

BEFORE  
THE GOVERNING BOARD OF  
VALLEJO CITY UNIFIED SCHOOL DISTRICT

<p>In the Matter of the Accusation Against:</p> <p>CERTAIN NAMED CERTIFICATED EMPLOYEES OF THE VALLEJO CITY UNIFIED SCHOOL DISTRICT REPRESENTING 77.30 FULL TIME EQUIVALENT POSITIONS</p> <p style="text-align:center">Respondents.</p>	<p>OAH No. 2008030353</p>
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**PROPOSED DECISION**

On April 28, 2008, within the Board Room of the Administrative Offices of the Vallejo City Unified School District at 665 Walnut Avenue, Vallejo, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Lawrence M. Schoenke, Attorney at Law, of Miller Brown and Dannis, 71 Stevenson Street, Nineteenth Floor, San Francisco, California 94105, represented Superintendent Mary M. Bull, Ph.D., (the Superintendent), for the Vallejo City Unified School District (the District).

David Weintraub, Attorney at Law, of Beeson, Tayer and Bodine, 1404 Franklin Street, Suite 500, Oakland, California 94612, represented Respondents Angela Bandy (also known as A. Nicole Bandy), Stacy Bates, Retina Bowen, Jennifer Castro, Donna Chin, Kristina Crowley, Veera De La Mater, Rosalinda De Paz, Byron Durkee, Taira Elrod, Frances Grasso, Shanon Hawkesworth, Timothy Hite, Tovah Keleshian, Kristina Kittel, Karen Mallaya, Brooke Peterson, Kristin Rogerson, Katy J. Thomas, Maria Christina Thomas, Danielle Tinsley, Christy Whitmire, and Jennifer Zeeb.

Respondents Miranda Crane, Christine Dalisay, Miriam Dizon, Cathleen Gilmore, Gina Glass, Katrina Hammer, Michelle Hawthorne, Tiffany Jackson, Michael Mercado, Richard Responte, Gina Rolling, Karen Soltesz, and Diana Williams were not represented by legal counsel at the hearing, but each of those individual respondents had requested a hearing in this matter. The District Superintendent's personnel served each of those respondents with notice of the hearing but they failed to appear for the hearing of this matter. The absent respondents, who were not represented by legal counsel, were in default pursuant to Government Code section 11520, and the hearing proceeded in their absence.

On April 28, 2008, the parties submitted the matter and the record closed.

### FACTUAL FINDINGS

1. On or before March 5, 2008, the District's Superintendent, or her designee, presented the District's Governing Board with a recommendation that the District give notice that particular kinds of services, then offered through the District, be reduced or eliminated for the ensuing school year (2008-2009).

2. The respondents to the proceeding are identified by name on the list attached hereto as Attachments "A."

3. Ms. Nona Cohen-Bowman, in her capacity as the District's Director for Human Resources, appeared at the hearing. She provided competent, credible and persuasive evidence at the hearing of this matter.

The prospective elimination of particular kinds of services for the 2008-2009 school year directly results from a prospective shortfall in money for the District's budget. In order to partially aid the District in crafting a reasonable budget for the ensuing school year, the Superintendent, or her designee, recommended to the Governing Board that certain certificated positions be eliminated due to lack of money to fund operations, programs and functions of the District.

4. With the aid of the District's Human Resources Director Cohen-Bowman, the Superintendent recommended on or before March 5, 2008, that the District eliminated 77.30 full time equivalent positions for the ensuing school year.

5. On March 5, 2008, the District's Governing Board unanimously adopted District Resolution number 2401.

The resolution recites that, pursuant to Education Code section 44955, it has become necessary for the District to reduce and/or to discontinue, no later than the beginning of the 2008-2009 school year, particular kinds of services in the form of F.T.E. (full time equivalent) certificated positions as follows:

<i>Particular Kinds of Services</i>	<i>Full Time Equivalent Positions</i>
BTSA Support Provider	2.0
PDC Teacher	2.9
Teacher on Special Assignment	
Library Media (JBHS)	1.0
Categorical Funded EL Teacher Leader	
(Special Projects)	1.0
Categorical Funded ELA Teacher Leader	
(Reading First Program)	3.6



