erroneously added to the Seniority List. These Respondents were given lay off notices and were allowed to challenge their lay off in this matter, however, none of them did. No cause was established for them to be retained next school year.

32. The District used the Seniority List to determine which employees were to be laid off and which were eligible to “bump” less senior employees currently assigned in the various services being reduced. In determining who would be subject to lay off for each kind of particular service reduced, the District counted the number of reductions not covered by attrition, and determined the impact on incumbent staff in inverse order of seniority.

Tie-Breaking Criterion

33. 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, in which case “the order of layoff will be based on District seniority number as determined by Article XI, Section 6.2 of the [CBA], as determined at the time of hire.”

34. Pursuant to the CBA, the last five digits of an employee’s seniority number is computed by a formula involving the last four numbers of his/her Social Security Number. The lower the resulting number, the greater the person’s seniority.

35. Although the tie-breaking criterion, i.e., the last five digits of employees’ seniority numbers, was placed on the Seniority List, the tie-breaking criterion was not used in this matter to resolve ties in seniority amongst certificated personnel. Thus, as among those employees with the same RIF dates, they were listed in no particular order. The District did not use the tie-breaking criterion to resolve ties in seniority because it had determined that doing so was unnecessary, because the determination of who was to be laid off was not dependent on breaking any ties.³

36. 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 tie-breaker number at their time of hire, and their relative seniority is fixed so they can anticipate their standing in any lay off 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.

Competency

37. The Board’s Resolution also established a definition of competency for purposes of allowing an employee currently assigned in a position subject to lay off to “bump” a less senior employee holding another position not subject to lay off. For bumping purposes, an employee is “competent” to render a service if:

³ Appellate courts have not required school districts apply tie-breaking criteria prior to issuing lay off notices. (*Zalac v. Ferndale Unified School District* (2002) 98 Cal.App.4th 838, 855.)

- A. The employee possesses an appropriate credential for 2012-2013 assignment, and
- B. The employee 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 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 a least 75% of days during the qualifying school year.
- C. The “preceding five (5) years” is calculated backwards, from June 30, 2012, to the 2007-2008 school year.

38. The District’s five-year recency requirement is deemed to be reasonable, and the inclusion of the current school year in the five-year recency requirement is also deemed to be reasonable. Therefore, the District’s definition of competency in determining bumping rights (i.e., whether Respondents who received lay off notices may exercise their statutory right to bump into a position held by a less senior employee not subject to layoff) is upheld.⁴

Skipping

39. Pursuant to its Resolution, the Board determined that it was necessary to retain the services of certificated employees for the 2012-2013 school year regardless of seniority (also known as skipping)⁵ possessing special training and experience as follows:

- A. Certificated employees who hold National Board Certification (NBC) in the subject matter they will be teaching during the 2012-2013 school year.

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⁴ See Legal Conclusion 4 below.

⁵ Education Code section 44955, subdivision (d)(1), permits a school district to deviate from the order of seniority in teacher lay offs when “the district demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the employee [who is retained] has special training and experience necessary to teach that course or course of study . . . which others with more seniority do not possess.”

- B. Certificated employees who have served in Dual Immersion programs during the 2011-2012 school year and who will serve in such programs during the 2012-2013 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 2011-2012 school year and who will serve in such a program during the 2012-2013 school year.

A. National Board Certification

40. The District's NBC skip category is invalid. It was not established that NBC is a specific course or course of study within the District. Moreover, it was not established that having an NBC is necessary to teaching any course or assignment within the District. As that skip category is invalid, those Respondents who received Precautionary Notices because they were subject to the NBC skip category are subject to lay off.

B. Dual Immersion

41. The District has 44 Dual Immersion (DI) programs among grades K-12. Students in these programs learn in English and one of three other languages, Mandarin, Spanish or Korean. The goal is for the students to become bilingual and biliterate, not simply proficient in one or both languages. The teachers involved in the DI programs must be bilingual, be able to teach in both languages of their particular DI program, and have a CLAD credential. The DI teachers have received special training throughout the past school years, including two day training for new teachers to the program, and support from lead teachers. Lead teachers receive six to seven days per year of training, and they provide at least three to four hours per month of training to the other teachers. Teachers in the DI program are required to teach half of the day collaboratively with a partner teacher, and the other half on their own. Many of the DI Respondents who have received precautionary lay off notices are leaders. So much time and training has been invested in these individuals that if they are laid off, District staff believes significant training would be required for new teachers to be able to replace them.

42. No Respondent contested the validity of the DI skip category. In any event, the District established a specific need for personnel to teach the DI program, that the DI program is a specific course of study, and that the involved DI teachers have the special training and experience necessary to teach that course of study which others with more seniority do not possess.

C. International Baccalaureate

43. The International Baccalaureate Organization (IBO) offers three programs, the Primary Years Programme (PYP) for elementary schools, the Middle Years Programme (MYP) for middle schools, and the Diploma Programme (DP) for high schools. Students start at the first level and are able to progress to the other levels if interested and if they attend integrated schools that have all three programs. The International Baccalaureate (IB) program emphasizes international awareness, global studies, and multi-cultural awareness.

44. To be eligible for IB status, a school's teaching staff must reach a consensus to apply and participate in the authorization process, receive District approval for the necessary funding, and then apply to become approved by the IBO as an "IB world school." The IBO application process can take one to three years and cost several thousand dollars. The application process is also rigorous, culminating in an inspection of the school by the IBO. Schools involved in the application stage are known as IBO "candidate schools." In the past, the District funded the application process for interested schools. Due to the current budget crisis, new schools are no longer given funds to apply to become IB world schools. There are nine schools in the District that are at various phases of the IB authorization process. So far two have become IB world schools. No evidence suggests that any of the other seven schools are no longer in the IB application process.

45. To work in an IB school, staff must be willing to engage in efforts and training beyond what is normally required of certificated staff. The District has invested significant funds and several days of professional training in the teachers who participate in the IB program. If a significant portion of an IB school's certificated personnel is lost, that school's IB status and/or ability to achieve authorization could be jeopardized. A teacher cannot competently participate in an IB program without the significant training and experience received before so; having a particular credential is not enough. Under these circumstances, it was established that there exists a specific need for personnel to teach the IB program, that the IB program is a specific course of study, and that the involved IB teachers have the special training and experience necessary to teach that course of study which others with more seniority do not possess.

46. Respondent Lorcan Kilroy contests the validity of the IB skip. He makes two arguments against the IB skip. His first argument is that the District should not be able to consider a school to be in an IB program unless and until it achieves IB world school status from the IBO. Since the District only has two such schools at this time, and seven other IB candidate schools in the process of becoming IB world schools, he argues that skipping those who will teach at the seven schools who have not yet achieved that status is invalid.

47. Respondent Kilroy's first argument is not persuasive, for these reasons:

A. The administrative hearsay information from the IBO presented by the parties, when used to corroborate and explain the other admissible evidence regarding the IB program, indicates that although the IBO requests schools to not claim that they are authorized to deliver IB programming until they are IB world schools, the IBO still allows schools in the application process to do so for reasons of funding or similar needs. The fact that the District is faced with a substantial reduction in force and desires to skip teachers in the IB program appears to be a reason similar to funding. Thus, it is not convincing that the IBO would frown on the Board's inclusion of the IB skip in the Resolution. Moreover, the intent behind this caveat by the IBO seems to be an attempt to limit the IBO's liability should an applicant school ultimately not achieve IB world school status, as opposed to a statement that the IBO does not consider schools in the application process not to be an IB school.

B. It is clear from the evidence that the Board's skip decision is aimed not only at the two IB world schools, but also the seven other candidate schools involved in the IB program. As established by the persuasive testimony of District employee Arzie Galvez, who oversees the IB program for the District, the seven schools in the various phases of the IB authorization process are considered by the District to be IB programs because the teachers at those schools have already received the requisite training, have become integrated with the curriculum, and have begun instruction. Moreover, Respondent Kilroy's interpretation of the Board's Resolution concerning the IB skip is not consistent with one of the underlying reasons for the skip, i.e., not wasting the tens of thousands of dollars already invested in the IB application process and the requisite training of staff for the seven schools still in the IB application process.

48. Respondent Kilroy's second argument is that the IB skip is invalid because it places too much discretion in the hands of the District, since the IB does not control or have objective criteria controlling which personnel are allowed to participate in an IB program. Respondent Kilroy fears that the IB skip can/will be used by the District to subvert the seniority process of the Education Code concerning lay offs, giving the District complete discretion to play favorites by placing junior teachers in IB schools to save them from being laid off. However, Respondent Kilroy did not establish that an abuse of discretion has occurred for the IB skip. There is no evidence indicating that any of those subject to the IB skip have not been teaching at one of the nine schools involved in the IB program, will not be so assigned next school year, and have not received the special training and experience necessary to teach that course of study which others with more seniority do not possess.

The Superior Court Judgment in Reed v. State of California

49. The Board's Resolution also determined that it was necessary to retain the services of certain classroom teachers at 45 specified schools for the 2012-2013 school year, regardless of seniority, "pursuant to judicial orders issued in the matter of Sharail Reed, et al. v. State of California." Specifically, the Resolution requires:

RIF notices that would have been sent to skipped teachers at [the 45 specified schools] shall be redirected to teachers based on District seniority order at schools that would have otherwise received less than the district-wide average (by percentage) of RIF notices, but in no case shall redirected RIF notices cause a school to exceed the district-wide average of RIF notices, per Court-approved terms in the *Reed* case.

50. This is essentially a skipping decision, although unique in that it was forced upon the District by order of the Los Angeles Superior Court. In 2010, the District was sued by a group of students and their families in *Reed, et al. v. State of California, et al. (Reed)*, Superior Court of the State of California, County of Los Angeles, case number BC 432420. The plaintiffs in that case argued that the lay off of the certificated staff in three under-served middle schools would deprive particular students of their constitutional right to a fair education. Judge William F. Highberger issued a preliminary injunction, enjoining the District from “budget-based layoffs of classroom teachers” at the three middle schools. The court ordered that those individuals must be skipped by the District, pursuant to Education Code section 44955, subdivision (d)(2), and may not be subject to bumping.

51. After that matter was further litigated, on February 8, 2011, Judge Highberger issued a Judgment approving the terms of the settlement based on 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 [United Teachers of Los Angeles (UTLA)] for purposes of supervising the implementation, enforcement, construction, and interpretation of the Agreement, the court’s Findings of Fact and Conclusions of Law and this Judgment.” According to the *Reed* Judgment, pursuant to Education Code section 44955, subdivision (d)(2), the District may not impose any budget-based lay offs of classroom teachers at 45 specified schools (*Reed* schools). The *Reed* Judgment was based on findings that the lay off of the certificated staff in question would deprive particular students of their constitutional right to a fair education. In its Findings of Fact and Conclusions of Law, the court noted that UTLA (the union representing the District’s certificated staff) was a party to the case, participated in settlement negotiations and was given an opportunity to present its arguments and establish why the settlement should not be approved. UTLA appealed the *Reed* Judgment and unsuccessfully sought a stay in the Superior Court and the Court of Appeal. The California Supreme Court also denied UTLA’s request for review.