Categorical Funded District ELA Teacher Leader (Special Projects)	0.8
Categorical Funded Teacher On Special Assignment (Math & Technology)	2.0
Categorical Funded Secondary ELA Teacher On Special Assignment	1.0
Categorical Funded Staff Development Teacher	1.0
Categorical Funded Teacher Leader	31.5
Alternative Education Teacher, Community Day School	1.0
Opportunity Teacher (Middle School)	4.0
Elementary Support Teacher	1.7
Secondary Support Teacher (Middle School)	2.6
Senior High School Counselors	12.0
Class Size Reduction (CSRI) High School English	7.8
Secondary Academic Coach (Middle School)	1.0
World Languages, Filipino	0.4
Total FTE Eliminated or Reduced	77.30

6. The District's Human Resources Director, Ms. Cohen-Bowman, further established that upon learning that the District was required to initiate lay-off proceedings regarding positions held by certificated employees of the District, the director, with her staff, took reasonable and lawful steps to develop the District's seniority list for the District's teachers. She studied records of certificated employees and set forth on the District's 2007-2008 seniority list dates calculated as the hire dates or first date of paid service for all teachers employed by the District.

7. Ms. Cohen-Bowman, and District staff in the Human Resources Director's office, identified 82 individuals, who held positions as interns, probationary employees, as well as permanent teachers, who occupied positions that were subject to elimination or reduction under the Board's resolution.

8. By individual letters, dated March 14, 2008, Ms. Nona Cohen-Bowman, dispatched preliminary notices to a number of FTE position holders, including each respondent, that the District's Governing Board had an intention to reduce or to discontinue the particular service provided by each person who received the notice. Hence, due to the prospective elimination or reduction of the particular kind of service now rendered to the District, each of the respondents learned the District would not reemploy the named individuals in the certificated positions each had worked. (The letters, which served as the preliminary notice to respondents, reflected a date of "March 14, 2008;" but, Ms. Cohen-Bowman explained that the form letters were prepared sooner

than expected and hence were taken to a post office on Thursday, March 13, 2008, and mailed on that earlier date.)

Also the letter, dated March 14, 2008, which had attached to it the District's resolution and other pertinent documents, conveyed to each respondent a right to file a request for hearing "to determine if there is cause for not employing [the named respondent] for the ensuing school year."

9. On Thursday, March 13, 2008, the District's Director of Human Resources caused to be mailed to the address of record for Respondent Tovah Keleshian the letter that set out the preliminary notice of layoff actions of District certificated employees. Because the address of record for Respondent Keleshian did not include an apartment number, the letter, which had been dispatched by certified mail, was marked by the United States Postal Service on Saturday, March 15, 2008, as "Return to sender. Insufficient address. Unable to forward."

On Monday, March 17, 2008, personnel in the office of the District's Director of Human Resources conversed with Respondent Keleshian about the return to the office of the District's Human Resource of the envelope that bore the preliminary notice of her layoff. On that date, Respondent Keleshian conveyed to the personnel in the office of the District's Director of Human Resources that her address included an apartment number. Also on March 17, 2008, an envelope, which contained the preliminary notice, was mailed to Respondent Keleshian's address that included her apartment number.

Respondents did not show at the hearing of this matter that Respondent Keleshian was prejudiced by any form of deprivation of due process rights because of the misaddressed envelope that contained the preliminary notice of her layoff. The misaddressed envelope may be attributed to neglect by Respondent Keleshian in failing to assure that the address of record on file with the District included an apartment number at the mailing address that represented the site of her residence.

10. The written preliminary notice to respondents from the District's Superintendent and the District's resolution set out legally sufficient reasons of the District's Board's intent to eliminate particular kinds of services.

11. Respondents each timely requested in writing a hearing to determine whether or not cause exists for not reemploying each respondent for the ensuing school year.

12. Each respondent filed timely notices of defense.

13. All pre-hearing jurisdictional requirements were met.



### *Respondents' Contentions*

14. Respondents contend that Respondent Rosalinda De Paz, who has a multiple subject credential and has a first date of paid service to the District later in time than teachers who are junior to her for whom the District proposes to retain for the next school, should have dismissed the accusation as filed against her. Such dismissal is sought even though Respondent De Paz is currently providing services to District students at the high school level under a contract whereby she holds a 0.4 FTE position to teach under the District's World Language program in the area of the Filipino language. Respondents aver that Respondent De Paz is entitled to bump a junior teacher who holds a 1.0 FTE position at the elementary school level because she holds a multiple subject credential.

Also, respondents aver the District's seniority list is substantively defective and improper insofar as two certificated employees, namely Respondent Timothy Hite and Respondent Shanon Hawkesworth, who dispute the accuracy of the seniority list regarding their respective first date of paid service to the District. Each of those two respondents avers that due to his or her respective reporting to an "in service" training day on a date before other teachers began the school year that the District should grant each respondent an such earlier date as his or her first date of paid service as a probationary employee of the District.

Further, respondents contend that the District failed to timely make service upon Respondent Tovah Keleshian of the District's preliminary notice of the lay off action. Respondents assert that because proper service of the preliminary notice is a jurisdictional requirement and because Respondent Keleshian did not receive a preliminary notice by certified mail by the statutory deadline of March 15, 2008, that the accusation must be dismissed as against her.

And respondents aver that even though Respondent Donna Chin resigned her tenured, permanent position the District in June 2006 that the District should have granted her a seniority date to the beginning of her initial period of employment with the District that is August 1978. Because she returned to the District within 39 months of having resigned her tenured position in June 2006, respondents argue that the District must grant Respondent Chin her original seniority date.

Respondents' contentions are without merit and are rejected.

### *Individual Respondents*

#### *a. Ms. Rosalinda De Paz*

15. Respondent Rosalinda De Paz did not attend the proceeding in this matter to offer evidence in support of the contention made by her attorney on her behalf.

16. The District's Human Resources Director offered persuasive evidence regarding the District records that reflect information that pertains to Respondent De Paz.

Respondent De Paz has a first date of paid service to the District of August 29, 2004. She holds a multiple subject credential, a CLAD certification and a supplemental authorization to teach "Intro: Filipino," which is a world languages course.

Under her contract with the District, Respondent De Paz occupies a 0.4 FTE position to teach a course titled "World Language: Filipino," which is a service that is identified in Broad Resolution 2401 for elimination in the ensuing school year.

17. Respondent De Paz provided no competent evidence that the District has retained any teacher junior to her for which Ms. De Paz possesses a credential and is currently competent to teach. Nor did Respondent De Paz establish that the Superintendent committed a procedural error in the initiation in the initiation of the lay-off action that adversely affects her teacher position with the District.

*b. Ms. Shanon Hawkesworth*

18. Respondent Shanon Hawkesworth (Respondent Hawkesworth) offered evidence at the hearing of this matter.

Respondent Shanon Hawkesworth (Respondent Hawkesworth) holds a multiple subject credential and an ELD/SDAIE.<sup>1</sup> Respondent Hawkesworth has a first date of paid service to the District of August 20, 2007. Currently Respondent Hawkesworth works as a first year probationary elementary school teacher at Elsa Widenmann Elementary School

19. Respondent Hawkesworth erroneously believes that her first day of paid service to the District was August 16, 2007. On that date she enjoyed a "buy-back" day for which she was paid a stipend for attending in-service training. And on August 17, 2007, she had another "buy-back" day for "social studies." The District paid Respondent Hawkesworth a stipend for the "buy-back day," in the amount of \$225 per day.

On August 16 and August 17, 2007, Respondent Hawkesworth received in-service training at the direction of the principal of the school at which Respondent Hawkesworth eventually provided services as a teacher. But the District reasonably considers those dates (August 16 and August 17) as being in-service training days, which do not mark Respondent Hawkesworth's first day of paid service as a probationary teacher to the District.

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<sup>1</sup> "ELD" is the acronym for "English Language Development" while "SDAIE" connotes "Specially Designed Academic Instruction in English."



20. The District's Human Resources Director offered persuasive evidence that the District's personnel records that pertained to Respondent Hawkesworth do not show that she had a first day of paid service to the District as a probationary employee other than the date of August 20, 2007.