52. In the lay off matter for the District litigated in 2011, the portion of the District’s lay off Resolution containing the same *Reed* skip language as the current version was upheld by the ALJ hearing that matter. A writ filed by a few Respondents in that case challenging that part of the District’s 2011 lay off decision has been stayed, pending the appeal of Judge Highberger’s Judgment currently before the Court of Appeal.

53. At a prehearing conference (PHC) in this matter, the ALJ granted the District's motion-in-limine regarding this issue. Specifically, in the order following the PHC, the ALJ ruled that the "parties may not relitigate the issues decided in the case of *Reed v. California*, nor may they argue that Respondents not teaching in the *Reed* schools are subject to the same treatment as those subject to the judgment in *Reed*. However, Respondents may challenge the way in which the *Reed* judgment has been executed by the District in this lay off proceeding."

54. As required by the *Reed* Judgment, the District must deviate from seniority in a limited manner in that no classroom teachers at any of the 45 *Reed* specified schools shall be included in the 2012 lay off. According to the *Reed* Judgment, to ensure that the skipping of the *Reed* teachers does not negatively affect students at other "vulnerable" schools, the redirected lay off notices were to be "sent on a seniority basis to teachers at LAUSD schools that would otherwise receive less than district-wide average [lay off] notices." Additionally, the *Reed* Judgment specified that, although the District was prohibited from imposing any "budget-based" lay offs of the *Reed* teachers, the mandated skipping did not apply to either displacements (i.e. elimination of a teacher's position at a school site) as a result of district wide class size increase, declining enrollment or termination.

55. Lorcan Kilroy. Respondent Kilroy challenges the way in which the District has executed the *Reed* skip process, as follows:

A. Respondent Kilroy received a lay off notice redirected from a *Reed* school teacher in his subject area of art. He contends the District may have intentionally listed teachers as being *Reed* school classroom teachers when in fact they are not, or that certain junior teachers were moved to a *Reed* school without legitimate reason at or before the lay off notice deadline as favoritism and/or to subvert the seniority process established by the Education Code. Respondent Kilroy cites two specific examples of art teachers junior to him who are listed in seniority list documents as being *Reed* protected but whom he believes are in fact not teaching at *Reed* schools. Respondent Kilroy argues that this means he is not subject to lay off, because art teachers junior to him are being retained by the District.

B. The first example is Karla Ortiz, listed in seniority lists as an art teacher at Huntington Park High School, which is a *Reed* school. Respondent Kilroy was unable to find her on that school's website. Respondent Kilroy concedes that may have simply been a mistake on the part of the school's webmaster. In any event, the District established that Ms. Ortiz has been assigned to that *Reed* school effective August 29, 2011.

C. The second example is Maria Cortez, who is listed as an art teacher at Bethune Middle School, which is a *Reed* school. Respondent Kilroy was unable to find her on that school's website, and he was also unable to find her on the California Commission on Teacher Credentialing (CTC) website as having an art credential. However, the District established that she actually spells her name "Maria Cortes" and that the District had inadvertently listed her with the incorrect spelling in its records. The CTC website does show that Maria Cortes, employed by the District, has an art credential. The District established that Ms. Cortes has been assigned to Bethune Middle School since December 2010.

D. Under these circumstances, Respondent Kilroy failed to establish that the District has not properly executed the *Reed* skip process, or that an art teacher junior to him not currently assigned to a *Reed* school is being retained.

56. Sean Garrett. Respondent Garrett is a relatively new teacher to the District, having started in the 2009-2010 school year as an elementary teacher at the Judith Baca Arts Academy (JBAA), which is one of the 45 designated *Reed* schools. By virtue of his low seniority, he is subject to lay off in his subject area as an elementary teacher. Respondent Garrett was assigned to teach a fourth grade class at JBAA as of October 3, 2011. Due to that assignment, he contends that his lay off notice should be redirected to another person because he has a classroom assignment at a *Reed* school. However, on April 4, 2011, Respondent Garrett was placed on paid administrative leave and he was removed from any teaching assignment. Since then, his salary has been paid from a budget source other than JBAA. Though he was “reassigned” to a fourth grade classroom at JBAA in October of 2011, he was not actually placed in any teaching assignment. A long term substitute has been assigned to teach that fourth grade class. As of January 2012, Respondent Garrett has been directed to remain at home during the workday and report his time to a local District office. Thus, as of the time that the Board adopted its Resolution, and since then, Respondent Garrett has not been a classroom teacher at a *Reed* school and therefore is not exempt from being laid off.

Bumping Applied to the Teacher Librarians

57. The parties stipulated that the District will rescind the lay off notices provided to the following Respondents who are teacher librarians due to the invalidation of the NBC skip: Rosemarie Bernier; Stacia Salanoa; and Valary White. After the presentation of evidence was completed, the District advised in its initial closing brief that it has also agreed to rescind the lay off notice of Respondent Allison Walker for the same reason.

58. The parties also stipulated that Respondent Blair Carroll has at least one year experience teaching English within the past five school years and is competent to bump a more junior English teacher. Respondent Carroll executed the stipulation reflected in exhibit 403 and therefore is not subject to lay off by reason of that stipulation.

59. A number of Respondents not involved in the above-described stipulations testified that through their experience as teacher librarians at the District over the past several years, they have accumulated sufficient experience in other subject matters to either meet the District’s competency criteria or to be deemed competent to bump more junior teachers. These Respondents also have subject matter credentials other than their teacher librarian credentials. These Respondents are Suzanne Osman, Dale Futoran, Kathleen Sheppard, Adalgisa Grazziani, Janet Larson, Melissa Mukai, Tamara Celi, Mary Byrne, Karen Gonzalez, Melinda Buterbaugh, Michelle Addison, Sherri Whitham, Laureen Keough, Seanean Shanahan (but see Factual Finding 13 and Legal Conclusion 2.D.), and Marcy Drexler (teacher librarian Respondents).

60. The teacher librarian Respondents failed to establish that they meet the District's competency criteria and therefore they cannot bump into other subject matters. This is because they do not have at least one year experience teaching in those areas within the meaning of the District's competency criteria, for the reasons explained below.

61. Many of the teacher librarian Respondents have never taught a subject matter course in their alternate credentials nor have they carried the register for any courses under their alternate credentials. None of the teacher librarian Respondents has carried the register for any courses under their alternate credentials in the past five school years.

62. Secondly, the teacher librarian Respondents have been required to run their respective libraries, which accounts for a substantial period of their time each school day. Thus, their testimony was not persuasive that they have also been engaged in teaching in other subject matters within the meaning of the District's competency criteria. For example, the teacher librarian Respondents are responsible for maintaining collections of thousands of print volumes, as well as electronic resources, databases, magazines, and reference materials. Their respective libraries are subject to thousands of visits each year by students. The visiting students must be supervised to some extent. Teacher librarians are also expected to order new books, purchase new technology, keep the research media updated, train and supervise clerical helpers, assist students with selecting materials, and provide professional development to staff. Finally, teacher librarians are tasked to clean the library, from dusting shelves to vacuuming.

63. In addition, teacher librarians spent substantial time teaching information literacy, through their library practices courses. To teach library practice courses, one needs a teacher librarian credential, which is separate from the alternate credentials they have. The California Department of Education has developed Model School Library Standards, which are rooted in four core principles - accessing information, evaluating information, using information, and integrating information in all areas of learning. This illustrates that the library practice courses are separate and distinct from teaching under the alternate credentials they hold. The library practice courses they teach are an elective course that does not afford academic credit. Enrollment in these classes is often in the single digits. Students do not receive regular instruction and are allowed to work on their academic courses. That teaching experience is not the equivalent of that described in the District's competency criteria.

64. The parties stipulated that Respondents Darla Castillo and Janet Larson are teacher librarians who meet the District's competency criteria and are competent to teach in elementary teaching (ELR) and home economics (HEA), respectively. However, these Respondents do not have seniority allowing them to bump more junior certificated employees in these other subject areas and are still subject to being laid off.

65. Respondent Larson contends she is competent in health and social studies. However, she admitted that she has not held the register for a social studies course since 2006-2007, which pre-dates the five school years that qualify for the District's competency criteria. She has not held the register for a health class at all.

66. Respondent Addison claimed competency in English; however, she admitted that she has not held the register for an English class, outside of summer school, since the 2003-2004 school year. Therefore, she falls outside the five-year competency period. The summer course that Respondent Addison taught in 2010 was for only six weeks; the one in 2011, only four weeks. Neither course meets the District's competency requirement that a teacher provide instruction in the claimed subject for 75 percent of the days during the qualifying school year.

67. Therefore, it was not established that the teacher librarian Respondents are certificated and competent to bump into other positions and consequently they have not established cause to be retained next school year.

Bumping Applied to the PSA Counselors

68. The following Respondents currently have positions with the District as pupil services and attendance (PSA) counselors: Graciela Ortiz, Wendy Arreola Cholico, Abel Villasenor, Tanya Mercado, Melissa Morris, Susan Martinez, and Rosalinda Moreno (PSA Counselor Respondents). They contend that they have performed at least 75 percent of one school year in the past five in the position of a psychiatric social worker (PSW), and therefore should be allowed to bump into that position next school year.

69. The District agrees that the PSA Counselor Respondents hold the necessary credential that would allow them to bump into a PSW assignment next school year, and that the PSA Counselor Respondents are more senior to one or more PSW employees who are being retained for the next school year. However, the District does not agree that the PSA Counselor Respondents have actually served in a PSW assignment, and therefore the District argues they do not meet the competency criteria for purposes of bumping.

70. The PSA Counselor Respondents uniformly testified to essentially the same set of facts. They have all been employed by the District as PSA Counselors since 2006. During that time, they have only held the title of PSA Counselor. Each PSA Counselor Respondent testified that he or she has actually performed the duties and functions of a PSW at least 75 percent of one or more of the past five school years, mostly because they believe the duties of the two positions substantially overlap. However, none was able to satisfactorily quantify where the overlap exists, or that they have spent at least 75 percent of their days at school performing PSW duties.

71. The PSA Counselor Respondents (except for Rosalinda Moreno) also point to the fact that they have been assigned to schools where either no PSW has been assigned, or one has been assigned only one or two days per week. On those days when the PSWs are absent, the PSA Counselor Respondents were the only mental health professionals available to respond to problems that arose. However, while there is some level of overlap between the two positions, many of the duties they described performing are squarely within the job description of the PSA Counseling position.

72. Each PSA Counselor Respondent is registered as an Associate Clinical Social Worker (ACSW) with the State Board of Behavioral Sciences (BBS). An ACSW is required to perform 3,200 hours of clinical therapy in order to be eligible to take the examination for a Clinical Social Worker license. The PSA Counselor Respondents have either completed those hours and are eligible to take the examination or have performed between 1,600 to 2,800 hours. The hours of clinical work have been fulfilled while performing their duties at school. Interestingly, the job descriptions indicate that a PSW must be registered with the BBS, while a PSA Counselor does not. However, the PSA Counselor Respondents did not establish that the time they spent in the qualifying therapy was not part of their PSA Counselor duties.

73. The PSA Counselor and PSW positions are not as interchangeable as these Respondents suggest. The CTC requires separate authorizations and credentials for them. The District distinguishes them by title and job description. The schools where the PSA Counselor Respondents work hire different individuals to perform these different functions. As their title implies, PSA Counselors focus on attendance issues and on dropouts. Given that the two positions are different, PSA Counselors must have served as PSWs during a qualifying year (within the past five) in order to have bumping rights. None of the PSA Counselors was able to establish that he or she had served as a PSW. They do not meet the District's competency criteria and cannot bump into the PSW positions.