The District's records do not support Respondent Hawkesworth's contention that she began work for the District on August 17, 2007. Contrary to the position of Respondent Hawkesworth, the District's Human Resources Director compellingly represented that any "in service" day for which a teacher was paid before the beginning of the school year, or before the date specified in the subject teacher's contract as the beginning of the term of the agreement, was treated as a voluntary day for work. Such voluntary day was viewed by the District's Human Resources office as being outside the certified employee's contract; and as such, the certificated employee's in-service day was not treated as a first day of paid service to the District.

21. The District's Assistant Superintendent for Human Resources, Reynaldo Santa Cruz, offered evidence at the hearing of this matter.

Assistant Superintendent Santa Cruz persuasively presented an overview of the meaning of the District's "buy-back days" program. Those days are designated as staff development days that were initiated at school sites and were planned by school site administrators. The days are considered voluntary days and are viewed by the District as being outside regular work year that consists 183 days. Buy-back days, as staff development days, are not included as part of the three days set aside for mandatory preparation by certificated employees. The District does not require a teacher to attend a "buy-back" days training program, although a teacher is paid a stipend of \$225 per day.

22. Respondent Hawkesworth provided no competent evidence that the District has retained any teacher junior to her for which Ms. Hawkesworth possesses a credential and is currently competent to teach. Nor did Respondent Hawkesworth establish that the Superintendent committed a procedural error in the initiation in the initiation of the lay-off action that adversely affects her teacher position with the District.

c. *Mr. Timothy Hite*

23. Respondent Timothy Hite (Respondent Hite) did not attend the proceeding in this matter to offer evidence in support of the contention made by his attorney on his behalf.

24. The District's Human Resources Director offered persuasive evidence regarding the District records that reflect information regarding Respondent Hite.

Respondent Hite has a first date of paid service as a first year probationary teacher of August 20, 2007. He holds a multiple subject credential and he occupies a 1.0



FTE position. Respondent Hite works as an elementary school teacher at a District school site.

25. Assistant Superintendent Santa Cruz established that Respondent Hite attended training over three days beginning on August 13, 2007, whereby he was paid at the "sub rate" of \$125 per day. Also, Respondent Hite was paid a stipend of \$225 per day for two days of "in service" training on August 16 and August 17, 2007. However, none of those days was part of the contract year for certificated employees. By engaging in the voluntary training on those days, the District did not view Respondent Hite as acquiring a first day of paid service as a probationary teacher for any of that time.

26. Respondent Hite provided no competent evidence that the District has retained any teacher junior to him for which Mr. Hite possesses a credential and is currently competent to teach. Nor did Respondent Hite establish that the Superintendent committed a procedural error in the initiation of the lay-off action that adversely affects his teacher position with the District.

*d. Ms. Tovah Keleshian*

27. Respondent Tovah Keleshian (Respondent Keleshian) did not attend the proceeding in this matter to offer evidence in support of the contention made by her attorney on her behalf.

28. The District's Human Resources Director offered persuasive evidence regarding the District's records that reflect information that pertains to Respondent Keleshian. And the District's seniority list presents further evidence regarding Respondent Keleshian.

Respondent Keleshian has a first date of paid service as a first year probationary teacher as of November 16, 2007. She now holds a multiple subject credential and she occupies a 1.0 FTE position. Respondent Keleshian works as an elementary school teacher at a District school site.

29. On Thursday, March 13, 2008, the District's Human Resources office used the address of record, as placed on file by Respondent Keleshian, to send the subject District certificated employee, by certified mail, the District's preliminary notice that she was subject to a lay off proceeding and that she had a right to participate as a respondent in a formal administrative adjudication proceeding.

On Monday, March 17, 2008, the United States Postal Service returned to the District's Human Resources office the envelope that contained the preliminary notice that had been intended for delivery at Respondent Keleshian's address of record. During the course of that same day, a District employee within the Human Resources office conversed with Respondent Keleshian about the returned envelope. Respondent Keleshian informed the District employee that the street address on the envelope was



correct, but the envelope did not reflect the number for her apartment unit. And, on that same date personnel in the Human Resources office sent the preliminary notice to Respondent's Keleshian's address that included an apartment number.

Respondent Keleshian offered no evidence that she suffered any prejudice or deprivation of her due process rights by reason of the misaddressed envelope reaching her correct address after March 15, 2008.

30. Respondent Keleshian provided no competent evidence that the District has retained any teacher junior to her for which Mr. Keleshian possesses a credential and is currently competent to teach. Nor did Respondent Keleshian establish that the Superintendent committed a procedural error in the initiation of the lay-off action that adversely affects her teacher position with the District.

e. *Ms. Donna Chin*

31. Respondent Donna Chin (Respondent Chin) offered evidence at the hearing of this matter.

Respondent Chin is a permanent and tenured certificate employee of the District. She has a first date of paid service with the District of August 20, 2007. She holds a multiple subject credential and an ELD/SDAIE authorization. Respondent Chin works as a first grade teacher at Highland Elementary School.

Respondent Chin worked in the past for the District from August 1978 until June 29, 2006, when she resigned her tenured, permanent certificated employee position in order to accept a position as a literacy teacher in another school district.

32. The District's Human Resources Director offered credible evidence that when Respondent Chin resigned from the District she lost her previous seniority date, but she did not lose her tenured status as a permanent employee with the District.

33. Respondent Chin was not persuasive that the District should have granted her a seniority date that reflects the date in 1978 when she began her initial employment relationship with the District before she resigned her position in June 2006.

34. Respondent Chin provided no competent evidence that the District has retained any teacher junior to her for which Ms. Chin possesses a credential and is currently competent to teach. Nor did Respondent Chin establish that the Superintendent committed a procedural error in the initiation of the lay-off action that adversely affects her teacher position with the District.



*District's Reasonable Basis to Proceed*

35. Human Resources Director Ms. Cohen-Bowman was credible and compelling in refuting the contention of Respondent Hite and Respondent Hawkesworth that the District erred in crafting the seniority list as to their respective first date of paid service in a probationary position with the District. The District's Human Resources Director persuasively noted that the District's seniority list was correct as to those respondents. Respondent Hite and Respondent Hawkesworth each hold a first date of paid service to the District of August 20, 2007. Those respondents' claim that they were entitled each to have a first date of paid service to the District reflected as the date on which they reported for "in service" training was not correct.

An in-service training date by respondents is voluntary in nature, although employees are paid a stipend for participation. Furthermore, such training is an exercise that springs from the discretion of a supervisor or principal in the process of orientation or staff development. And, such in service training is not a component of the contract between the District and the new certificated employee.

36. As to Respondent Keleshian's motion to dismiss the accusation as filed against her, Ms. Cohen-Bowman offered compelling evidence to support the District's position that it met the jurisdictional requirements of the statute to timely serve the preliminary notice of layoff upon Respondent Keleshian.

The notice sent from the District's Human Resources office to Respondent Keleshian reflected the address of record as provided by the affected certificated teacher. When she was first employed by the District in about November 2007, Respondent Keleshian had provided the District with a street address that did not reflect an apartment number. The argument that Respondent Keleshian had received other mail from the District that was timely delivered is of little consequence in showing failure of the District to timely mail, by way of certified mail, the preliminary notice of layoff by March 15, 2008. First, as Complainant persuasively propounded a rational inference that regular mail was more likely delivered to the subject respondent's home by a postal employee who was familiar with Respondent Keleshian's apartment number and made delivery of the mail with ordinary postage; but, certified mail, more likely than not, was made by a postal worker who was not familiar with Respondent Keleshian's apartment number and returned the certified mail as being "undeliverable." Second, the failure in the delivery of the letter, via certified mail, to Respondent Keleshian was attributable to her failure in providing the District with an accurate address for her residence. Third, on Monday, March 17, 2008--the date which marked the statutory deadline because March 15 fell on a Saturday--Respondent Keleshian personally received verbal notice from the Human Resources office of the return to that office of the envelope that bore the preliminary notice of the pending layoff action.