Bumping Applied to an Elementary Counselor

74. Dr. Steven Targum. Respondent Targum (who has a doctorate in psychology) received a lay off notice in his position as an elementary counselor. His RIF date is September 17, 1999. From then through November of 2001, he worked for the District as a secondary counselor. In November of 2001, he took an assignment at an elementary school and began providing services as an elementary school counselor. Respondent Targum has continuously worked as an elementary school counselor since the November 2001.

75. Respondent Targum argues he should be allowed to bump into a secondary counseling position by virtue of the Pupil Personnel Services (PPS) credential authorizing him to provide counseling services in grades K through 12. He also argues he has the requisite training and experience to perform those duties in light of his past experience as a secondary counselor, and because of the similarity of duties between his current position as an elementary counselor and those of a secondary counselor.

76. While his credential may authorize him to perform certain services, that does not mean that he is performing those services. For example, Respondent Targum has spent the past ten years working with pre-teens, who present different emotional and academic issues and needs than do secondary students. Elementary counselors do not perform all of the same duties as secondary counselors, e.g., master scheduling; tracking graduation credits and college entrance requirements; and advising students regarding the California High School Exit Examination (CAHSEE) and the Scholastic Aptitude Test (SAT). Moreover, key parts of those particular duties have changed in the past ten years since Respondent Targum last

served as a secondary counselor. For example, the CAHSEE only came into existence in the last ten years; Respondent Targum has never counseled a student regarding the CAHSEE. The District has modified the way master schedules are set in the past ten years. He has not prepared a master schedule in over ten years. The SAT format has changed substantially in the past ten years and Respondent Targum is not sure of the specifics. Both the UC Regents and the California State University system have changed their college entry requirements in the past ten years.

77. Under these circumstances, Respondent Targum did not establish that, as an elementary counselor, he has one year of full-time-equivalent experience within the District within the preceding five school years serving in the area of secondary counseling. Despite his prior experience, Respondent Targum did not establish that he meets the District's competency criteria required to bump into a secondary counseling position. Respondent Targum did not establish cause to be retained next school year.

Bumping Applied to Other Respondents

78. The parties agree that the Respondents who executed the stipulation referenced in exhibit 403 are competent to bump into the specified service area/alternate courses and that they will not remain where they are currently serving but will teach in the new service area/alternate course for the 2012-2013 school year. The Respondents who executed that stipulation are identified in Appendix 1, which is attached to this Decision.

79. The parties stipulated that Respondent Emilia Zarookian (CNS) meets the District's competency criteria and is competent to teach in the subject area of LRE. However, she does not have seniority allowing her to bump more junior certificated employees in the other subject area and is still subject to being laid off.

80. Joann McKenna. She received a lay off notice as an elementary school teacher because she has a life standard elementary credential and she initially taught for the District in that capacity. She also has an authorization to teach history in secondary schools, and has actually been teaching history courses at a middle school for the past several years. Respondent McKenna therefore argues that she can bump into a history assignment next school year since she would meet the District's competency criteria. However, Respondent McKenna was only able to teach those history classes after her principal executed middle school authorization waivers at the beginning of the last several school years. Waivers are valid for only one school year. A waiver was necessary because a social science credential is required to teach history, geography, economics and other social science courses. Respondent McKenna does not have a social studies credential. Without a middle school waiver, Respondent McKenna would not have been able to teach those history courses. In this case, it was not established that Respondent McKenna has the appropriate credential allowing her to teach history courses next year without the District executing yearly

authorizations, which the District is not required to do.⁶ Respondent McKenna has not established cause to be retained next school year.

81. Julie Park. Respondent Park is in the same situation as Respondent McKenna. She received her lay off notice in the subject area of elementary school teacher because she has a multiple subject credential. Because she also has a supplemental authorization in history, she has been allowed to teach history courses in the sixth and seventh grades. She contends that she should be allowed to bump into a history assignment next school year. She does not have a social studies credential, so she has only been able to teach the history courses because her principal executed middle school authorization waivers. Although Respondent Park may meet the District's competency criteria in terms of teaching history courses, she is not appropriately credentialed to teach history next year under the circumstances, and may not bump into such an assignment.

82. Jana Fowlks. She received her lay off notice in the subject area of elementary school teacher, because when she was hired by the District she only had a multiple subject credential. However, she has taught math courses at a magnet span school for the past several years. She argues that she should have been properly classified as a math teacher, not an elementary teacher. Since math teachers are not being laid off this year, she argues she should be retained next school year. However, Respondent Fowlks does not have a single subject math credential, and she does not have a supplemental math authorization. She has been allowed to teach math courses because they have been at an alternative school, and she has received yearly authorization waivers by the District. She does not have a credential outside of her multiple subject credential that would allow her to teach single subject math courses. Under these circumstances, it was established that the lay off notice in the subject area of elementary school teacher she received was appropriate. She failed to establish that she is able to bump into a math assignment next school year.

83. Nancy Reyes. Her RIF date is July 20, 2004. She received a lay off notice in the subject area of elementary school teacher, because she was hired by the District under her multiple subject credential. In November of 2011, Respondent Reyes also obtained a single subject credential in English. For most of the past five school years, she taught English as a Second Language (ESL) courses. She now is a Title III Access to Core Coach. In order to teach ESL, one must have a basic credential in any subject area, combined with a CLAD, BCLAD or similar predecessor credential. Respondent Reyes has a BCLAD. There are one or more teachers junior to her that the District has retained for the next school year to teach ESL courses using English credentials at Respondent Reyes' school. Pursuant to Education

⁶ School districts have discretion to define positions in the manner which they will be taught as long as it is done in good faith. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334.) Respondents cite no legal authority requiring the District to execute such yearly waivers in order to avoid laying off certificated personnel. However, Education Code sections 44256, subdivision (b), and 44258 indicate that such are discretionary decisions, in that both the governing school board and the teacher in question must consent to such a waiver each year.

Code section 44955, subdivision (c), school boards are required to make assignments and reassignments in such manner that employees shall be retained to render service in which their seniority and qualifications entitle them to render. In this case, Respondent Reyes is credentialed to teach ESL courses, in that she can use either her multiple subject credential or her single subject English credential to do so, combined with her BCLAD. She also meets the District's competency criteria, in that she has well more than one school year of experience teaching ESL courses within the past five. Her situation is unique, in that a) she has taught courses using one or both of the credentials she currently possesses, and b) she has actually taught the subject matter area in which she would like to bump. Under these unique circumstances, Respondent Reyes established that she can bump into an ESL assignment next school year, using her English credential. Since Respondent Reyes is credentialed and competent to perform an assignment (ESL) that the District has retained more junior teachers to perform next school year, using the same credential Respondent Reyes possesses, she may not be laid off.

84. Erik Matsubayashi. He received a lay off notice in the subject area of elementary school teacher. He has a multiple subject credential, as well as a single subject credential in foundational science which allows him to teach single period science classes in grades K-8. For the past few years, he has been assigned to a middle school. He has taught one period of science and one period of math as part of a "math and science combo" within a core curriculum. In such an assignment, he shares students with another who teaches English and history classes. He also teaches elective computer programming classes and a math intervention class. Respondent Matsubayashi contends that his experience in science, and to a lesser extent math, should allow him to bump into such assignments next school year. He is in the same unique position as Respondent Reyes. His one period science class can be taught using either his multiple subject credential (since the classes are in a core curriculum) or his single subject foundational science credential. The same is not true of his math class, in that it was not established that he is credentialed to teach a single period math class with the credentials he currently possesses. In any event, Respondent Matsubayashi is credentialed to teach middle school science classes using his single subject foundational science credential. He meets the District's competency criteria since he has taught middle school single period science classes the past five school years. The District is not laying off science teachers next school year, and is retaining teachers junior to Respondent Matsubayashi to teach such assignments. Under these circumstances, Respondent Matsubayashi has established that he can bump into a science assignment, and has established cause to be retained next school year.

85. Valerie Davidson. Respondent Davidson received her lay off notice in the subject area of art, in which she has performed the bulk of her service for the District. She argued that she should be allowed to bump into an English assignment, because she has a supplemental English authorization in addition to her art credential. Her prior experience teaching English classes is limited to Saturday English classes in middle school, and a summer school English class in a high school. That experience does not meet the District's competency criteria requiring teaching in the alternate subject area 75 percent of the days during the qualifying school year.

Rescinded Lay off Notices

86. During the hearing, the parties stipulated that the District will rescind the lay off notices provided to Carthec Davidson and Frank Treece because they should not have received lay off notices.

87. During the hearing, the parties stipulated that the District will rescind the lay off notices provided to the following twelve most senior nurse Respondents, who are also identified in exhibit 95: Mary Ann Topico; Po Yu; Tamunosa Okiwelu; Rosela Hipolito; Lourdes Gallardo; Treesa Lowther-Sopata; Gina Aguirre; Derek Patrimonio; Corazon Lazaro; Don Alvarado; Marilou Abrantes; and Susan Fernandez.

The Precautionary Respondents

88. Precautionary lay off notices were sent to a number of Respondents for various reasons, including the *Reed* school situation and the District's lack of certainty whether its three skipping categories would be affirmed.

89. Respondents argue the District exceeded the authority provided by the Board's Resolution by "over noticing" the number of certificated individuals far greater than the number of positions to be reduced and eliminated as specified in the Resolution. Respondents also argue that the Education Code does not provide for a lay off notice to be provided on a "precautionary" basis, and therefore such notices issued to the relevant Respondents are invalid. Respondents' arguments are unconvincing.

90. First, Respondents argument that the number of individuals given lay off notices impermissibly exceeds the number of positions specified in the Resolution does not contemplate (a) the number of individuals impacted by the complete elimination of the ECE and ACE programs not specifically referenced in the Resolution, and (b) the number of individuals impacted by the *Reed* school situation and the three skipping categories proposed by the District. Respondents have not quantified the total number of those receiving lay off notices or reconciled that with the number of positions being reduced or eliminated. Thus, Respondents point to no facts supporting their argument.

91. Second, the use of precautionary lay off notices has been validated by appellate courts reviewing lay off cases. For example, in *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, the court recognized the statutory necessity of giving more notices than the number of teachers who may actually be laid off. The *Allen* court observed that the present statutory timetable is unrealistic, and that although a teacher who is terminated has preferential rights to reemployment should the district decide fewer reductions are necessary, "this provides little solace to the understandably upset teacher who is given a needless preliminary (and perhaps final) notice because the school district cannot accurately ascertain its financial circumstances for the ensuring school year until the chaptering of the state budget." (*Id.*, at pp. 632-633.) In this case, the District does not presently intend to give final lay off notices to many of the precautionary Respondents unless

some of its discretionary decisions are overruled in this matter. No Respondent established any prejudice caused by the District proceeding in this way.

Respondents Raising Multiple Issues

92. Carole Sielaff. She is a school psychologist at John Mack Elementary School who made a number of challenges to her lay off, none of which established cause to retain her for the next school year:

A. Although she established that her correct RIF date is August 22, 2005, as opposed to the RIF date assigned by the District of September 1, 2005, she is still junior to other school psychologists being laid off.

B. She contends that she is credentialed and competent to bump into a position as a Pupil Services and Attendance (PSA) Counselor. However, she has never been assigned to that position at the District. She does not meet the District's competency criteria to bump, in that she did not establish having at least one year in the past five of experience in that area.

C. She contends the District's tie-breaking criterion is invalid, but she failed to present sufficient factual or legal bases to support her argument. In any event, neither her corrected or previous RIF date places her in a tie with other certificated employees, so the tie-breaking criterion is not applicable to her.

D. She argues that the District should skip her under the Dual Immersion category because she is bilingual and performs activities similar to those who work in the Dual Immersion program. Respondent Sielaff has no prior experience in a Dual Immersion program and is therefore not eligible to be skipped on that basis.⁷

E. As a school psychologist currently working in that capacity at one of the 45 designated *Reed* schools, Respondent Sielaff argues that her position is just as important as classroom teachers at those schools and that the District should retain her services as it has for classroom teachers. Since Respondent Sielaff is not a classroom teacher, she is not eligible to be retained under the Board's Resolution pertaining to the *Reed* schools. Moreover, the ALJ does not have jurisdiction to decide whether the Board should have decided to skip or retain other types of certificated personnel.

93. Marcy Drexler. She is a teacher librarian at Dodson Middle School. She argued that teacher librarians should be retained for the same reasons as the classroom teachers at the *Reed* schools. However, the ALJ does not have jurisdiction to decide whether

⁷ Education Code section 44955, subdivision (d), provides the exclusive purview of skipping decisions to school boards, not to teachers, parents or students. Therefore, the ALJ has no jurisdiction to determine whether a new skip category should be created for this Respondent or any other.

the Board should have decided to skip or retain other types of certificated personnel (see footnote 7). Respondent Drexler's RIF date places her junior to other teacher librarians being laid off. Respondent Drexler has not established cause to be retained next school year.

94. Carlos Madrigal. He is an assistant principal at Manual Arts Adult School. When initially hired by the District, Respondent Madrigal taught elementary classes under an internship contract from 2000 through 2002. In 2003, he applied for and accepted a position at an adult school within the District. He did not receive his clear multiple subject credential until 2005, well after he transferred to the adult school. He has remained in the District's adult school division since then. He was given a lay off notice because the entire ACE program is being eliminated. Respondent Madrigal made three challenges to his lay off, none of which established cause to retain him for the next school year:

A. He contends that it is inequitable for the District to not bump him into an elementary assignment at a K-12 school simply because he transferred to an adult school. He argues that when he transferred to the adult school, nobody from the District advised him that he would not accrue seniority for purposes of the K-12 schools within the District or would not have any "return" rights. However, Respondent cites no legal authority requiring the District to have provided him with any such advice. Respondent Madrigal did not necessarily argue estoppel against the District,⁸ but to the extent that he did, he failed to establish that the District made an affirmative statement or took some course of conduct, upon which Respondent Madrigal relied to his detriment. For example, it was not established that District personnel made a false or erroneous statement to Respondent Madrigal concerning his transfer to the adult school division. Moreover, it was his decision to transfer to the adult school division; Respondent Madrigal did not testify that he was requested by the District to transfer and then was given incomplete or erroneous information.

B. Respondent Madrigal contends that the District must bump him into an elementary school classroom assignment, since he has a credential that would allow him to teach such an assignment. However, as a matter of law, Respondent Madrigal is not entitled to bump out of an adult school assignment and into an elementary school assignment.⁹ Even

⁸ Estoppel may be invoked when a party establishes the following elements: (1) the party to be estopped must be apprised of the facts; (2) the party to be estopped made a statement which he/she intended to be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) the other party must rely upon the conduct to her injury. (*Crumpler v. Board of Administrators* (1973) 32 Cal.App.3d 567, 581.) However, cases applying estoppel to government entities also involve some sort of misrepresentation, misleading action or inaccurate information negligently given by the involved agency. (*Id.*, at 580-582.)

⁹ The Education Code creates two distinct teacher categories: day school (K-12) and evening school (adult education), and provides that service in one category may not be counted toward service in the other. (§§ 44929.25 and 44929.26.) As such, service in adult education does not count towards seniority in K-12. (See *Rutherford v. Board of Trustees*

if he were legally entitled to do so, Respondent Madrigal has not taught in an elementary assignment in the past five years, so he fails to meet the District's competency criteria for purposes of an elementary school assignment.

C. Respondent Madrigal also contends that as an administrator who reached permanent status in that position, he is entitled to retain a job within the District pursuant to Education Code section 44897, subdivision (a). Respondent Madrigal did not become a permanent employee of the District until after he transferred to the adult education division. Administrators, including certificated administrators, who are employed as administrators at the time that they acquire permanent status, acquire tenure only as classroom teachers, not as administrators, and can be reassigned from a position as an administrator to one as a classroom teacher. (*Thompson v. Modesto City High School Dist.* (1977) 19 Cal.3d 620.) While this statute may support an argument that Respondent Madrigal would have been entitled to an assignment as a classroom teacher in an adult school, if ACE was not being completely eliminated and his seniority otherwise permitted it, the statute does not allow him to claim entitlement to a classroom assignment in the K-12 program. He was not entitled to permanent status as a classroom teacher in the K-12 program since he did not become permanent in the K-12 program. By operation of Education Code sections 44929.25 and 44929.26, Respondent Madrigal cannot claim permanent status in both programs.

95. Justin Lauer. He has been the Dean of Students at Madison Middle School for the past five years. He has a health credential, and he taught health science classes for three years before standing for election for his current position. Last year he obtained a supplemental authorization to teach introductory science for grades nine and below. He was given his lay off notice in the subject area of health science. He has never taught a regular science class nor carried the register for the same. His testimony is not persuasive that he has performed at least one school year of service teaching a science class in his work the last five school years as a dean. Therefore, Respondent Lauer does not meet the District's competency criteria and may not bump into a science position. The CBA contains a provision limiting service as dean to five years unless certain exceptions are met (including being reelected), in which case a person may return to a classroom assignment. However, the CBA does not trump the District's legal authority to lay off certificated employees provided by the Education Code. Respondent Lauer contended that the District was required to advise him, when he sought election to the dean position, of the possibility that he may be subject to a competency criteria in the event of a future lay off. However, Respondent Lauer provided no legal authority creating such a requirement. In any event, it was not established that the District foresaw this eventuality five years ago when Respondent Lauer sought to be elected to the dean position. Respondent Lauer has not established cause to be retained.

(1976) 64 Cal.App.3d 167; *Kamin v. Governing Board* (1977) 72 Cal.App.3d 1014.) Thus, adult school teachers do not have tenure or seniority in regular school and cannot bump into the regular school program and regular school teachers do not have tenure or seniority in adult school and cannot bump into the adult school program.

96. Gregory Calvert. His RIF date is October 6, 2006. He taught high school English classes his first few years with the District. Two years ago he was elected to be the Dean of Students at Van Nuys High School. He received a lay off notice in the subject area of English. Respondent Calvert challenges receiving his lay off notice in English, but that is the only subject area he has actually taught at the District. He has a Level II Education Specialist Instruction Credential (Mild/Moderate Disabilities) and thus contends he should be allowed to bump into a special education position next school year. He also has a social science credential, though it is not clear that he seeks to bump into that subject area. However, he does not meet the District's competency criteria for purposes of bumping, in that he has not taught a special education or social science class at least 75 percent of one school year in the past five. Respondent Calvert also believes the District should skip certificated staff with special education credentials because that is a shortage area for the District, but the ALJ does not have jurisdiction to decide whether the Board should have decided to skip other types of certificated personnel (see footnote 7 above). Respondent Calvert did not establish cause to be retained next school year.

Respondents Seeking to Change Their Seniority Dates

A. Stipulations Regarding RIF dates

97. Joseph Espinoza. The parties stipulated that this Respondent's correct RIF date is August, 12, 2002, and that with that amount of seniority he is no longer subject to being laid off. The accusation against Respondent Espinoza shall be dismissed.

98. Angela Vitalis. The parties stipulated that this Respondent's RIF dated stated on the seniority list was incorrect, and that with her correct RIF date (not stated on the record), she is no longer subject to being laid off. The accusation against Respondent Vitalis shall be dismissed.

B. Early Report for Buy Back Days

99. Seniority is measured from the first date on which an employee renders paid service in a probationary position.¹⁰ Often times, and for various reasons, probationary teachers report to their school sites before the date specified as the beginning of the school year in the CBA.

100. There are many factors that can go into determining whether those early report dates constitute the first date of paid probationary service. Those factors include whether or not the early report dates are recognized as part of the negotiated school year in a collective bargaining agreement; whether attending an early report date was mandatory or voluntary; and whether the employee received regular pay for the early report day, a stipend, or other form of special payment. The treatment of early report days as part of the negotiated school year, the fact that attendance is mandated by the district in question, and the receipt of

¹⁰ Education Code sections 44845 and 87414.

regular pay for such attendance are all facts that tend to demonstrate the early report date is included in service rendered as a probationary employee. The lack of recognition of early report days as part of the negotiated school year, voluntary attendance, and special payments other than regular salary tend to demonstrate the opposite.

101. The consistent application of these factors is important, because otherwise great mischief can be done to the seniority system. For example, allowing an employee to randomly establish their own seniority date by simply visiting their classroom before classes begin would be unfair to other employees who only reported when required. The same can be said of allowing employees to increase their seniority because they attended training that was either not mandatory or was subject to extra compensation due to the fact that it occurred outside of the negotiated school year. An unfair situation may arise when two probationary teachers have the same start date, but one is required to attend an earlier day of new teacher orientation but the other is not so required based on his/her prior experience elsewhere as a teacher. It is indeed an inequitable situation to deem the former more senior to the later simply because of his or her inexperience. Annualized pay presents a similar problem. A teacher who receives his or her pay spread out through the year (annualized) can receive a paycheck on the first of the month, but not commence work until the end of the month. The date on which a paycheck is issued in that situation does not demonstrate the date on which paid service actually commences.

102. On the other hand, it is unfair to allow the CBA to dictate an employee's seniority when he or she is mandated to begin their contracted services by their immediate supervisor and is paid regular salary for such service. Thus, it is hard to establish a bright-line test that can fairly decide any particular situation. Evaluating all of these factors is most helpful, until either the Legislature or the appellate courts provide more guidance.

103. In this case, some of the Respondents reported to their school sites before classes began for the school year for what were known as "buy back" days. Those were essentially days of training or professional development provided to teachers during off track, vacation periods or weekends. The buy back days were not part of the school year negotiated in the CBA and therefore were voluntary. The teachers who attended the buy back days were paid for their attendance by the District, but the pay stubs submitted by some of the Respondents in question uniformly show that the buy back day payments were separate and distinct from their regular salary. For example, the buy back pay was accounted for separately from regular salary on the pay stubs, had a different code, and different pay rates.

104. Cheryl Fukushima, Christopher Miller, and Luz Quintero. These Respondents testified that their RIF dates should be deemed earlier than as stated in the District's Seniority List because they were required to attend buy back days before the beginning of their inaugural school years with the District. As discussed above, buy back days were not part of the negotiated school year pursuant to the CBA. Moreover, it was also not established that these Respondents' attendance at the buy back days was mandatory. Although some of their principals strongly encouraged them to go, it was not established that mandatory directives were issued. These Respondents also failed to establish that they received regular

compensation for their attendance or that a majority of their colleagues also attended the training (which would suggest that attendance was not mandatory). Therefore, these Respondents failed to establish a basis for adjusting their seniority dates by virtue of attending earlier buy back days.

105. Herbert Hernandez. He seeks to adjust his RIF date from September 7, 2007, to the earlier date of September 4, 2007. Respondent Hernandez testified that he attended school on September 4th on a buy back day to set up his classroom, and that he began teaching his classes on September 5th and 6th. However, he failed to present any reliable documentary corroboration of his testimony. In fact, payroll and timesheet records produced by the District indicate no formal activity at the school until September 7th. Moreover, his probationary contract indicates the date of offer was September 7, 2007, and that his service was to commence on or before October 8, 2007. At the time, Respondent was waiting for a work permit related to his obtaining legal residence, which did not arrive until September 7th. He was also not cleared to begin service until his fingerprint clearance was obtained, which was also on September 7th. Schools in California are prohibited from employing anyone to work with students without a fingerprint clearance to ascertain whether the applicant has a criminal history precluding employment. (Ed. Code, §§ 44237, 44830.1, 44830.2, 45125, 45125.1.) Under these circumstances, no cause was established to adjust his seniority date.

106. Veronica Gonzalez. The District's RIF date for this Respondent is August 28, 2003. Respondent Gonzalez contends her correct RIF date is August 26, 2003. She received a lay off notice redirected from a teacher at a *Reed* school, and the RIF cut-off date applicable to her is August 28, 2003, which happens to be her RIF date. Respondent Gonzalez testified that on August 26, 2003, she either visited her school site to set up her classroom (the music room), contact band member/students and perform other duties, or she attended a mandatory buy back day. She also testified that she was paid for her service on that date. However, as explained below, Respondent Gonzalez did not establish a basis to adjust her RIF date, and therefore is subject to being laid off.

A. In support of her position, Respondent Gonzalez submitted a letter from a District personnel specialist dated August 25, 2003, stating that she had been assigned to her school site effective August 26, 2003. It was not established when she received that document, which is material in that the letter is dated the day before her claimed RIF date.

B. Respondent Gonzalez also submitted a District Verification of Seniority Date form issued to her, which states that her "first day of paid probationary or District intern contract service [is] 8-26-03." However, the District presented a single-track school calendar for the 2003/2004 school year, which showed no official school activity scheduled for August 26th, but rather that a paid pupil free day was scheduled on August 28th. Respondent Gonzalez taught at a single-track school that year. The District also presented a letter dated November 4, 2003, purportedly mailed to Respondent Gonzalez, indicating that the Verification of Seniority Date form previously sent to her was incorrect, and that her first date of paid probationary service was August 28, 2003. The District also presented a

verification roster signed by Respondent Gonzalez in November of 2011, in which she certified that her correct “seniority date” is August 28, 2003.

C. Finally, Respondent Gonzalez was equivocal in her initial testimony that she was required to report for duty on the day in question. When she testified on a second occasion, she was more direct in her recollection that her attendance was mandatory. However, when she testified the second time, it was also clear from the evidence that she had attended a buy back day. As discussed above, buy back days are not part of the school year pursuant to the CBA and are not mandatory. The payroll records Respondent Gonzalez presented also tend to indicate that although she was compensated for days predating the first day of class, she was paid at a rate different than her regular pay as a teacher.

C. Early Reporting for Work

107. Some of the Respondents contend that they should have earlier RIF dates because they began to actually perform services as probationary employees and were compensated for the same before their RIF dates assigned by the District.

108. Anthony Colla. He contends that his RIF date should be adjusted from September 1, 2006, to a new date of August 22, 2006. He signed his probationary contract on August 22, 2006. That day he also attended an English Department meeting. He attended another English Department meeting on August 28, 2006. Although he established that he received regular pay from the District for his attendance those two days, it was established that neither of these meetings was mandatory. Moreover, it was not established that any of these dates were part of the contracted school year pursuant to the CBA. It was not established that Respondent Colla was paid for rendering service in his probationary capacity earlier than his RIF date. Cause was not established to adjust his seniority date.

109. Rachel Nguyen. The District’s RIF date for this Respondent is September 1, 2006. She contends her correct RIF date is August 25, 2006, because on that day she began performing her duties as a counselor and was paid for doing so. However, Respondent Nguyen failed to establish that her early attendance before classes began was mandated by an administrator, and she failed to present written corroboration that she was paid for service on August 25th, or any other day preceding the District’s RIF date. Respondent Nguyen failed to establish that her RIF date should be adjusted.

D. Various Contract Issues

110. Valerie Davidson. The District’s RIF date for this Respondent is July 6, 2004, the effective date of a University Intern contract she signed. She contends that her RIF date should be adjusted to July 1, 2001, which is when she initially served the District through a Provisional, Pre-Intern contract. However, during the summer of 2003, Respondent Davidson was without a credential, and was advised that she would have to be a substitute employee the following school year in light of that situation. She worked for the District as a substitute during the 2003-2004 school year. After she obtained her credential in June 2004, she was

offered and signed an intern contract which accounts for her District assigned RIF date. Under these circumstances, Respondent Davidson did not establish cause to adjust her RIF date.

111. Victoria Bareghamyan. She contests the District's RIF date for her of March 30, 2007. She was initially retained under a temporary contract that was dated December 15, 2006, the date she also began teaching with the District under a valid credential. Her principal assigned her to cover a class vacated by a teacher who was reassigned. On March 30, 2007, Respondent Bareghamyan was offered and accepted a probationary contract. The District was permitted to initially retain Respondent Bareghamyan under a temporary contract pursuant to Education Code section 44920 to fill a mid-year vacancy created by another teacher's reassignment. There is no evidence that the temporary contract was offered to Respondent Bareghamyan by reason of her credential status or to frustrate the purposes of teacher tenure established by the Education Code. Respondent Bareghamyan is not entitled to the tacking provision of section 44920 because she did not teach the complete school year in 2006/2007. Since seniority is based on paid service in a probationary capacity, service under her temporary contract does not count for purposes of establishing her RIF date. Therefore, cause was not established to adjust Respondent Bareghamyan's RIF date. In any event, the RIF date Respondent Bareghamyan requests would not give her sufficient seniority to avoid being laid off.

112. Tova Adler. The District's RIF date for her is January 5, 2004, when she first began teaching under a probationary contract. Respondent Adler contends her correct RIF date is July 1, 2003, when she was first paid for teaching under a temporary contract. Respondent Tovar had a valid credential at that time, and she taught the entire school year. She has taught full-time for the District since. Although Respondent Adler testified that she had no knowledge of being a replacement teacher for another, the District was not required to establish that Respondent was assigned to a particular school site from which any particular employee was on leave.¹¹ A school district the size of the District can be presumed to have a constant percentage of teachers on short-term or long-term leaves of absence, and a large number at that.¹² Respondent Adler failed to establish that she was improperly classified as a temporary teacher.¹³ She articulated no cause to tack-on her prior temporary employment experience to her seniority date. Therefore, cause was not established to adjust Respondent Adler's RIF date.

¹¹ See *Santa Barbara Federation of Teachers v. Santa Barbara High School District* (1977) 76 Cal.App.3d 223, 229-234. In *Santa Barbara*, the court adopted the school district's argument that "the statute requires only that the total number of temporary teachers not exceed the aggregate of probationary and permanent teachers on leave at any one time."

¹² *Santa Barbara Federation of Teachers v. Santa Barbara High School District*, *supra*, 76 Cal.App.3d 223, 229-234.

¹³ *Santa Barbara Federation of Teachers v. Santa Barbara High School District*, *supra*, 76 Cal.App.3d 223, 234.

113. Angelica Fuentes. She seeks to have her RIF date adjusted from November 4, 2002, to an earlier date of October 2, 2000, when she began serving the District and taught a second grade class the remainder of the school year. However, in October of 2002, she was without a credential when her emergency permit expired. Her contract informed her that it would expire on October 1, 2002. On September 30, 2002, she signed a document indicating her status changed to being a substitute teacher. After she was issued an appropriate credential, she was offered and signed an intern contract on November 4, 2002, which is her RIF date assigned by the District. Under these circumstances, cause was not established to adjust her seniority date.

114. Ronnie Ford. He seeks to have his RIF date adjusted from January 19, 2007, to December 1, 2005. He began with the District as a coach in 2002, and then as a substitute in 2005. At the beginning of the 2005-2006 school year, he signed a statement of his availability as a day-to-day substitute teacher. He again signed the same statement on January 17, 2006. Sometime in December of 2005, he was given an assignment as a long-term substitute teacher, which he performed through the end of the school year in June 2006. Respondent Ford continued the same assignment the following school year, 2006-2007. When he obtained a provisional intern credential on January 19, 2007, the District offered him a contract for employment, which accounts for his District assigned RIF date. Although not entirely clear, he apparently urges that he should be able to tack-on the prior service as a long-term substitute for purposes of his seniority pursuant to Education Code sections 44918 and 44914.¹⁴ Section 44918 is not applicable to the District, since it has an average daily attendance (ADA) above 400,000 students. Although section 44914 allows tacking of the sort requested by Respondent Ford, it is permissive; a school district does not have to apply it. The District has decided not to apply it in this case. Respondent Ford has not established a basis to adjust his RIF date.

115. Jana Fowlks. She contests her District assigned RIF date of January 15, 2002, which is the effective date of her first probationary contract with the District. She contends her correct RIF date is August 30, 2001, when she began an assignment at a magnet span school teaching sixth and seventh grade math classes. She began that assignment as a long term substitute teacher. At that time, she was working toward getting a math supplemental authorization, which later proved to be unsuccessful. When the District was able to obtain the

¹⁴ Both statutes provide that an employee who has served 75 percent or more of a school year as a substitute or temporary employee is eligible to be deemed to have served that school year as a probationary employee if they serve the following school year in a probationary status. However, Education Code section 44918, subdivision (f), indicates that the statute does not apply to school districts in which the average daily attendance is in excess of 400,000. Education Code section 44914 is permissive, in that it provides that “the governing board of the district *may* count the year of employment as a substitute or as a substitute and probationary employee as one year of the probationary period which he is required by law to serve as a condition to being classified as a permanent employee of the district.” (Emphasis added.)

requisite authorization for her to teach math in January of 2002, she was offered her probationary contract. As explained above regarding Respondent Ford, Education Code sections 44918 and 44914 do not apply to Respondent Fowlks and thus she is not entitled to tack-on her first semester of service as a substitute teacher pursuant to those statutes. Section 44920 does not apply because Respondent Fowlkes was not offered a temporary contract for the first semester of the 2001-2002 school year. Under these circumstances, it was not established that Respondent Fowlks' RIF date should be adjusted.

116. (A) Lorcan Kilroy. This Respondent seeks to have his RIF date adjusted from January 16, 2003, to a new date of July 1, 2001. Respondent Kilroy was initially employed by the District as a substitute teacher. He taught in that capacity from 2001 through 2003 at Van Nuys High School and a few other schools, and taught a variety of different classes. Respondent Kilroy did not establish that he taught under a temporary contract during this time period. However, he signed a probationary contract effective January 16, 2003, which is the RIF date assigned to him by the District.¹⁵

(B) Respondent Kilroy argues that Education Code section 44917 allows him to tack on his prior substitute teaching experience to his probationary service. He cites to the second paragraph of the statute which provides that a district "may employ . . . in substitute status any otherwise qualified person who consents to be employed in a position for which no regular employee is available...." However, the third paragraph of that statute, which is central to Respondent Kilroy's argument, states that any person "employed for one complete school year as a temporary employee shall, if reemployed for the following school year . . . be classified . . . as a probationary employee and the previous year's employment as a temporary employee shall be deemed one year's employment as a probationary employee for purposes of acquiring permanent status." Since these two paragraphs refer to different classifications, substitute and temporary, Respondent Kilroy's argument does not naturally flow that the District's hiring him as a substitute employee as referenced in the second paragraph of the statute qualifies him for the tacking relief provided to temporary teachers provided by the third paragraph of the statute. Respondent Kilroy failed to establish that he served in a temporary teaching classification or assignment before he achieved probationary status, and therefore he failed to establish that he fits within the meaning of section 44917.

¹⁵ These findings are based on the testimony of Respondent Kilroy and his exhibits admitted into evidence on May 17, 2012. Subsequently, when the closing briefs were being submitted by the parties, Respondent Kilroy requested to amend his testimony and offer new exhibits into the record to support his argument that he should be viewed as a temporary employee. The request was denied for the reasons stated on the record during the oral argument of this matter on June 4, 2012.

(C) Respondent Kilroy also argues that his service for the District in 2001-2003, before he was made probationary, fits within the definition of temporary employment pursuant to Education Code section 44919.¹⁶ He argues that by operation of that statute, he should have been reclassified by the District as being a probationary employee in either spring or fall of 2002, which would provide him with sufficient seniority to avoid being laid off. However, as found above, it was established by the evidence that Respondent Kilroy served as a substitute employee during the period in question. In any event, the evidence did not establish that Respondent Kilroy was offered a temporary contract or was given an assignment of the type specified in section 44919. Respondent Kilroy failed to establish cause to adjust his RIF date.

E. Returning to Service After Resignation

117. Three Respondents testified that their RIF dates should be adjusted due to circumstances surrounding past resignations from the District.

118. The policy of the District is to permit certificated employees returning to employment on the same or equivalent salary table within a 39-month period after a resignation to maintain their permanent status, but not their RIF date. (CBA, Art. XIV, § 15.0.)¹⁷ If the employee is rehired at a lower salary table, they are treated as a new hire. (CBA, Art. XIV, § 15.2.) District policy is to inform inquiring employees of the above. Employees are typically advised when resigning from the District that there is no guarantee of future employment.

119. Kristen Black. Respondent Black's RIF date with the District is July 1, 2005. She contends her RIF date should be adjusted to an earlier seniority date she held with the District before resigning. Under the circumstances explained below, Respondent Black's seniority date should be adjusted to September 18, 1995, which no longer subjects her to being laid off, meaning cause has been established to reemploy her next school year.

A. She was first employed by the District effective September 18, 1995. After teaching five school years, and becoming permanent, she resigned from the District in June of 2000 for a teaching position at another school district closer to her home.

¹⁶ Education Code section 44919 provides, in part, that 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. If the classes or duties continue beyond the first three school months of any school term, the certificated employee, unless a permanent employee, shall be classified as a probationary employee.

¹⁷ It is well settled that even upon returning within 39 months, a previous seniority date is not restored. (*San Jose Teachers Assn. v. Allen* (1982) 144 Cal.App.3d 627, 641.)

B. In 2005, Respondent Black was approached by Hector DuBon, at the time the District's Director of School Services for Local District 8. Mr. DuBon asked Respondent Black to return to the District to serve as a math coach at a low performing school. Respondent Black was concerned about leaving her then employing school district and losing her seniority, so she told Mr. DuBon she would only return to the District if her previous seniority date with the District (September 18, 1995) was restored, and only so long as Mr. DuBon would put that in writing. Mr. DuBon promised to do so, in part because the math coach position could only be filled by a teacher with permanent status. In reliance on Mr. DuBon's promise to have her previous seniority date with the District restored, Respondent Black resigned from the other school district and signed a new probationary contract with the District, effective July 1, 2005. Mr. DuBon issued a letter dated June 28, 2005, in which he stated that her previous employment status and seniority date with the District "were reinstated."

C. Estoppel is available against governmental agencies. It has been said that "[a] citizen ought to have the right to expect his government to deal fairly with him." (*Crumpler v. Board of Administrators* (1973) 32 Cal.App.3d 567, 579.) It has also been aptly said that if "men must turn square corners when they deal with the government, it is hard to see why the government should not be held to a like standard of rectangular rectitude when dealing with its citizens." (*Id.*, at 579-580.) In this case, Respondent Black may invoke equitable estoppel against the District, because all the elements of estoppel have been established: (1) Mr. DuBon, a high-ranking official of the District, was apprised of the situation by Respondent Black, and he told Respondent Black that he would check with District HR personnel before making an assurance regarding the restoration of her seniority date in writing; (2) Mr. DuBon intended that Respondent Black rely on his conduct and resign from her then employing school district; (3) Respondent Black had no suspicion that the District would not follow through on Mr. DuBon's promise; and (4) Respondent Black relied on Mr. DuBon to her detriment, in that she resigned from her then employing school district and lost her 2000 seniority date. (*Crumpler, supra*, 32 Cal.App.3d at 581.)

D. Although estoppel should be applied against the government "where justice and right require it," it cannot be applied against the government where to do so would effectively nullify a "strong rule of policy, adopted for the benefit of the public...." (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 493.) Nor can estoppel be applied where to do so would enlarge the power of a governmental agency or expand the authority of a public official. (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28.)

E. Contrary to the District's contention, estoppel is not precluded in this case by virtue of *Fleice v. Chular Union Elementary School District* (1988) 206 Cal.App.3d 886. In that case, the court rejected the application of estoppel to a teacher who was given permanent tenure status even though she had taught at the district less than two years. The court strictly construed Education Code section 44882 to require a mandatory two-year "test period" of teaching before a district could make a teacher permanent. This was because the public policy buttressed by that statute was not teachers' employment, but rather the proper education of pupils by teachers who have satisfied the district of their competency. (*Id.*, at

879-880, 892.) Applying estoppel was rejected because doing so would not only nullify the strong public policy of pupils being taught by teachers who passed the two year test period, but it would also expand the government's powers beyond legal limits since districts have no statutory power to grant permanent tenure to teachers with less than two years teaching in a district. (*Id.*, at 893-895.) The *Fleice* decision is limited to that particular fact pattern. For example, in *Briney v. Santa Ana High School District* (1933) 131 Cal.App. 357, the court did not hesitate to apply estoppel where a district attempted to renege on earlier promises to make a certificated teacher permanent after two years of teaching at the district. The court estopped the district from not following through on those promises and prohibited it from subjecting that teacher to lay off since she had taught there satisfactorily for two years.

F. In this case, the concern noted in the *Fleice* case is not apparent. Respondent Black became a permanent teacher in her initial tenure with the District. She again became permanent after she returned to the District. She has twice satisfied the two-year "test period" at the heart of the *Fleice* case. In fact, Respondent Black has been with the District almost seven years after she returned in 2005. Thus, allowing Respondent Black to invoke estoppel will not pose a threat to students or faculty. On the other hand, Education Code section 44931, which requires school districts to restore permanent status to an employee who resigns and returns within 39 months, does not appear aimed at the protection of the public in general or students in particular. Rather, it provides protection to teachers who resign and return within a moderate time period. The concept of a seniority date for purposes of lay off cases is to ensure that seniority is honored when a school district makes lay off decisions and to prevent favoritism. In this case, forcing the District to honor Mr. DuBon's promise to Respondent Black simply protects her from being unjustly laid off. It does not provide the District any power prohibited by the Education Code or nullify a strong public policy.

120. Christina Thymes. Her District assigned RIF date is August 17, 2005, when she signed a probationary contract to serve as a school psychologist. However, Respondent Thymes seeks to adjust her RIF date to August 23, 1997, when she was employed in a probationary capacity as an elementary school teacher. Under the circumstances explained below, Respondent Thymes' seniority date should be adjusted as she requests, which no longer subjects her to being laid off.

A. From 1997 through December 2002, Respondent Thymes worked as an elementary school teacher, during which time she became a permanent employee. From January 2003 through April 2004, she began a series of District approved leaves.

B. At some point during this process, she was training to become a school psychologist. In April 2004, she was asked to serve as a substitute school psychologist while she was still on leave, mainly because the District was enduring a hiring freeze and could only use existing employees to fill positions. She worked for three months as a substitute school psychologist, from April through June 2004.

C. She was not paid for that service and discovered that the District would not pay her because she worked out of classification, i.e., the position of school psychologist is a different classification than as an elementary school teacher. She was told by her supervisor and District HR personnel that she would not be paid for her three months of service unless she signed a formal resignation of service from the District. She did so in order to get paid. Only after she resigned was she paid for her three months of service.

D. Respondent Thymes continued to work regularly as a substitute school psychologist until she was offered a probationary contract to work in that capacity on August 17, 2005, which is her District assigned RIF date.

E. In this case, Respondent Thymes has established all the elements of estoppel against the District: (1) Because the District needed to hire existing employees during a hiring freeze, Respondent Thymes was requested to and allowed to work out of classification as a school psychologist. The District was not only aware of this situation, but it placed Respondent Thymes in her untenable situation; (2) Respondent Thymes' supervisor intended her to work as a substitute school psychologist; (3) Respondent Thymes had no suspicion that the District would not pay her because she worked out of classification or that she would be required to resign in order to be paid retroactively; and (4) Respondent Thymes relied to her detriment on the District's statement that she could only get paid if she resigned from the District, in that the District is now taking the position that the resignation has eliminated her prior 1997 seniority date. (*Crumpler, supra*, 32 Cal.App.3d at 581.) The District has not established a valid reason to require Respondent Thymes to formally resign from service in order to be paid for the three months of service she rendered as a substitute school psychologist at the request of the District. Thus, the District misrepresented to Respondent Thymes the necessity of resigning from the District in order to get paid. The District also put her in a situation of duress, essentially forcing her to resign in order to be paid for service already rendered.

121. (A) W. Scott Norton. He contests the District's RIF date for him of September 16, 2002. He contends his correct RIF date is no later than July 1, 2001, when he began teaching at Maclay Middle School (Maclay) under a District Intern contract.¹⁸ He later discovered that there would not be a position for him the following school year at Maclay in the District Intern program, but that he could remain at Maclay in a position under the University Intern program. On September 15, 2002, he completed and signed a resignation form, which stated that he was resigning from District service, that he intended to apply for an assignment as a University Intern, but that "there is no guarantee of future employment." Respondent Norton signed a University Intern contract and began teaching on September 16, 2002, which is his District assigned RIF date.

¹⁸ He testified that an alternate RIF date could be June 25, 2001, when he began what he referred to as mandated training for which he received regular pay. However, Respondent Norton did not establish that the training was mandatory or that he received regular pay for attending it. The early training does not provide cause to adjust his RIF date.

(B) Respondent Norton testified that he did not intend to resign from the District, but simply wanted to change programs. He also testified that nobody from the District warned him that he would be viewed as separating from service at the District when he signed the resignation form. However, Respondent Norton did not establish estoppel, most notably that he was misled, deceived or given inaccurate information negligently by District authorities (see footnote 8). Respondent Norton had an opportunity to read and consider the resignation form before signing it.

(C) Ultimately, Education Code section 44931 and the *San Jose Teachers* case are not controlling, because it must be concluded that the resignation was not effective. It is not effective because it is clear that Respondent Norton did not intend to terminate or end his employment with the District, and the District did not intend for that either. Indeed, the District's intent is signaled by the fact that Respondent went right back to an assignment, and Respondent kept his probationary status. The parties' real purpose was to "finagle" a way for Respondent Norton to obtain a different assignment and/or remain at Maclay.

(D) In such circumstances, a resignation is not effective. (*Sherman v. Board of Trustees* (1935) 9 Cal.App. 2d 262, 265-266.) In *Sherman*, the teacher had worked for the district for three years. Her employer did not approve of the then-new tenure law, and persuaded her to resign, promising her continued employment. She resigned, which resignation was accepted by the district board, and went back to work for another three years after having applied for reappointment. After her sixth year of service, there was a dispute over whether or not she was tenured, and the district asserted the resignation as a break in her contract that barred tenure at that point. The Court of Appeal rejected the board's position, holding that:

the purported resignation was ineffectual for the reason that it was not made with the purpose of terminating [the teacher's] employment, but on the contrary was presented with the understanding that it was not to terminate her service, but was offered for the mere purpose of avoiding the effect of the tenure law and upon the definite promise that she would be reemployed. . . . A resignation is in the nature of a notice of the termination of a contract of employment and is contractual in nature. It is ineffectual without the intent of the incumbent to sever the relationship of employer and employee. (9 Cal.App. 3d at 265-266.)

(E) In this case, is it clear that Respondent Norton and the District did not intend to sever the employer-employee relationship, as evidenced by their conduct and the testimony of Respondent. Thus, Respondent Norton's RIF date should be adjusted to July 1, 2001. Since there are employees in his subject area junior to him being retained by the District, Respondent Norton shall not be laid off.

LEGAL CONCLUSIONS

Jurisdiction

1. The notice and jurisdictional requirements of Education Code sections 44949 and 44955 were met. (Factual Findings 1-13.)

2. (A) Of the many certificated individuals involved in this case as potential parties, it was only established that the District failed (inadvertently) to serve timely lay off notices on the following five Respondents: John Beilock, Monica Hein, Lisa Jordan, Shelley Lee, and Heidi Nariman. The Accusations against those individuals will be dismissed. Some of the five individuals are junior to Respondents who have the same positions.

(B) Respondents argue that all individuals in the subject areas of the five Respondents in question with greater seniority must be retained. Respondents rely on a literal interpretation of Education Code section 44955, subdivision (b), which provides, “the services of no permanent employee may be terminated under the provisions of this section 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.” This is the so-called “domino theory.”

(C) Application of the domino theory is not supported by relevant legal authority. For example, it has been suggested that the proper remedy for such a situation is for a “corresponding number of the most senior employees” who did receive a lay off notice to have their notices withdrawn. (*Alexander v. Delano Joint Union High School District* (1983) 139 Cal.App.3d 567, 576.) Education Code section 44949, subdivision (c)(3), provides that “non-substantive procedural errors committed by the school district . . . shall not constitute cause for dismissing the charges unless the errors are prejudicial errors.” This provision suggests that when a school district, through oversight, fails to notice one employee, that procedural error should only result in one corresponding respondent having his/her lay off notice withdrawn, as that employee would be most properly viewed as the one suffering prejudice. A noted legal scholar on school district lay off cases in California disapproves of applying the domino theory in cases of good-faith errors by districts. (Ozsogomonyan, *Teacher Layoffs in California: An Update*, (1979) 30 Hastings Law Journal 1727, 1754-1759.) Finally, the approach approved by the *Alexander* court has been generally accepted by ALJs of the Office of Administrative Hearings in cases of good faith errors by school districts.

(D) In this case, there is no evidence suggesting that the failure to provide the five individuals in question with their lay off notices was the result of anything other than inadvertence, which can be reasonably assumed given the massive number of employees involved (or potentially so) in this matter. Thus, the appropriate remedy is for the District to rescind the lay off notices of the five most senior Respondents in the subject areas corresponding with the five Respondents who did not receive their lay off notices. However, the District has determined that there are no Respondents in the same subject area junior to

two of the five Respondents in question (Nariman and Lee) who will be retained by the District next year. There is no harm to be remedied as to those two Respondents. Therefore, only the three most senior Respondents corresponding to the other three Respondents who did not receive a lay off notice shall have their lay off notices rescinded. The District has determined that Respondents James Pulliam, Rene Fuentes, and Seanean Shanahan are the most senior Respondents in the subject areas corresponding with the five Respondents who did not receive their lay off notices. (Factual Findings 1-13.)

3. Temporary teachers may be released at the pleasure of the governing school board. (Ed. Code, § 44949, subd. (a).) The statutory layoff provisions therefore do not apply to them. (Ed. Code, § 44949, subd. (a); *Zalac v. Governing Board of the Ferndale Unified School District* (2002) 98 Cal.App.4th 838.) The precautionary Respondents who the District properly classified as temporary employees are not subject to the protections of Education Code sections 44949 and 44955. The three Respondents identified in Factual Finding 30 are also temporary employees. The Accusations against them should be dismissed.

The District's Competency Criteria

4. (A) A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee is said to displace or “bump” a junior employee who is filling that position. (Ed. Code, § 44955, subd. (c); *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

(B) However, 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 by a reasonableness standard, i.e., the school district's criteria must be reasonable, rather than fraudulent, arbitrary or capricious. (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 808.) The reasonableness standard permits “a difference of opinion on the same subject.” (*Id.*) A school 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”].) However, the *Duax* court opined that a “one in the last two or three (years)” standard “too narrowly defines competency.” (*Id.*) There are no other known appellate decisions to provide further guidance in this area. Therefore, it appears that a recency requirement somewhere between one-in-three years and one-in-ten is appropriate.

(C) Although past lay off decisions regarding other school districts issued by the Office of Administrative Hearings are not binding, it is worth noting that the vast majority of such decisions have upheld criteria from other school districts similar to the District's in defining competency for purposes of bumping. (These decisions are cited in the District's motion-in-limine regarding this issue.) Finally, the ALJ who decided the District's lay off case last year upheld the same competency criteria. While that decision is not res

judicata or collateral estoppel on the Respondents in this case, it still would be unseemly for OAH to uphold the same competency definition one year, but invalidate it the next year.

(D) In this case, the District's competency criteria of one-in-five years past experience is deemed to be reasonable. The evidence in this case abundantly established that the laws, standards, norms, methods, training and technology are constantly evolving on a yearly pace. Requiring teachers seeking to bump into other subject areas to have one year of teaching experience in the past five school years appears to be reasonable. Having teachers with such recent experience is certainly to the benefit of the District's students. The Board's competency criteria is an objective standard, avoiding the often vague and murky questions of competency that can lead to inconsistent or unfair application, which can often prove to be a breeding ground of subjective decision-making and favoritism.

Specific Respondents

5. Pursuant to stipulation between the parties specifically referenced in the record, the layoff notices issued to the involved Respondents shall be rescinded, if not already. The Accusations against those individuals shall be dismissed and they shall be retained for the next school year. (Factual Findings 9, 10, 57, 58, 78 [stipulations pertaining to exhibit 403], 86 and 87.)

6. Pursuant to Education Code section 44955, the Respondents who received precautionary notices relative to the *Reed* schools situation, and the Dual Immersion and International Baccalaureate program skips, shall have their lay off notices rescinded. (Factual Findings 39-56, 88-91.)

7. Pursuant to Education Code section 44955, subdivision (c), the following Respondents established grounds to bump junior employees being retained to teach in assignments which these Respondents are credentialed and competent to perform: Nancy Reyes and Erik Matsubayashi. The Accusations against these Respondents shall be dismissed and they shall be retained for the next school year. (Factual Findings 83-84.)

8. Pursuant to Education Code sections 44845 and 87414, cause was established to adjust the RIF dates of the following Respondents to those specified: Joseph Espinoza, August 12, 2002; Angela Vitalis, date not established; Kirsten Black, September 18, 1995; Christina Thymes, August 23, 1997; and W. Scott Norton, July 1, 2001. The District shall dismiss the Accusations against them and they shall be retained for the next school year. (Factual Findings 97, 98, 119, 120, and 121.)

9. Pursuant to Education Code sections 44845 and 87414, cause was established to adjust the RIF date of Respondent Carole Sielaff to August 22, 2005. However, she failed to establish sufficient seniority to avoid being laid off. The Accusation against her is sustained and she shall be subject to lay off. (Factual Finding 92.)

Overall Conclusions

10. 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. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Services will not be reduced below mandated levels. Cause for the reduction or discontinuation of those particular services relates solely to the welfare of the District's schools and students within the meaning of Education Code section 44949. (Factual Findings 1-27.)

11. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. (Factual Findings 1-27.)

12. By taking into account 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. (Factual Findings 1-121, Legal Conclusions 1-11.)

ORDER

1. The Accusations are dismissed against Respondents Lynn Aafedt; Tove Aitchison; Nicole Allison; William Gabriel; Jennifer Horton; Nadezhda Kostritskaya; Petra Krumland; Susan Smith; Haikaz Vardavarian; Roger Wilson; and James Womack. These Respondents shall be retained for the 2012-2013 school year.

2. The Accusations are dismissed against Respondents John Beilock; Monica Hein; Lisa Jordan; Shelley Lee; and Heidi Nariman. These Respondents shall be retained for the 2012-2013 school year. The District has determined that Respondents James Pulliam, Rene Fuentes, and Seanean Shanahan are the most senior Respondents in the subject areas corresponding with the five Respondents who did not receive their lay off notices. The Accusations are dismissed against Respondents James Pulliam, Rene Fuentes, and Seanean Shanahan, and they shall be retained for the next school year.

3. The Accusations are dismissed against Respondents Rosemarie Bernier; Stacia Salanoa; Valary White; Allison Walker; Carthec Davidson; Frank Treece; Mary Ann Topico; Po Yu; Tamunosa Okiwelu; Rosela Hipolito; Lourdes Gallardo; Treesa Lowther-Sopata; Gina Aguirre; Derek Patrimonio; Corazon Lazaro; Don Alvarado; Marilou Abrantes; and Susan Fernandez. These Respondents shall be retained for the 2012-2013 school year.

4. The Accusations are dismissed against those Respondents who executed the stipulation contained in exhibit 403 and who are identified in Appendix 1 attached herein. These Respondents shall be retained for the 2012-2013 school year.

5. The Accusations are dismissed against Respondents Nancy Reyes and Erik Matsubayashi. These Respondents shall be retained for the 2012-2013 school year.

6. The precautionary Respondents who received lay off notices because they were identified as temporary employees are not subject to this lay off proceeding. The Accusations against them are dismissed.

7. The District's RIF dates for the following Respondents shall be adjusted: Joseph Espinoza, whose correct RIF date is August, 12, 2002; Angela Vitalis, whose correct RIF date was not established by the evidence, and therefore the District shall determine and adjust her correct RIF date; Kirsten Black, whose correct RIF date is September 18, 1995; Christina Thymes, whose correct RIF date is August 23, 1997; and W. Scott Norton, whose correct RIF date is July 2, 2001. The Accusations against these Respondents shall be dismissed and they shall be retained next school year.

8. The District's RIF date for Respondent Carole Sielaff shall be adjusted to August 22, 2005, however the Accusation against her is sustained and she shall be given a final lay off notice.

9. The Accusations are sustained against the remaining Respondents. Notice shall be given to those Respondents that their services will not be required for the 2012-2013 school year in inverse order of seniority.

Dated: June 6, 2012

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

APPENDIX 1: Respondents who executed the stipulation referenced in Exhibit 403

	PERSON ID	NAME	RIF SUB- JECT	COMPETENCY
1	789121	AAFEDT, LYNN	HTH	SBS
2	770958	ABAD, CONSUELO	LIB	ENG
3	750794	ABRAHAM, DARREN	CSC	ENG/IAT
4	789446	ADAIR, MATTHEW	ELR	MMD
5	956378	AGUSTIN, SHULAMITE	HTH	SBS
6	770795	AITCHISON, TOVE	HTH	SBS
7	771659	ALLISON, NICOLE	HTH	SBS
8				
9	733043	ALTOUNIAN, LILIT	CNS	JMA
10	772678	AMBROSIO, HEATHER	ART	ENG
11	789106	AQUINO, YOLANDO	BEA	CSC
12	809362	ARANAGA, TRAVIS	SST	MAT
13	593266	ARIAS, ALBERTO	IAD	IAT
14	713134	ARMSTRONG, CATHLEEN	ENG	SST
15	760157	AXELMAN, ANDREA	ELR	ENG
16	770975	BAILEY, BARRETT	CSC	BEA
17	773219	BALALA, KIMBERLY	LIB	SST
18	703274	BALYAN, NARINE	ELR	MSD
19	639576	BELLO, KAI	ELR	JEN
20	575820	BENNETT, LEGDRENA	ELR	JEN
21	790308	BERHITOE, GEORGE	ENG	MAF
22	985529	BINNS, ALISSA	ELR	LHD
23	789040	BLOCK, JASON	ELR	JEN
24	780586	BOLLER, RICHELLE	ELR	SST
25	663291	BOTTS, CATARINA	ELR	MMD
26				
27	800973	BUNNELL, DAVID	ART	ENG
28	794910	CANDLER, ARTIS	HTH	SST
29	920216	CAPORALE, LOIS	ELR	MSD
30	804721	CHONIS, JOYCE	HTH	SBS
31	760061	COHEN, ILENE	ELR	MMD
32	926269	CONNOR, MICHAEL	SST	SBS
33	587870	CONTRERAS, ELIAS	IAD	IAT
34	788858	CORDERO, MARIE	ELR	ENG
35	800930	CORDOVA, DARCY	ELR	MMD
36	728228	CURIEL, GABRIELA	ELR	JSC
37				
38				
39				
40	770696	DE VORE, ADAM	ELR	JMA
41				
42	928157	DODGE, JENNIFER	ENG	SIF
43	760658	DRAKE, WENDY	ELR	MMD
44	800626	DREW, SORAYA	HTH	SBS
45	770664	ELLIS, JADE	LIB	ENG
46				

47	645802	FERNANDEZ, BERTHA	ELR	JEN
48				
49				
50	780891	FONSECA BAI, PAULA	LIB	ENG
51	703816	FRIERSON, ANGELA	CNE	CNS
52				
53				
54				
55	706951	GALVEZ, JAVIER	ELR	SST
56	706348	GARCIA, MONIQUE	ELR	SST
57	970183	GARCIA-BERRY, CARLA	HTH	SBS
58				
59				
60	746148	GOLDARREH, SUSAN	LIB	ELR
61				
62	800648	GONZALEZ, GERARDO	CSC	MAT
63				
64				
65	782322	GRIMM, KATHLEEN	ELR	ENG
66	719867	GUERRERO, PHILLIP	HTH	CNS
67	789849	GULUK ISENSEE, DENISE	ELR	JMA
68	974063	GUTHRIE, JACOB	PEA	MAT
69	772711	HAGGERMAN, KATHY	HTH	SST
70	800577	HAJDUK, DEBORAH	ELR	MMD
71	780170	HARRIS, CINDY	CSC	MAF
72	779013	HARTUNIAN, DIANE	FLF	FLS
73	790275	HASSON, AARON	CSC	SST
74	957290	HAUSER, ALAN	SST	SBS
75				
76	779219	HENDERSON, ALBERTA	ELR	MAF
77	623178	HERNANDEZ, MARIO	IAG	ELR
78	771325	HERNANDEZ, RODOLFO	ELR	JMA
79				
80	700107	HOLLOWAY, ELIZABETH	LIB	ENG
81				
82	702456	HOWE, ELIANA	ELR	MMD
83	770709	HUTLOFF, GLEN	ENG	SST
84	778076	JACKSON, KAMILAH	LIB	ENG
85	780709	JACOBY, ANDREW	HTH	PEA
86	782008	JARVIS, STEPHEN	ELR	SIF
87				
88				
89				
90	757063	KENT, STEVEN	BUS	CSC
91				
92	759173	KIDWELL, KEISHA	LIB	HTH
93				
94	804715	KINCAID, SANDELLE	ELR	ENG
95	789864	KMIEC, STEPHANIE	ELR	JEN
96	691832	KOSKI, REVELEANNE	ELR	SBS
97	1004292	KRUMLAND, PETRA	HTH	SIF

98	781770	KUEBLER, JOLENE	HTH	FLS
99	778809	KULENCAVICH, WILLIAM	ELR	JMA
100	780816	LAIDLAW, JEFF	ART	PEA
101	804414	LANCASTER, JOANNA	ENG	MMD
102				
103				
104				
105	725778	LEMUS, CYNTHIA	LIB	ENG
106				
107	782384	LLAMAS, ELIZABETH	ELR	JMA
108	957315	LOSA, EDNA	CSC	MAT/IAT
109	232360	LOUIE, LINDA	ELR	JMA
110	809204	MAGYAR, CINDY	ELR	SIF
111				
112	283497	MARSHALL, THOMAS	IAA	IAT
113	702203	MARTINEZ, MARTHA	HEA	SBS
114	707675	MAYE, OLGA	ELR	JMA
115	260195	MCKINNON, CYNTHIA	ELR	CNS
116	742188	McNEILL, DONALD	CSC	IAT
117	771147	McNULTY, ERIN	HTH	SBS
118	622673	MEDINILLA, EDGAR	CSC	PEA
119	614639	MELENDEZ, SANDRA	PEA	CSC
120	773310	MILLER, SALLY	LIB	ENG
121	740425	MILLER, STEVEN	LIB	ENG
122				
123	762042	MINARD, DIANA	ELR	JEN
124	600258	MITCHELL, MICHELE	ELR	CNS
125	782076	MOAYERI, LILY	LIB	MAT
126				
127				
128	789573	MOSSADAQ, YOUSSEF	FLF	FLAZ
129	800321	MUNOZ, IVETTE	ELR	ENG
130	760109	NAVARRO, ANGELICA	ELR	ENG
131				
132	664143	NOVOA, ANTONIO	SST	JMA
133	729169	ORTIZ JOHNSON, RE- BECCA	ELR	MMD
134	718681	PADILLA, RODOLFO	ELR	SST
135				
136	957542	PAGAN, ANTHONY	CSC	IAT
137	788439	PARK, HYUN	ELR	MMD
138				
139				
140	804379	PORTNOFF, SCOTT	CSC	MAT
141	804978	POWELL, ERNEST	ENG	SST
142				
143				
144				
145	782029	RAMOS, ANA	ELR	MAF
146	782808	RANDICK, ALYSON	HTH	SBS
147	770879	RASKIN, BEATRICE	ELR	ENG

148	956500	RICE, PATRICIA	ENG	SPI
149				
150				
151	743513	RIVLIN, DANIELLE	ELR	JMA
152	760142	RODRIGUEZ, ARGENTI- NA	ELR	ENG
153				
154	641981	ROMERO ARCINIEGA, ERIKA	CSC	JMA
155	586203	ROMERO, ALICIA	ELR	CNS
156	788495	RUSH, JOHN	BEA	CSC
157				
158	772543	SABBAH, SOPHIE	HTH	PEA
159	696250	SALAZAR, JOSE	CSC	IAT
160	781844	SAUCEDA, MARIA	ELR	JEN
161	925084	SAYERS, PATSY	HTH	SBS
162	795951	SCANTLIN, SHAYLEEN	ELR	SBS
163	542647	SCHERR, ANNETTE	LIB	SCB
164	746318	SHOWRAI, DARA	ELR	MAT
165				
166	729741	SMITH, TOBY	ELR	PEA
167	700061	SNELL, YOLONDA	MUS	MAF
168	799785	SONMEZAY, MEHMET	BEA	MAT
169				
170	771423	STERN, SCOTT	HTH	JSS
171	805018	SUN, CAROL	ELR	MSD
172	767511	SUNG, KYUNG WON	ELR	JMA
173				
174				
175	686606	TISCARENO, MARCELA	ELR	MMD
176	684732	TOKESHI, STEVE	ELR	JMA
177				
178				
179				
180	930976	VARDAVARIAN, HAIKAZ	HTH	SIF
181	603785	VASSERMAN, SOFIA	ELR	JSC
182	740941	VENGER, GREG	HTH	PEA
183	712311	VIZAS, CECILY	ELR	JEN
184	664418	VLADOVIC, JOHN	ELR	MAT
185	531038	WALD, JANICE	ENG	SST
186	804070	WARKENTINE, ELLEN	ELR	ENG
187	622902	WARNER, TERESA	HTH	PEA
188	767653	WILSON, LESLIE	ELR	MAT/JSC
189				
190				
191	804011	WOOD, TAMARIN	LIB	ENG
192				
193	789912	YOON, KATHY	ELR	JMA
194				
195				
196				

197	801868	SOOKIASIANS, SELIN	ELR	MMD
198	708155	NAHLE-SALAZAR, RANIA	ELR	CNS/PSA
199	772635	HIGGINS, PAMELA	HTH	JSC
200	740525	LYDON, MELODEE	LIB	ELR
201	653629	BELTRAN-MATA, SANDRA	LIB	ELR
202	608873	WALKER, ALLISON	LIB	JEN
203	712297	CARROLL, BLAIR	LIB	ENG
204	781877	RUIZ, MARCO	LIB	SBS
205	699037	GOLDEN, CYNTHIA	ELR	JEN
206	805040	WROBLESKI, MARY	ELR	SBS
207	723288	DAHL, ANTHONY JAMES	ELR	MMD
208	779025	LESSEM, JORDAN	BEA	CSC
209	789369	WEXLER, BARBARA	ELR	ENG
210	986527	JACKSON, FREDERICK B.	PEA	APE
211	752209	MLADEN, CHRISTOV	ENG	SST
212	682989	WOLL, JEANETTE	HEA	JMA
213	788588	NAKASHIMA, DAN	JEN	SST
214	780035	COSTIGAN, VALERIE	ELR	JMA
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