### *Ultimate Factual Findings*

37. During the immediate past school year, the Board has found that the District faces a prospective budget shortfall in that the amount of funding from the State of California may be markedly reduced for the upcoming school year. Hence, the Board has determined that sufficient money is not available to provide the same number of services during the ensuing school year so that the District must prospectively reduce or eliminate a number of FTE particular kinds of services, including the positions held by many of the affected respondents.

38. No competent and credible evidence establishes that as a result of the proposed elimination of the full time equivalent positions respectively held by respondents, the District will retain any teacher who is junior to respondents to perform services for which respondents have been certificated or found to be competent to teach in such FTE positions for the next school year.

39. The recommendation of the District's Superintendent and the Board's decision to eliminate or discontinue most of a total of 77.30 FTE positions were neither arbitrary nor capricious. Rather, the Superintendent's recommendation and the Board's decision were within the proper exercise of the District's discretion.

40. The District's proposed elimination or discontinuation of a number of FTE positions for the ensuing school year is related to the welfare of the District and its overall student population.

41. The Board determined that it will be necessary, due to the elimination of particular kinds of services, to decrease the number of teachers before the beginning of the next academic year. The Board lawfully directed the notification to respondents of the elimination of the certificated positions held by each respondent.

### LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

2. The District provided all notices and other requirements of Education Code sections 44949 and 44955. This conclusion of law is made by reason of the matters set forth in Factual Findings 1 through 13, inclusive.

3. Evidence Code section 664 establishes a presumption that the action or official duties of a public entity, such as the District and its governing board, have been regularly performed. Respondents offer no evidence to rebut the presumption that the District has properly performed actions related to the procedures that seek the non reemployment of respondents.



Board Resolution 2401, as adopted on March 5, 2008, stated that it was the Board's determination that it was necessary to reduce or eliminate particular kinds of services for the 2008-2009 school year.

Education Code section 44949, subdivision (a), requires that no later than March 15 and before an employee is given notice that his or her services will not be required for the ensuing year, the governing board and the employee will be given notice by the superintendent that it has been recommended that preliminary notices be given to employees and the reason for that recommendation.

The preliminary notice is intended to insure that affected employees are informed of the facts upon which they can reasonably assess the probability that they will not be reemployed. The preliminary notice must state the reasons for the recommendation. (*Karbach v. Board of Education* (1974) 39 Cal.App.3d 355.)

A governing board's decision to reduce or eliminate particular kinds of services need not be tied to any statistical computation, such as a projected decline in the number of students in the affected district. The number of terminations by a PKS reduction of certificated employees depends entirely on the district's governing board's decision regarding how many, or which, services to reduce or to eliminate. It is wholly within the Board's discretion to determine the numbers by which the District will reduce a particular service. (*San Jose Teachers Assn. v. Allen*, (1983), 144 Cal.App.3d 627.)

The Vallejo City School District Governing Board's decision to eliminate seventy seven and three-tens (77.3) F.T.E. positions for the 2008-2009 school was a discretionary decision that constituted a valid basis for reduction in particular kinds of service under the Education Code.

#### *Motion for Dismissal by Respondent Keleshian*

4. Respondent Keleshian made a motion for dismissal of the accusation as against her because of the supposed failure by the District to make timely service of the preliminary notice upon her by March 15, 2008. The motion is resolved by way of the authority expressed in *San Jose Teachers Assn. v. Allen, supra*, 144 Cal.App.3d 627.

The *San Jose Teachers Assn. v. Allen* decision stated, among other things, that notice to employees under section 44949, subdivision (g), is "deemed sufficient when it is . . . deposited in the United States registered mail, postage pre-paid and addressed to the last known address of the employee." (*San Jose Teachers Assn. v. Allen, supra*, 144 Cal.App.3d at 634.) (Emphasis added.) In this matter, on Monday, March 17 (the date required for delivery of preliminary notices of layoff because March 15 fell on Saturday), Respondent Keleshian learned that the misaddressed envelope with the preliminary notice had been returned to the District's offices, that she was a recipient of a layoff notice and that the District was placing into the mail an envelope with her full, accurate



address. There was no substantive error on the part of the Superintendent or her designee in making delivery upon Respondent Keleshian of the preliminary notice of her layoff by the statutory deadline of March 15, 2008.

*Respondent Chin*

5. Education Code section 44848 sets out:

When any certificated employee shall have resigned or been dismissed for cause and shall thereafter have been reemployed by the board, his date of employment shall be deemed to be the date on which he first accepted reemployment (if reemployed before July 1, 1947) or rendered paid service (if reemployed after June 30, 1947) after his reemployment. When an employee's services are terminated for lack of enrollment or discontinuance of service or are otherwise interrupted in a manner declared by law not to constitute a break in service, his original order of employment shall stand.

Education Code section 44931 prescribes:

Whenever any certificated employee of any school district who, at the time of his or her resignation, was classified as permanent, is reemployed within 39 months after his or her last day of paid service, the governing board of the district shall, disregarding the break in service, classify him or her as, and restore to him or her all of the rights, benefits and burdens of, a permanent employee, except as otherwise provided in this code. However, time spent in active military service, as defined in Section 44800, subsequent to the last day of paid service shall not count as part of the aforesaid 39-month period.

The decision in *San Jose Teachers Association v. Allen*, *supra*, 144 Cal.App.3d 627 is instructive:

Appellants also contend that the district misclassified two other groups of individual employees for purposes of seniority; however, these contentions lack merit. The

first group consists of five individual *appellants* who attained permanent status, resigned, and then were rehired within 39 months and were not given credit for purposes of seniority for their preretirement employment. If a certificated employee resigns and is thereafter reemployed, his date of employment is normally deemed by section 44848 to be the date of reemployment; however, the original date is effective if the employee's services were 'terminated for lack of enrollment or discontinuance of service or are otherwise interrupted in a manner declared by law not to constitute a break in service . . .' Appellants rely on a combined reading of the latter part of section 44848 and the provisions of section 44931 which state when a permanent employee resigns and is reemployed within 39 months, the district 'shall, disregarding the break in service, classify him as, and restore to him all the rights, benefits and burdens of, a permanent employee, except as otherwise provided in this code . . . .' We hold that section 44931 provides that the break in service shall be 'disregarded' as to individual rights, burdens and benefits, but not as to seniority rights which affect other employees. The 'except as otherwise provided in this code' provision in section 44931 must be read as deferring to section 44848.

(*San Jose Teachers Assn v. Allen, supra*, 144 Cal.App.3d at 641.)

The District is correct that Respondent Kim, as a certificated teacher who resigned and later was rehired, assumes the date of her reemployment in August 2007 as her current seniority date. Respondent Kim does not reacquire as a seniority date the August 1978 date when she was first hired by the District.

#### *Ultimate Determinations*

6. Pursuant to Education Code sections 44949 and 44955 cause exists for the District to eliminate or reduce particular kinds of services for the ensuing year where such services are now offered in District schools. And cause exists to give certain respondents notice that for the ensuing school year they will not be reemployed to provide services now rendered by such respondents. These determinations are made by reason of the matters set out in Factual Findings 16, 17, 20 through 22 inclusive, 24 through 26 inclusive, 29, 30, 35 through 37 inclusive, and 41.

7. The discontinuation of the subject particular kinds of service provided by each respondent relates solely to the welfare of the District and its students within the

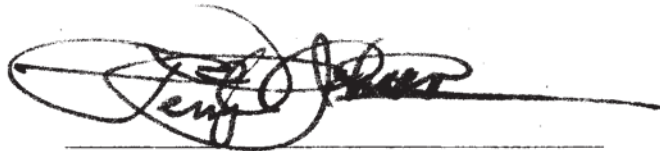


meaning of Education Code sections 44949 and 44955, by reason of the matters in Factual Finding 40.

ORDER

1. The Accusation served on each respondent is sustained.
2. Final notice may be given to respondents, named in Attachment A hereto, that their respective services will not be required for the 2008-2009 school year because of the reduction or discontinuance of the particular kinds of services by the District.

DATED: May 6, 2008

A handwritten signature in black ink, appearing to read "Perry O. Johnson", written over a horizontal line.

PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings