

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

In the Matter of the Reduction in Force of:

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

OAH No. 2013030556

Respondents.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on April 22 through May 1, 2013, in Sacramento, California.

Attorneys Dulcinea A. Grantham and Thomas R. Manniello, of Lozano Smith, represented the Sacramento City Unified School District (District).

Attorneys Margaret Geddes and Costa Kerestenzis, of Beeson, Tayer and Bodine, APC, and Attorney Ann N. Arkush represented respondents identified in Attachment A, attached hereto and incorporated herein by reference.

Unrepresented respondents Tammy Abdo, Richard Godnick, Maria Lopez, Christina Otterson and Tiffany Peltz-Planchon did not appear.

Oral and documentary evidence was received. The parties filed simultaneous closing and reply briefs on May 3 and 4, 2013, respectively.¹ The record was closed and the case was submitted for decision on May 4, 2013.²

¹ The District's Closing and Reply Briefs were marked as Exhibits 50 and 51 for identification, and Respondents' Closing and Reply Briefs were marked as Exhibits PP and QQ for identification.

² Education Code section 44949, subdivision (c)(3), provides that the proposed decision shall be submitted to the governing board and to the employees on or before May 7.

FACTUAL FINDINGS

Jurisdiction

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

2. On or before February 21, 2013, the Superintendent recommended that the Board reduce and/or discontinue particular kinds of certificated services (PKS) no later than the beginning of the 2013-2014 school year in the amount of 153.9 full-time equivalent (FTE) positions. The Board adopted Resolution No. 2735 (PKS Resolution) that determined it was necessary to reduce and/or discontinue PKS in the amount of 153.9 FTE positions.

3. The Board further determined that it was necessary by reason of the reduction and/or discontinuance of services to decrease the number of permanent and/or probationary certificated employees at the close of the 2012-2013 school year by a corresponding number of FTE positions. The Board directed the Superintendent or his designee to send appropriate notices to all employees whose services would be terminated as a result of the Board's action to reduce or eliminate PKS.

4. On or before March 15, 2013, the District served 164 affected certificated employees (not including administrators), including respondents, with written notice, pursuant to Education Code sections 44949 and 44955,³ that their services would not be required for the next school year (preliminary notice). Each preliminary notice set forth the reasons for the recommendation. The preliminary notice attached and incorporated by reference Resolution No. 2735, which listed the services to be reduced or discontinued, resulting in a proposed reduction in the certificated staff by 153.9 FTE positions.

5. Respondents, except those with individual service issues discussed below, timely filed requests for hearing to determine if there is cause for not reemploying them for the next school year.

6. Mr. Serna made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense (Accusation packet) were timely served on respondents. The parties stipulated that the Accusations were served via certified mail on March 26, 2013.

The parties waived this requirement, and agreed to extend the submission date three days to May 10, 2013.

³ All statutory references are to the California Education Code unless otherwise indicated.

7. Respondents, except those with individual service issues discussed below, filed timely individual or group Notices of Defense to the Accusation.

8. All respondents are certificated permanent or probationary employees of the District.

9. Jurisdiction for the subject proceedings exists pursuant to Education Code sections 44949 and 44955.

Cause for Reduction or Elimination of Services

10. The District is a large urban school district that provides services to approximately 47,900 students on 81 campuses in and surrounding the City of Sacramento. The District employs approximately 2,669 certificated employees. It has experienced declining enrollment and increasing costs. It has had difficulty meeting its financial obligations over a two to three-year period, and its spending deficit has resulted in the District's budget being placed on "qualified status." The District is seeking to close a \$5.6 million deficit this year. The Superintendent and his staff developed proposals for programs and services to be reduced and/or eliminated to address the anticipated budget deficit.

Approximately 90 percent of the District's budget is comprised of personnel costs (salaries and benefits for certificated and classified staff). As a consequence of the anticipated budget shortfall, the District recognized that it would need to reduce programs and services for the 2013-2014 school year.

Services to be Reduced or Eliminated

11. In response to the Superintendent's recommendation above, the Board adopted Resolution No. 2735 on February 21, 2013. The PKS Resolution authorized the Superintendent or his designee to take action to reduce or discontinue the following particular kinds of services for the 2013-2014 school year:

Services	Number of FTE Positions
Principal	12.0 FTE
Assistant Principal, Middle School	1.0
Site Instruction Coordinator	3.0
Specialist II, Learning Support Services	2.0
Coordinator II, Linked Learning	1.0
Specialist, Research	1.0
Sub-Total	20.0
Clinical Psychologist/Social Worker	3.0 FTE
Computer	1.0

Counselor	19.0
English	11.4
Foreign Language: Spanish	3.0
Geography (grades 9-12)	1.0
Health Science	1.0
History (grades 7-8)	1.0
Elementary Teacher	25.0
Teacher (CORE)	2.0
Teacher, Resource	6.5
Training Specialist	9.5
Math (grades 7-9)	8.0
Music	1.0
Nurse	2.6
PE	5.8
ROP: Digital Imaging	1.0
ROP: Law & Legal	2.0
ROP: Computer Application	1.0
Science: Biology	1.0
Science: Chemistry	1.0
Science: Life Science	2.0
Science: Physical	1.0
Social Science	3.0
Social Worker	7.6
Teacher, Resource, Parent/Preschool Adult	2.0
Teacher, Parent/Preschool Education	3.5
Teacher, Children's Center	3.0
Sub-Total	128.9 FTE

Adult Education

English as a Second Language	4.0
Basic Education	1.0

Total FTE Reduction 153.9 FTE

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

Competency Criteria

13. The PKS Resolution states that Education Code section 44955, subdivision (b), does not define “competent.” Exhibit B to the PKS Resolution states that “‘competent’ shall be defined according to the following...” and lists the following criteria for an individual to be deemed competent under section 44955, subdivision (b) (competency criteria):

- (A) Highly Qualified status, as required by the No Child Left Behind Act;
- (B) Possession of a BCLAD, CLAD or other equivalent English Language Learner Authorization to the extent required by the position;
- (C) In order to work in a Priority School, training and/or experience working in a Priority School setting;
- (D) In order to work in a Waldorf School, formal training/coursework in the Waldorf method of teaching;
- (E) In order to work in a Dual Immersion program, one (1) year of experience in the past five (5) years teaching in a Dual Immersion program.

14. On April 4, 2013, the Board amended above competency criterion (C) to state as follows: “C. In order to work in a specific Priority School, training in the curriculum, methodologies and techniques used in the Priority Schools, and experience in implementing such curriculum, methodologies and techniques.” The Board made the amendment in response to a statement of decision in proceedings in the Sacramento County Superior Court which, among other matters, considered competency criteria used by the District during the 2012-2013 layoff proceedings, which criteria were substantially identical to criteria used by the District this year.

Skipping Criteria

15. On February 21, 2013, the Board adopted Resolution No. 2736, entitled “Resolution to Determine Criteria for Deviation from Terminating a Certificated Employee in Order of Seniority (‘Skipping Criteria’).” “Exhibit A” to the Resolution includes skipping criteria and states:

For the 2012-2013 [sic] school year, to meet the requirements of Education Code section 44955, the Board of Education determines the needs of the District and the students by establishing the following skipping criteria:

- A. Individuals fully-credentialed to serve in classes requiring Bilingual Cross-Cultural Language and Development (“BCLAD”) certification, to the extent necessary to staff BCLAD required positions.
- B. Individuals fully-credentialed to serve in a Special Education assignment. For purposes of this criteria, a “Special Education assignment” does not include an Adapted Physical Education assignment.
- C. Individuals currently serving in a Priority School assignment, who will also be teaching in a Priority School assignment for 2013-2014.
- D. Individuals who have one (1) or more years of experience teaching in a Dual-Language Immersion Program.
- E. Individuals who have two (2) or more years of experience teaching and/or specialized training in a home or hospital setting.
- F. Individuals who have formal training/coursework in the Waldorf method of teaching.

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

Tie-Breaking Criteria

16. At the February 21, 2013, meeting, the Board also adopted Resolution No. 2737, Resolution of Determination for Tie-Breaking Criteria (Tie-breaker Resolution). The Tie-breaker Resolution set forth criteria for breaking ties when two or more certificated employees with the same first day of paid service were facing potential layoff. The Board listed categories for consideration and assigned points to each category. The Tie-Breaking Criteria were used to break ties in seniority dates among multiple certificated employees. There were no challenges to the content or application of the Tie-Breaking Criteria in this proceeding.

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

17. The District maintains a list of certificated employees that contains data on the first date of paid service in probationary status with the District (seniority date), certifications

and authorizations held, current assignments and other data. In December 2012, in preparation for budget reductions, the Human Resource Services Department sent Verification Statements, with attached Employee Information Report 298e, to all site and department administrators of the District for distribution to each certificated employee. If employees made corrections to the Employee Information Report, District personnel checked the information and, if correct, entered the corrected information into the District data system. Any corrections were reflected in the master seniority list. The District relied on the verifications provided by certificated employees in updating the District's seniority list, which it then used to determine the order of layoff.

18. The District made some changes to the seniority list based on application of Tie-Breaking Criteria.⁴ At hearing, the parties agreed that the seniority date for Sharon Bertrand will be corrected to be September 6, 2011. The District updated its records to reflect this information.

Method of Effectuating the Reduction in Services and Identifying Affected Employees

19. The Board's Resolutions delegated to the Superintendent and his designees the authority to implement the reduction and elimination of the listed particular kinds of services, to identify and determine which District employees would be affected by the reductions and to draft and serve the preliminary notices upon those employees. Mr. Serna, Human Resources Director Cancy McArn and the Human Resource Services Department personnel analysts (HR staff) worked together to identify the services to be reduced as set forth in the PKS Resolution. After identifying the positions to be eliminated, HR staff used the seniority list to identify the least senior employees providing those services. Those least senior employees who fit the skipping criteria were skipped. HR staff then applied the competency criteria to the remaining employees to determine which employees were competent under the criteria to bump into positions held by junior employees. HR staff created a "bumping chart" that was used to identify the certificated employees who could bump junior employees. The end result of the process was that the District identified the most junior employees who were not skipped and were not eligible to bump more junior employees. The District issued preliminary notices to these employees.

20. The District identified and issued preliminary notices to employees occupying more than the 153.9 FTE positions identified in the PKS Resolution, to account for rescissions that might result from successful challenges at hearing, temporary employees who might be successful in challenging their temporary status or other causes. Prior to and during the hearing, the District rescinded the preliminary notices issued to several respondents and other certificated employees who are not respondents. The rescissions were based on the fact that certain potential challenges were not made at hearing, and took into account "positively assured attrition" (i.e., resignations, retirements, and other permanent

⁴ Gavin Williams and Anita Carapiet have the same seniority date (9/7/99), as do Sara Taylor and Evelyn Ramos (9/2/08). Application of tie-breaking criteria resulted in Mr. Williams being senior to Ms. Carapiet, and Ms. Taylor being senior to Ms. Ramos.

vacancies and leaves of absence). As a result of the rescissions, the District has not issued more preliminary notices than authorized under the PKS Resolution.

Rescissions

21. Prior to or at the time of hearing, the District rescinded the planned reduction of 19.0 FTE Counselors. The District identified carryover funding to pay for counseling services next years. By restoring the 19.0 FTE counselor positions, the District now seeks to reduce 134.9 FTE in certificated positions. No counselors were sent preliminary notices of layoff.

The District issued dual layoff notices to 43 certificated employees who it considered to be temporary employees. These employees also received, or will receive notice of their release and non-reelection for employment under Education Code section 44954. The parties stipulated that the District will reclassify respondent Jennifer Kadry as a probationary employee, and not as a temporary employee. Ms. Kadry may be laid off by the District as a probationary employee. As to the remaining 42 temporary certificated employees, the District will rescind the dual notice issued to each of them, and release them under section 44954 as temporary employees. Given the District's rescission of the precautionary layoff notices, no issues in these proceedings remain for these temporary employees.

22. The District has rescinded layoff notices to the following certificated employees:

- a. Judianne Alves-Powell
- b. Michelle Carroll
- c. Sandra DeAnda
- d. Kim Reyes
- e. Rosario Ruiz
- f. Ramona Schlect
- g. Marea Silva
- h. Rosaline Vincent

Attrition

23. The District considered resignations, retirements, dismissals and non-reelections of certificated employees as part of the layoff process. The District identified 46 individuals who will retire or resign prior to the 2013-2014 school year. The District took these individuals into account in determining the overall number of layoff notices to issue. It has satisfied its obligation to take attrition into account.

Late Requests for Hearing

24. The District identified 109 certificated employees who did not request a hearing, or who submitted a late hearing request. Eight of these employees were represented

at hearing. Of these eight employees, one withdrew her notice of defense.⁵ The remaining seven appeared and testified as to the circumstances and reasons for filing late requests for hearing. Five employees⁶ testified persuasively to equitable circumstances favoring their inclusion as respondents, notwithstanding their failure to request a hearing on or before the date specified. (Ed. Code, § 44949, subd. (b).) They were allowed to participate as respondents in these proceedings. The testimony of two other employees was considered in determining that their failure to file a timely request for hearing constituted a waiver of their right to a hearing.⁷

Late Notices of Defense

25. The District identified 19 individuals who filed late notices of defense. As to nine individuals, the District stipulated that it would waive any untimeliness to their notices of defense and include them as part of the instant proceedings “provided that the Respondents agree that they are not challenging their layoff and agree to be laid off for the 2013-14 school year.” This stipulation applies to the following individuals:

- a. Theresa Bachman Tavianini
- b. Sharon Bertrand
- c. Jennifer Kadry
- d. Danielle Martin
- e. Minden Newman
- f. Jennifer Osalbo
- g. Kelly Thompson
- h. Stefan Villegas
- i. Heather Wagers

26. The District resolved other issues with several respondents who filed late notices of defense.⁸ Respondents Anita Carapiet and Siphwi Mashinini-Nigl waived their right to hearing by filing late requests for hearing. The remaining six respondents who seek inclusion in these proceedings, notwithstanding their late filing of notices of defense (NOD) which were due April 3, 2013, included:

- a. Tracy Adams NOD filed April 18, 2013

⁵ Respondents stipulated that Erika Jensen did not submit a request for hearing. Accordingly, they withdrew her notice of defense.

⁶ These individual include Yip Tek Chanh, Sandra DeAnda, Monica Dyer, Katherine Hensley and Pamela Patterson.

⁷ These two individuals are Anita Carapiet and Siphwi Mashinini-Nigl.

⁸ See, for example, earlier Findings relating to Sharon Bertrand, Sandra DeAnda and Jennifer Kadry.

- b. Loveleen Ashat NOD filed April 8, 2013
- c. Jane Crumbley NOD filed April 5, 2013
- d. Monica Dyer NOD filed April 5, 2013
- e. Lorrinda Johnson NOD filed April 8, 2013
- f. Sara Pickering Pick NOD filed April 8, 2013

27. Tracy Adams has a September 4, 2007 District seniority date. She worked as a substitute or temporary teacher for the District through the 2011-2012 school year, and was re-employed as a probationary resource intervention teacher for this school year. In past years she had been released as a temporary employee, and therefore did not participate in layoff proceedings. She requested a hearing and received an accusation packet, including a form notice of defense, at the end of March 2013. She did not read it carefully, and was not aware that she needed to file the notice of defense until she was advised to do so on April 15, 2013. She filed it the following Monday, April 18, 2013. Ms. Adams explained that she was under the mistaken impression that she was a temporary employee and therefore could not participate in these layoff proceedings.

The District contends that all late filings of a notice of defense constitute a waiver of the right to hearing. Regarding Ms. Adams, the District noted that by not filing her notice of defense until April 18, 2013, by not raising issues related to her resource teacher position during discovery, and by not disclosing documents relating to her defense until the time of hearing, the District suffered prejudice.

The above matters were all considered in determining that equitable circumstances favor inclusion of Ms. Adams as a respondent, notwithstanding her filing a late notice of defense. She is allowed to participate in these proceedings.

28. Respondents' counsel indicated that Jane Crumbley's name was inadvertently omitted from the Notice of Defense filed on April 2, 2013 by counsel. Ms. Crumbley is permitted to participate as a respondent in these proceedings.

Monica Dyer testified to the circumstances leading to her late filing of her request for hearing on March 21, 2013. As noted in Finding 24, she testified persuasively to equitable circumstances favoring her participation in these proceedings, notwithstanding her failure to request a hearing on or before the date specified. Because she filed a late request for hearing, the District never served her with an accusation packet. She nevertheless filed a notice of defense on April 5, 2013. Under these circumstances, she is permitted to participate as a respondent in these proceedings.

29. Loveleen Ashat, Lorrinda Johnson and Sara Pickering Pick filed late notices of defense on April 8, 2013, and waived their right to a hearing under Education Code section 44949, subdivision (c)(1), and Government Code section 11506, subdivision (b). Respondents' suggestion that they should have been afforded an additional five days by analogy to Code of Civil Procedure section 1013 is not persuasive otherwise. The short time periods for a response under Education Code section 44949 were intended to accommodate

the narrow window in which certificated layoffs must take place, and respondents cite no authority making Code of Civil Procedure section 1013 applicable to these proceedings. It is also noted that the District agreed to extend the time period for every employee to file a notice of defense from five to eight days in these proceedings.

Individual Bumping Issues

30. Economic layoffs are generally to be carried out on the basis of seniority. A teacher with more seniority typically has greater rights to retain employment than a junior teacher. A senior teacher whose position is discontinued has the right to a position held by a junior teacher if the senior teacher is properly credentialed and competent. (Ed. Code, § 44955, subd. (b).) That displacement of a junior teacher is known as “bumping.” In general, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers if the senior teacher has both the credentials and competence to occupy such positions. (Ed. Code, § 44955, subd. (c).)

31. Alternative Education Assignments. Respondents identified three teachers at American Legion Continuation High School (ALCHS) who are junior to respondents noticed for layoff. The ALCHS teachers are Pedro Garbay (12/6/10)⁹, Launa Block (10/2/06) and Charles Rosemeyer (1/14/08). ALCHS is an alternative education school. Qualified teachers may be assigned to an alternative education school with their consent. (Ed. Code, § 44865.) Respondents believe the following senior teachers are qualified to bump into the alternative education positions: 1) Lorrinda Johnson (9/29/04); 2) Chanh Yip Tek (9/30/04); and 3) Veasna Nim (10/11/04). Respondent teachers all hold multiple subject credentials.

The District noted that both Launa Block and Charles Rosemeyer hold single subject social science credentials, and that they teach courses at ALCHS requiring this credential. Respondent senior teachers are not credentialed and competent to teach social science related courses at ALCHS. Continuation high school students require such courses to meet graduation requirements.

Pedro Garbay is a Secondary School Resource Teacher at ALCHS. The District explained that this is an interview-only position as set forth in Article 8.2.16 of the Collective Bargaining Agreement between the District and the Sacramento City Teachers Association (SCTA). Senior teachers cannot bump into these positions. For the above reasons, the senior respondent teachers cannot bump into the alternative education positions at ALCHS.

32. Middle School Assignment. Respondent Joanna Evans (10/10/05) is credentialed to teach English in grades 7-9, as she holds a multiple subject credential with an English Authorization. She is senior to Cynthia Leriche (9/5/06) and Brenda Elazier (9/5/06) who are both assigned to teach English at District middle schools. The layoff notice to Joanna Evans should be rescinded.

⁹ (District seniority date.)

33. Resource Teacher Assignment. Tracy Adams (9/4/07) is an elementary school resource teacher. She was identified for layoff by virtue of a senior training specialist bumping into her position. Two resource teachers junior to Ms. Adams are assigned to other District schools, one an elementary resource teacher (Jacquelynn Pullano (12/17/07)) and the other a middle school resource teacher (Jennifer Ellerman (10/27/08)). The District has suggested that this is another situation governed by Article 8.2.16 of the Collective Bargaining Agreement between the District and SCTA. But this begs the question how is it that Ms. Adams, a resource teacher, was bumped by Stephanie Lee, who was in a training specialist position identified for elimination under the PKS resolution. The District is instructed to consider what application, if any, Article 8.2.16 has to the rights of Tracy Adams to bump into the elementary and middle school resource teacher positions held by junior teachers.

34. Priority School Teachers Who Were Not Skipped. The District determined not to include physical education (P.E.) teachers and counselors on the list of Priority School skips. Respondents identified two additional Priority School teachers who were not added to the list of skipped teachers. Sherri Donovan (9/5/06) is an English teacher at Fern Bacon Middle School. She holds a single subject English teaching credential. The other teacher is Heather Bennett (9/8/09), who teaches English at Will C. Wood Middle School. She also holds a single subject English teaching credential. Respondents identified two senior respondents (Joanna Evans (10/10/05) and Monica Dyer (12/4/06) who are certificated and competent to teach middle school English.¹⁰

35. The District amended its Priority school skip list at the time of hearing to add three additional teachers – Ariane Bair, Christine Ha and Ana Elias-Morales. All teach English in District middle schools. Respondents contend that the amendment of the skip list does not change the fact that the District did not skip those individuals, and therefore seek rescission of layoff notices to three senior respondents certificated and competent to teach in those assignments.¹¹

The District explained that during the hearing it discovered that due to a clerical error, the names of these three Priority School employees were omitted from the skip list. The District noted that these three individuals were in fact skipped, as evidenced by their not receiving a layoff notice. The three employees were also listed on the training matrices for

¹⁰ The layoff notice to Joanna Evans should be rescinded pursuant to Finding 32. Monica Dyer also contends that she has the special training and experience necessary to teach in Priority Schools under Education Code section 44955, subdivision (d). Her qualifications in this respect are discussed later as part of the skipping analysis. Satisfaction of this higher standard would make it unnecessary to also conduct an analysis of whether Ms. Dyer meets District threshold competency criteria.

¹¹ Respondents identified Camica Edwards (2/13/07), Sara Pickering Pick (9/2/08) and Christin O’Cuddehy (9/15/08) as being the next senior respondents who can teach these middle school English assignments.

their respective Priority School sites, which were considered by the District in assessing the training and experience of the skipped employees. No prejudice to respondents was occasioned by the District's omission of these three employees from the skip list. The error was corrected by way of amendment. For these reasons respondents are not entitled to rescission of layoff notices to the three senior teachers as requested.

36. P.E. Teacher. Respondent Sean Finegan (1/30/09) is the most senior P.E. teacher who received a layoff notice. Per the Board's PKS Resolution, P.E. was to be reduced by 5.8 FTE. The District's Bump Chart identified 7.7 FTE for layoff. As the most senior P.E. teacher, Mr. Finnegan's layoff notice should be rescinded.

Skipping

Background and Controlling Authority

37. The Education Code contains an extensive network of statutes governing the employment rights of public school teachers. "The purpose of the tenure law is to give employment security to teachers while protecting the community from ineffective teachers." (*Curtis v. San Mateo Junior College Dist.* (1972) 28 Cal.App.3d 161,165.) "A school district may not avoid the purposes of the tenure law by use of a subterfuge." (*Mitchell v. Board of Trustees* (1935) 5 Cal.App.2d 64, 68. "Thus, administrative practices that circumvent valid expectations of reemployment created by the tenure statutes are not permitted." (*Santa Barbara Federation of Teachers v. Santa Barbara High School Dist.* (1977) 76 Cal.App.3d 223, 230.) The requirement of seniority-based layoffs under Education Code section 44955 dates back to the 1930's. School Code 5.711 was enacted and amended in 1935 and required, when layoffs were implemented that, "employees shall be dismissed in the inverse of the order in which they were employed." (*Statutes of 1935, Chapter 690*; See also *Chambers v. Bd. of Trustees of City of Madera School Dist.* (1940), 38 Cal.App.2d 561, 566.)

38. The Education Code permits school districts to implement layoffs of certificated employees to effect a reduction or discontinuance of a particular kind of service and layoffs must proceed in accordance with the criteria set forth in section 44955 and the procedures prescribed by section 44949. The District is statutorily authorized to reduce teaching staff and is required to proceed according to seniority principles. The statute specifically protects tenure rights and seniority. Teachers must be laid off, rehired, assigned and reassigned based on their seniority. (See Ed. Code, §§ 44955, 44956, 44957.) Accordingly, section 44955 prohibits the layoff of a senior employee, if a junior employee is retained to perform a service which the senior employee is credentialed and competent to render.

39. The manifest intent of the Legislature is that discontinuance of a position must result in termination of the most junior qualified employee, and therefore districts must appoint ("bump") the most senior, qualified teacher to a position. (*Poppers v. Mount Tamalpais Unified School Dist.* (1986), 184 Cal.App.3d 399, 405.) The tenure system "has

raised immeasurably the dignity and professional competency of our teachers, and the legislative act which established it requires an interpretation which carries out, and not one which defeats its purpose.” (*Fuller v. Berkeley School Dist.* (1934) 2 Cal.2d 152, 159)

40. The seniority rule is not absolute, and a junior teacher with a needed credential or skills may be retained even if a more senior teacher is terminated. Such “skipping” is recognized by statute and appellate law. (See Ed. Code, § 44955, subd. (d)(1); *Bledsoe v. Biggs Unified School District* (2009) 170 Cal.App.4th 127; *Santa Clara Federation of Teachers, Local 2393 v. Governing Board of the Santa Clara Unified School District* (1981) 116 Cal.App.3d 831).

In *Bledsoe*, the Court of Appeal examined whether, given the protections afforded to senior teachers, a school district could lay off a senior certificated employee when it skipped two junior employees who were teaching in a community day school for students who had been expelled or who had extreme behavioral difficulties. The school district presented substantial evidence that, even though the senior employee was credentialed and competent to teach in the positions the junior employees occupied, the school district had a specific need for the two junior teachers to teach in the community day school; and that the two junior teachers had special training and experience necessary to teach in the community day school that the senior teacher did not possess. The court determined that, consistent with section 44955, subdivision (d)(1), the school district could skip the two junior employees and lay off the more senior employee. The court held: “While teachers qualified under section 44865 may have the base qualifications necessary to be certificated and competent to render services at a community day school for purposes of section 44955, subdivision (b), subdivision (d)(1) recognizes a district may have special needs for personnel to teach a specific course of study that go beyond base qualifications.” (*Id.* at 139.)

41. The District’s skipping criteria are examined below in the light of the above authority.¹²

Priority School Skips

Background

42. In the spring of 2010, the Superintendent announced the Priority Schools Initiative for the 2010-2011 school year. The Superintendent determined to provide additional resources in terms of finances and personnel to some of the lowest performing

¹² Preliminarily, it is noted that Resolution No. 2736 also proposed to retain individuals who have experience teaching and/or specialized training in a home or hospital setting; individuals who have completed formal training/coursework in the Waldorf method of teaching; and individuals fully credentialed to serve in classes requiring Bilingual Cross-Cultural Language and Development (BCLAD) certification. Respondents do not contest the skipping of these three classes of employees.

schools in the District. He considered the student demographic as well as many sources of data including test scores, attendance and suspension rates to identify the District's most needy schools. The Superintendent designated the following six schools as Priority Schools: Oak Ridge Elementary; Father Keith B. Kenney Elementary; Jedediah Smith Elementary (now Leataata Floyd Elementary); Fern Bacon Basic Middle; Will C. Wood Middle; and Hiram Johnson High School (HJHS). A seventh school, Rosa Parks Middle School, was identified as a Priority School for the 2011-2012 school year.

43. The Priority Schools were established to close the achievement gap between students at the Priority Schools and other schools within the District. The Priority Schools collectively serve 4,600 students, most of whom live in poverty. At the time of their selection, the seven designated schools were among the 20 percent lowest performing schools in California, with Oak Ridge Elementary in the lowest five percent in the state. They were persistently underperforming, in that four of the six schools had been in Program Improvement (PI) status for seven years, and all had been in PI status for five or more years. They had had low yearly improvement rates in the Academic Performance Index (API) and had failed to meet federal and state standards in English-Language Arts (ELA) and mathematics. They had low percentage rates of Adequate Yearly Progress (AYP) in ELA and mathematics. HJHS had the lowest rate of passage of the CAHSEE (high school exit examination) and the lowest graduation rate of the traditional high schools in the District.¹³

44. The student population served in the Priority Schools are primarily economically disadvantaged minority students with more than 90 percent of the students in five of the schools living in or near poverty. The schools have large Title 1 (free or reduced-price meals) participation. In addition, the schools have significant enrollment of English-language learner (EL) students. The school population is not significantly different from the student populations in most of the District's 81 schools. For example, in school year 2011-2012, 71.4 percent of District students received free or reduced price meals.

45. The District intended that the Priority Schools be "incubators of innovation" where innovative instructional techniques and environments could be used and, if successful, exported to the other District schools. Priority School principals were selected who had proven track records of success elsewhere in the District. They were given wide latitude to implement curriculum and interventions. The Priority Schools were initially considered "at least a three year experiment." The District dedicated substantial resources to replacing the former administrators at the Priority School sites, cleaning up school buildings, improving the classroom and school environments and providing training and support to staff.

¹³ Along with the CAHSEE, the results of these assessments are used as a basis for calculating the API, California's yardstick for measuring growth and improvement, and AYP and PI status, which are federal accountability measures. These two systems – API and AYP – convert test results into different measures of academic performance. API ranges on a scale from 200 to 1000, and assigns a single number to schools and districts across multiple subject areas. The API target for California is for all schools and districts to reach an API score of 800 by 2014.

46. The District's Priority School initiative is near completion of its third year. Early indications are that overall academic performance of Priority Schools has improved dramatically. A November 15, 2012 Board of Education Executive Summary, described the academic performance of the priority schools as follows: "The Priority Schools, with one exception, all increased their API scores, with Fern Bacon and Hiram Johnson posting the largest gains of 55 and 34 points respectively. Rosa Parks increased 52 points, Will C. Wood 36 points, Father Keith B. Kenny 22 points and Oak Ridge by 1 point. Leataata Floyd dropped by 29 API points." These API numbers reflected only the single year increase between the 2010/2011 and 2011/2012 school years. Cumulative increases are more impressive. Fern Bacon Middle School, for example, posted API gains of 44 points between the 2009/2010 and 2010/2011 school years, for a cumulative two-year API increase of 99 points. Similarly, HJSH had a cumulative two-year API gain of 93 points, and Oak Ridge Elementary School posted a two-year API gain of 83 points. A year to year API increase of 10 points is considered significant.

Father Keith B. Kenny is no longer in PI status. Fern Bacon and Will C. Wood Middle Schools appear to have satisfied all criteria to be removed from PI status this year.

District's Basis for Priority School Skips

47. The District seeks to exempt most certificated employees at its seven District Priority Schools. It contends that the Priority Schools constitute a course of study, and that the District has discretion to identify such a course of study "to fit the needs of the pupils for which the course of study is prescribed." (Ed. Code, § 51204.) The District notes that each of the Priority Schools serves a student population that is extremely diverse, including significant minority student populations, English Learner (EL) students, students with disabilities, and students who live in extreme poverty. It believes the Priority School students have been historically underserved, as demonstrated by low student test scores, dilapidated school facilities, high truancy and discipline rates, and low graduation rates. All Priority Schools were characterized by a significant lack of student, family and community engagement.

Sarah Noguchi, Ed.D. is a District Assistant Superintendent whose responsibilities include oversight of the seven Priority Schools. She described how Priority Schools have made progress toward District goals by focusing on the following four areas: 1) the use of data; 2) a focus on literacy, which incorporates reading and writing; 3) student and family engagement; and 4) collaborative and common practices. She noted that collaboration is fundamental to the success of Priority Schools, and that it is the "anchor" or "glue" that holds all of the trainings and strategies together that Priority School principals and teachers have successfully implemented over the past three years. The District contends that it is these four focus areas, and the experience implementing the trainings related to each focus area, that constitute the course of study at the Priority Schools.

48. The District's only legal ground for deviating from a seniority-based order of layoff is proof that the certificated employees in the Priority Schools have special training

and experience necessary to teach the courses and perform services in the Priority Schools, which the more senior teachers do not possess. Pursuant to a reading of the statute and *Bledsoe*, the process of skipping should be conducted on a case-by-case basis, where: 1) the District establishes that a particular assignment requires a teacher with special training and experience, 2) the District establishes that the skipped junior teacher has the necessary training and experience, and 3) the District establishes that the individual senior teachers do not have the necessary training and experience for that assignment. (Ed. Code, § 44955, subd. (d)(1).)

49. Here, the District maintains that the skipped certificated employees at the Priority Schools have special training and experience necessary to teach or provide services at those schools, and that all of the senior respondents do not have the necessary training and experience. The District's burden of establishing that the individual senior teachers do not have the necessary training and experience is not satisfied merely by demonstrating that skipped teachers have superior training and experience. The District has suggested that this was the sort of analysis that it undertook, noting that "each of the Priority School teachers has training and experience that each of the Respondents does not possess. Thus, the [skipped] employees ... have training and experience that the more senior employees identified for layoff lack."¹⁴ Any such analysis undertaken by the District is incorrect. Education Code section 44955, subdivision (d)(1) does not authorize the District to skip a junior Priority School teacher simply because that teacher has more training and experience than senior teachers. As long as senior teachers have the training and experience identified as "necessary" to teach the course of study, the senior teacher cannot be laid off before the junior teacher. As respondents correctly noted, the analysis does not look at what training and experience is "preferential," but what is "necessary."

50. The District does not dispute that some respondents have the same types of trainings as the Priority School teachers. However, it believes that respondents do not have the breadth or depth of training and experience possessed by skipped Priority School Teachers. The skipping analysis must accordingly focus upon whether such breadth, depth and intensity of training and experience are necessary to teach in the District's Priority Schools.

As noted in Finding 47, the District required its Priority School teachers to be trained in four focus areas over the past three years. The District maintains that intensive training in these areas is required to teach in its Priority Schools. The training the District believes is necessary in each focus area is detailed below.

¹⁴ See District's Closing Brief, p. 85. Elsewhere, the District argued: "Once a district establishes that its junior employees possess special training and experience justifying their exclusion from layoff, any more senior employee challenging their layoff must do more than establish mere "competency" to teach in the skipped employees' position. They must establish that they possess the *same* level of training and experience as the skipped employee. (*Bledsoe* at 137-38.)" (District's Closing Brief, p. 23, italics in original.)

51. Use of Data to Analyze Student Achievement and Adjust Curriculum. Priority School teachers received Data Inquiry training. This is a multi-day training provided by an outside consulting firm, Transformation by Design, which does follow-up training at each of the school sites and provides coaching and mentoring to teachers to implement the Data Inquiry analysis process in their classrooms. The Data Inquiry process involves collecting data from multiple sources to assess student work/achievement, and requires extensive staff collaboration to identify learner-centered problems. The teachers engage in “data inquiry” by performing assessments of the data, determining what strategies and interventions might be successful, implementing the strategies, and assessing success. The process of data analysis, strategic planning, plan implementation and measurement of the outcome is collaborative, and completion of each round of the process is known as a “cycle of inquiry.”

Staff will typically use Common Planning Time (CPT) in addition to other meeting time, for collaboration and implementation of the Data Inquiry process. CPT is time spent in professional development activities that focus on a school site’s development/improvement plan, or the District Strategic Plan. CPT may be done in department/grade level teams or as whole-staff activities. District Guidelines recommend that CPT meetings “focus on examination of student work, analyzing student/school data, sharing methodologies, and developing curriculum and assessments.”

52. Data Inquiry training began with the 2010-2011 school year with the staff of the Priority elementary and middle schools, except for Rosa Parks Middle School. HJHS staff were not trained directly due to the size of its staff. Instead, a team of HJHS administrators were trained and they returned to the high school to work with other staff in implementing an individualized data analysis method adapted to the needs of HJHS.

The work of Data Inquiry continued for all Priority Schools for the 2011-2012 school year, with some Priority Schools receiving on-site training and coaching. Rosa Parks Middle School staff began Data Inquiry training this second year. They were trained directly by Transformation by Design consultants, with follow up visits at the school site.

The District noted that it was unnecessary to receive direct Data Inquiry training into the third year since its use had become “embedded” in the Priority Schools as a result of the staff’s continuous and collaborative use of the methodologies during CPT. Dr. Noguchi and Priority School principals indicated that the use of Data Inquiry is now “just a part of what they do” and that Priority School staff far surpass the 18 hours of CPT required by the District to engage in this process. During the 2012-2013 school year, Priority School staff received continued training from District Training Specialists and Site Instruction Coordinators throughout the year. Priority School teachers have completed multiple cycles of inquiry, and Dr. Noguchi opined that regarding Data Inquiry they “are at a much deeper level partly because they’ve been having collaborative conversations for a number of years.”

53. The District believes that the above described training and experience in data analysis is necessary to the success of the Priority School Program and fundamental to everything they do. Oak Ridge Elementary School Principal Doug Huscher explained that “a

sharp, laser focus on data is critical” to moving his school forward with student achievement. Mr. Huscher’s staff engages in two to three-week cycles of Data Inquiry where the data/task is “identified, the plans are created, all the lessons that are associated with that are developed, the work is done, the work is collected, the work is reviewed and the conclusions are drawn.” The District believes this degree and intensity of data analysis practiced in Priority Schools such as Oak Ridge Elementary School is simply not present in other District schools. Father Keith B. Kenny Elementary School Principal Gail Johnson noted that without Data Inquiry, “we would be working in the dark; we wouldn’t know what our targets are.” Fern Bacon Middle School Principal Nancy Purcell indicated that Data Inquiry and the use of data are “absolutely necessary” and a “critical component” in working towards every single goal at her school. And HJHS Principal Felisberto Cedros indicated that the use of data is “fundamental” to the work at his high school.

The District established that training and experience in the use of data to analyze student achievement and adjust curriculum/instruction are necessary to teaching in its Priority Schools.

54. Focus on Literacy. Priority Schools, especially at the elementary school level, focus on literacy in improving students’ academic performance. One must “learn to read” before one can “read to learn” as one principal noted. The elementary and middle Priority Schools began in-depth training in instructional methods targeting literacy (reading, writing and speaking) in the summer of 2010, with a program called Write Tools. This is a training program in academic writing. Teachers receive initial and follow up training. In order to integrate the training into daily classroom teaching, trainers provide classroom coaching and modeling of the Write Tools techniques. The Write Tools training was provided by the founder of the program, Alice Greiner. In addition, Write Tools consultants visited the Priority School sites several times during the 2010-2011 school year, and worked directly with teachers in their classrooms to model how to present lessons to students. Since the 2010-2011 training, Priority Schools have expanded their instructional practices to include other literacy-focused instructional methodologies. Area 3 Writing training has replaced some Write Tools training because of its focus on EL and because of its more comprehensive approach to integrating reading and writing into curriculum and activities. Other writing trainings received by Priority School teachers include Systematic Instruction in Phonics and Phonic Awareness (SIPPS), California Treasures, Daily 5, Integrated Literacy and Writing Across the Curriculum. Dr. Noguchi noted that while different Priority Schools are using a variety of literacy trainings in the 2012-2013 school year, all Priority School staff have built on the foundational Write Tools training.

The District’s Priority School focus on literacy is both strategic and necessary. Dr. Noguchi explained that “literacy is essential” because many Priority School students have struggled with reading and writing. Training in literacy instructional methodologies is necessary because of the low reading proficiency of priority school students. Mr. Huscher noted that he needed staff at Oak Ridge Elementary School to “shake it up” in order to create literate students, and that they “had not a day to waste.” Oak Ridge Elementary had an 82-point API gain during its first year as a Priority School. Literacy is also fundamental to the

goal of Priority Middle and High Schools to prepare students for higher learning or for careers. Students need to know how to read, speak and write critically.

The District established that training and experience in Write Tools and literacy training are necessary to teaching in its Priority Schools.

55. Student and Family/Community Engagement. Priority School principals visited their respective schools prior to serving there in order to assess the situation and needs at each campus. All observed a high degree of student disengagement from their classrooms. Disengagement extended into the greater community where many families viewed the school staff with distrust or worse. Mr. Huscher echoed the sentiment of some principals, noting that if they “did not engage our families in a different manner ... [and] provide an engaging, learning experience to our children and plan our lessons more carefully, we would not succeed.” The District requires that Priority School teachers receive trainings on strategies to improve student and parental engagement. The foundational training, Culturally Responsive Teaching Strategies (CRTS), was provided in the summer of 2010. It addressed the various learning styles of students, and provided strategies and techniques to design lessons to appeal to these styles of learning (visual, auditory, and kinesthetic). The purpose of this training was to enhance the ability of Priority School teachers to deliver content to students in a way that is accessible through different learning modalities. Priority School staff received training directly from the founder of this training model, Dr. Sharroky Hollie, and the training continued during the 2010-2011 school year as the CRTS consultants worked directly with teachers in their classrooms. The District noted that CRTS concepts and practices continue to be used in all Priority Schools.

Since the 2010-2011 CRTS training, engagement training has expanded into other instructional practices such as Equity Training,¹⁵ Efficacy Training,¹⁶ Social Emotional Learning (SEL),¹⁷ Restorative Justice and Positive Behavior Intervention and Support (PBIS),¹⁸ all of which focus on building relationships and making curriculum relevant to students.

¹⁵ Equity training is an offshoot of CRTS that examines teaching and learning in a way that ensures every child is treated in an equitable and unbiased manner.

¹⁶ Efficacy training is premised on a belief that all students can learn, regardless of their background.

¹⁷ Social Emotional Learning encourages self-awareness among students and addresses their specific emotional and social needs, with a focus on building productive and positive relationships.

¹⁸ Restorative Justice and PBIS focus on teaching children how to make appropriate decisions about their behavior and building a structural support for students before they take action.

Many Priority School teachers have also received Home Visit Training. Teachers are instructed in how to conduct home visits of students and their families. The experience at Leataata Floyd Elementary School, where Billy Aydlett is principal, is instructive. The student demographic there is 60 percent African American, with the remainder a mix of Marshallese, Latino and Asian. Student family incomes average \$7,000 per year and most reside in public housing. Mr. Aydlett noted that students there chronically underperformed and the community was “historically disengaged from the benefits of the public school system” when he arrived. Parent teacher home visits became central to Mr. Aydlett’s engagement strategy, and it is now the expectation that all teachers conduct regular home visits. Mr. Aydlett noted the benefits of going into an environment where the student is most comfortable, and cultivating a more positive view of the school and the child’s education.

The District established that training and experience in student, family/community engagement are necessary to teaching in its Priority Schools.

56. Collaboration. The Priority Schools are distinguished by the way the content is delivered, evaluated and adjusted when necessary to meet student needs. This contemplates teachers working collaboratively. Dr. Noguchi believes collaboration is foundational to the program’s success. This is perhaps most evident in the Data Inquiry process where teachers work collaboratively in reviewing student work, identifying areas where adjustments are necessary, adjusting instruction and then repeating the cycle. It is also apparent in how teachers work within and across departments and grade levels, or how literacy-focused instructional strategies are coordinated across different classes or departments. Student and community engagement is also a collaborative process.

The District believes that Priority School teachers have, by collaborating, “continuously revisited and cycled back to the foundational trainings received early on in the program with their colleagues.” The District also noted the importance of having both common training *and* experience in the collaborative process. It contends that Priority school teachers have skills that go beyond simply the command of content – viz. experience in collaborating to implement the techniques necessary to deliver the content in a meaningful way. The collaboration experience gained by a Priority School teacher even after one year is significant, and the District believes it is important to the continuing success of the program that such teachers be skipped.

The District established that training and experience in collaborative practices are necessary to teaching in its Priority Schools.

District’s Process in Determining Skips

57. Perspective is important in evaluating the process by which the District conducted its Priority School skip analysis. In *Bledsoe* the Court of Appeal engaged in a rather extensive review of the training and experience possessed by two junior teachers and a single senior teacher in determining whether they had the necessary special training and experience to teach in a community day school. (*Bledsoe v. Biggs Unified School District*,

supra, 170 Cal.App.4th 127) In this case the proposed Priority School skips involve 61 Priority School junior teachers, and 22 senior teachers. Despite the scale of the proposed skips, the District still maintains that it conducted a careful individualized analysis of the training and experience of the employees proposed to be skipped to confirm that they had the training to teach at the Priority Schools. Respondents disagree, contending the District failed to engage in any meaningful individualized analysis, and that it otherwise failed to meet its burden of demonstrating that respondents lacked the necessary training and experience to teach in its Priority Schools.

It fell upon Dr. Noguchi to conduct the skip analysis. Dr. Noguchi obtained and reviewed the training transcripts of all the employees on the layoff list. She reviewed their training transcripts, highlighting any training that she believed could be comparable to trainings of Priority School teachers. Dr. Noguchi also consulted with some of the District's other departments, the Sacramento County Office of Education and the Superintendent's cabinet. Dr. Noguchi was hired by the District in July 2011. At that time, Mary Shelton was the Area Superintendent overseeing the Priority Schools. When Ms. Shelton left the District at the end of the 2011-2012 school year, Dr. Noguchi assumed responsibility for the seven Priority Schools, in addition to 11 other District non-Priority Schools. Dr. Noguchi studied the history of the Priority Schools program and visited each Priority School campus. As Area Superintendent she met individually with Priority School principals every three weeks, and with the entire group of Priority School principals once a month. She believes these regular meetings provided her with a solid understanding of the unique programs, teaching methods and experience resulting from working in the Priority Schools. Priority School principals also prepared training matrices for most trainings attended by their staff over the 2012-2013 school year. These training matrices were provided to Dr. Noguchi.

58. Dr. Noguchi determined, based upon the records and information available to her at the time, that the District's Priority School teachers, excepting those teaching P.E., should be skipped based on their unique training and experience. She further determined that more senior employees proposed for layoff did not possess the necessary training and experience possessed by junior Priority School teachers. While some of the more senior employees had the same trainings, Dr. Noguchi determined that none of them had the complete package of trainings received by the Priority School teachers. In proposing the Priority School skips, the District relied upon Dr. Noguchi's knowledge of the unique educational initiatives offered in the Priority Schools, the related training and experience possessed by Priority School teachers, and the fact that these trainings were not similar in type or scope to those received by non-Priority School teachers.

59. Respondents moved at hearing for a directed verdict on the ground that the District failed to submit any evidence regarding the training and experience of any individual respondent.¹⁹ Respondents note that Dr. Noguchi's review of the training transcripts was

¹⁹ Motions for nonsuit or directed verdict or any other interlocutory motion may not be considered by a hearing officer sitting alone in the absence of the governing agency board. (*Frost v. State Personnel Board* (1961) 190 Cal.App.2d 1, 6.) However, ruling on the

entirely cursory, that she did not conduct a one-to-one comparison of the Priority School employees to be skipped and the respondents to be laid off, and that the training transcripts are on their face incomplete documents in that they do not show all training received during a teacher's employment with the District. Respondents contend that the burden of proving the elements under Education Code section 44955, subdivision (d)(1) lies with the District, and that an essential element is that the more senior employees lack the special training and experience possessed by the more junior employees. Respondents' motion is denied for the reasons set out below.

60. The purpose of these layoff proceedings is to serve as an audit of the process used by the District. Eight days were set aside for hearing, during which respondents were provided an opportunity to present evidence of the training and experience of the affected individuals. In *Bledsoe*, the Court of Appeal noted the importance of employees taking advantage of the procedural due process rights afforded to them during an administrative hearing. (*Id.* at p. 140, fn. 10 ["Of course, plaintiffs were free to challenge the accuracy of the factual matters reflected in the decision or show that there were changes since 2004 to the district's need and/or to the qualifications of Gates and Sormano. They did not do so."]). See also *Southern California Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 545-47.)

Dr. Noguchi's analysis was somewhat cursory, and dependent upon District training transcripts which lacked detail and were not always complete. But even though Dr. Noguchi's analysis was not as comprehensive as that conducted by the court in *Bledsoe*, it was sufficient to determine that, based on the information then available to the District, the skipped teachers had the necessary training and experience to teach in Priority Schools that more senior teachers did not possess.²⁰ In addition, respondents were represented by counsel and provided the opportunity to engage in discovery, to cross examine District witnesses and to present individual testimony and documentation as to why they were qualified to teach in any or all of the Priority Schools. The District noted that over half of respondents presented no such testimony at hearing. And that during the discovery process, with the exception of three respondents, the only documents received regarding respondents' training or experience were the very same documents on which Dr. Noguchi based her analysis of respondents' training.

motion is made in this case as part of the proposed decision for consideration by the District's governing board, thereby obviating any issues arising from any interlocutory disposition of a case prior to board review.

²⁰ That is not to say that the process cannot be improved in the future. For example, District training transcripts could be maintained in different fashion, providing more detail on trainings given during CPT hours. The District could also choose to have its Academic office maintain all training records, as it now does the Transcripts, or keep training records in employee personnel files.

Under all these circumstances the District satisfied its burden under section 44955, subdivision (d)(1) of presenting the evidence upon which it relied in determining that respondents did not possess necessary training and experience to teach in its Priority Schools. Respondents were afforded procedural due process rights and had opportunity to present additional evidence of their training and experience at hearing.

Legal Challenges to Priority School Skips

Respondents' Background and Relevant Facts Regarding Priority Schools

61. Respondents have raised several legal challenges to the Priority School skips that are best considered in context of other evidence they presented regarding the District's Priority Schools. Respondents do applaud the successes of the Priority Schools. They believe, however, that there are many contributors to such success. For example, respondents believe the remarkable turnaround is also due to principals with proven track records, substantially increased resources and the renewed focus on these low performing schools. There is evidence that new and proven leadership was instrumental in turning Priority Schools around in schools that otherwise lacked focus, support and leadership for years. One example is Principal Gail Johnson, whose leadership qualities are apparent. Ms. Johnson served a year as a principal at Father Keith B. Kenny Elementary School *before* it was designated as a Priority School. The school's API scores increased by 84 points that year. Similarly, when Felisberto Cedros was principal at John F. Kennedy High School, that school's API increased by 51 points. In the year he transferred to HJHS, JFK High School's API decreased 23 points, and HJHS's API increased by 59 points. All this suggests that many factors likely contributed to the successes and remarkable turnaround in Priority Schools.

Respondents also note that the student demographic in Priority Schools is not unlike other District schools. Students living at or near the poverty line increased to 71 percent District wide. At least 44 of the District's 85 schools are currently in Program Improvement status, many for five years or more. Other District schools are underperforming at levels even lower than the Priority Schools. In other District schools, API scores have improved significantly without the additional resources and training provided to Priority Schools.²¹

62. Respondents also believe the District has overstated any negative impact that not skipping Priority School teachers may have on the program's continued success. Respondents note, for example, that more than half of the 60 Priority School employees skipped this year were not teaching at their Priority School in its first year as a Priority School. At least nine were not hired at a Priority School until the 2012-2013 school year, and at least 24 were not hired until the 2011-2012 school year. Sixteen have seniority dates in 2011 or 2012.

²¹ Edward Kemble Elementary School (+103); Freeport Elementary (+31); John H. Still Elementary (+31); California Middle School (+53); Health Professions (+33); and New Technology (+39).

Priority School principals testified strongly in favor of the proposed skips. They have invested significant time, energy and resources in the training and development of their respective staffs, and fear they would be starting all over again were junior teachers not skipped. Yet respondents note that the increased Priority School API scores came despite staff turnovers that were substantial in some cases. For example, Oak Ridge Elementary School has 25 certificated staff. It hired five new staff members at the beginning of the 2011-2012 school year, and seven new staff members at the beginning of the 2012-2013 school year. Fern Bacon Middle School has approximately 35 certificated staff. It hired more than 12 new staff members for the 2011-2012 school year, and hired seven new staff members for the 2012-2013 school year. While difficult, Priority School principals have demonstrated skill and success in integrating new employees into their existing team of teachers. It is noted that the number of proposed skips this year are substantial for some Priority Schools. Oak Ridge Elementary School, for example, proposes to skip 11 junior teachers. Other schools have a small number of proposed skips relative to their total certificated staff. The District proposes to retain four junior employees at Will C. Wood Middle School, and two junior employees at Rosa Parks Middle School.

63. Finally, respondents believe that the training they received through the District is comparable, if not identical to that received by Priority School teachers. This will be discussed in detail as it relates to individual respondents. Respondents note generally that it is District policy to train all teachers in Data Wise/Data Inquiry and that many respondents received the same training from Transformation by Design. Similarly, respondents note that the literacy-related trainings have been used at other District schools and that many have had substantial training in Write Tools, often directly from consultant Alice Greiner. Respondents indicated that the engagement related trainings have also been employed at the District's other schools. Finally, respondents believe that teachers collaborate throughout the District and that CPT is implemented in all District schools. Dr. Noguchi confirmed that "All schools have CPT, all schools have grade level meetings. They work together in teams of teachers."

64. Respondents take issue with Dr. Noguchi's claim that the Priority School skips are necessary because the "depth" of the trainings and collaboration at the Priority Schools is distinct from all the District's other schools. Respondents point out that Rosa Parks Middle School, which has been a Priority School for only two years, will be converting from a 7-8 grade school to a K-8 grade school starting in the 2013-2014 school year. Up to 14 certificated positions will be added to this conversion, adding a substantial number of employees who will be trained in the instructional methodologies used at Rosa Parks Middle School. Such plan of expansion by the District tacitly acknowledges that a school might continue as a Priority School notwithstanding integration of a substantial number of new and presumably untrained teachers.

Respondents believe the above matters demonstrate that there is no meaningful difference between the Priority Schools and the District's other schools, and that the "necessary" trainings to work at a Priority School are the same or similar to trainings and practices used at all of the District's schools.

Demonstrated “Specific Need”

65. Respondents contend that the District has failed to demonstrate a “specific need” for personnel to teach a specific course of study. Section 44955, subdivision (d)(1) authorizes a district to deviate from reverse seniority order only if “[t]he district demonstrates a specific need for personnel to teach a specific course or course of study...”

The Priority School initiative identified and then focused on the District’s lowest performing schools when the program began. Respondents noted that by the time the 2011-2012 API reported growth scores were reported, as a collective entity the Priority Schools are no longer in that position, and that in the ensuing years many of the Priority Schools “changed API places with other non-Priority similarly challenged District schools.” For example, Oak Ridge and Father Keith B. Kenny Elementary Schools no longer rank as chronically underachieving District schools.²² Similarly, HJHS’s API score was higher than that for Luther Burbank High School, and the three middle Priority Schools had higher API scores than Kit Carson Middle School.

The determination whether to continue to designate the seven schools as Priority Schools remains well within the discretion of the District’s Governing Board. Such cannot be challenged in these proceedings. The matters set forth in Findings 42 through 46 were also considered in finding that the District has demonstrated a specific need for personnel to teach a specific course of study at the seven Priority Schools.

Priority Schools As a Course of Study

66. Respondents contend that the term “course of study” for purposes of section 44955, subdivision (d)(1) is limited to content or subject matter. They note that Priority Schools teach the same content as the other District schools, to largely the same student population. On that basis respondents urge that the proposed Priority School skips should be invalidated.

This same question was addressed in the previous two years’ layoff proceedings, and specifically litigated and determined in the Sacramento Superior Court case, *Acquisto v. Sacramento City Unified School District* (Sacramento County Court Case No. 34-2012-80001173-CU-WM-GD, (hereafter “*Acquisto*”). In *Acquisto*, the trial court ruled that the District’s Priority Schools constitute a “specific course of study” within the meaning of Education Code section 44955, subdivision (d)(1). Superior Court Judge Allen Sumner’s Ruling and Order on Petition in that case is now final. The parties submitted extensive briefing on this issue as part of a prehearing Motion to Preclude Relitigation of Whether the District’s Priority Schools Constitute a Course of Study.

²² Respondent note that elementary schools with lower 2012 Growth API scores than Oak Ridge (741) and Fr. Keith B. Kenny (769) now include Mark Hopkins (673), Pacific (700), Mark Twain (710), Woodbine (714), C.P. Huntington (700), Fruit Ridge (701) and Maple (718).

67. Regardless of whether *Acquisto* is now the law of the case, the reasoning in that case is persuasive and incorporated by reference in this decision. *Acquisto* relied upon the language of Education Code section 44955, the legislative history of subdivision (d), and the Court of Appeal’s analysis in *Bledsoe*. Such discussion need not be reiterated here. It is further noted that in the District’s Waldorf Schools, like the Priority Schools, the course content/subjects are tied to District requirements. The course content at Waldorf schools is taught at other District schools. The primary difference between a Waldorf and a non-Waldorf school is the teaching methods and delivery of that prescribed course of study, done in a unique way so to qualify District Waldorf Schools as a “course of study.” Respondents did not contest this. Similarly, the primary difference between a Priority School and a non-Priority School is the method and delivery of instruction. In Priority Schools, the District determined that traditional methods of delivery will not meet the needs of the student populations they serve and, therefore, the method of delivering the course of study must be tailored to meet those student needs. Priority School teachers must be trained and/or have experience in the Priority School instructional methodologies.

The above matters having been considered, it is determined that the Priority Schools constitute a “course of study” within the meaning of Education Code section 44955, subdivision (d)(1).

Skipping Criteria Vague

68. Respondents contend that the Priority School Skips should be invalidated because the skipping criteria are impermissibly vague. Respondents have constitutionally-protected substantive rights to their employment, and the due process protections require that an employer not subvert these rights by adoption of impermissibly vague and uncertain regulations. (*Cleveland Board of Education v. Loudermill* (1985) 470 U.S. 532; *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 206.) Respondents believe the District failed to identify any specific training or experience that is necessary to teach at its Priority Schools.

The matters set forth in Findings 47 through 56 have been considered in determining that the District has identified the specific training or experience it believes are necessary to teach at its Priority Schools. In identifying such training or experience, the District’s skipping criteria are not impermissibly vague.

Individual Skipping Analysis

Skipped Employees

69. The process of skipping should be conducted on a case-by-case basis, where: 1) the District establishes that a particular assignment requires a teacher with special training and experience, 2) the District establishes that the skipped junior teacher has the necessary training and experience, and 3) the District establishes that the individual senior teachers do

not have the necessary training and experience for that assignment. (Ed. Code, § 44955, subd. (d)(1).)

Here, the District established that the skipped certificated employees at the Priority Schools have special training and experience necessary to teach or provide services at those schools. In making this determination, individual declarations of skipped Priority School teachers were considered. Each declaration set forth their Priority School assignment, grade/course taught, year(s) at the Priority School and attendance at certain specified trainings.²³ The declarations varied between individuals as to the number/type of trainings attended. There were similarities and differences in the specific trainings listed on the declarations depending upon the Priority School assignment. There were differences in the trainings among the three elementary schools. However, a review of proposed skips of the elementary Priority School teachers indicates that all have training in all three categories: Data, Literacy and Engagement. Every skipped elementary school teacher has at least two and in most cases four separate trainings in the category of engagement including CRTS and Home Visit training. Trainings were also different across elementary, middle and high schools, but all trainings fell within one of the four Priority School focus areas, and all skipped teachers had training and/or experience in all four focus areas.

In addition to the individual declarations, training matrices were prepared for each District Priority School. When the above were considered along with the testimony of Priority School principals, the District established that the skipped junior teachers have the necessary training and experience to teach in its Priority Schools.

Respondents With Special Training and Experience

70. Senior respondents contend that they also have the relevant training and experience in the four focus areas necessary to teach in the Priority School. As earlier noted, the District's burden of establishing that the individual senior teachers do not have the necessary training and experience is not satisfied merely by demonstrating that skipped teachers have superior training and experience. As long as senior teachers have the training and experience identified as "necessary" to teach the course of study, the senior teacher cannot be laid off before the junior teacher, and it is impermissible for the District to consider what training and experience might be "preferred."

The District's proposed skip was premised in part on its belief that senior respondents simply do not possess the breadth, depth and intensity of training possessed by skipped employees. (See Finding 50.) The District contends that the skipped employees received training that was specifically targeted, developed and aligned with the objective of achieving

²³ For example, the trainings included on the individual teacher declarations for Father Keith B. Kenny K-8 included: Data Inquiry, Write Tools, Culturally Responsive Teaching Strategies, Home Visit Training, California Treasures ELD, California Treasures Writing, California Treasures Reading, High Quality First Instruction Professional Development, Efficacy Training and Instructional Rounds.

certain performance outcomes at the Priority Schools and that senior employees do not have this same degree of training. This contention largely relates to preference, not necessity. The District's history is that it has successfully integrated and/or trained new teachers in its Priority Schools over the past two years, in part due to the excellent leadership provided by the principals. Looking ahead, the District intends to convert Rosa Parks Middle School to a K-8 grade school, and the entire school will be designated a Priority School. It will necessitate training a substantial number of District employees in the instructional methodologies used at this Priority School.

It is understood that respondents' willingness to be trained is largely irrelevant, and that the skipping analysis requires that they "possess" the necessary training and experience to be assigned to a Priority School. (Ed. Code, § 44955, subd. (d).) The point here is that the District has successfully added teachers to its Priority Schools before who did not have the same breadth, depth and intensity of training as skipped teachers. Accordingly, so long as an individual respondent possesses the necessary training and experience in all four focus areas, and such training and experience is both relevant and meaningful, the skip should be disallowed. Respondents need not possess identical trainings, or training to the same degree (breadth, depth and intensity) as the District's skipped employees. In considering the training of senior respondents below, consideration was also given to the matters set forth in Findings 51 through 56; and 61 through 64. Respondents have identified 22 individuals for whom individualized skipping analyses follow.

71. Tracy Adams (9/4/07). Ms. Adams has a multiple subject credential and is currently employed as a Resource Teacher. There are 15 junior multiple subject holders working at three elementary Priority Schools. She received the five-day Data Inquiry training provided by Transformation By Design during the 2010-2011 school year. She returned and trained other teachers at her school site (C.P. Huntington Elementary). She has used Data Inquiry during grade level meetings during which specific class assignments were considered, rubrics were created to evaluate progress and new lessons were created to teach subjects.

Ms. Adams attended a two-day Write Tools training in Summer 2008, and completed Write Tools module in 2010. She has attended Balanced Literacy trainings over the past two school years, which focused on strategies to promote lifelong reading and flexibility in the choice of reading materials.

Her engagement training includes taking a course on culturally sensitive teaching strategies (2007-2008), Increasing Student Achievement with Effective School, Family, and Community Partnerships, and training in Positive Support Behavior Strategies. She received home visit training at both Pacific and C.P. Huntington Elementary Schools. She has participated in home visits as an elementary teacher, and has accompanied classroom teachers as a Resource Teacher on home visits this past year. Ms. Adams participated as a team member (Cohort A) with responsibility for transitioning the District's schools to the State Common Core standards by 2014. As a Resource Teacher she has trained and worked with DIBELS and BURST Wireless generation training.

Ms. Adams testified to experience working collaboratively with her colleagues during CPT time, including work at schools requiring up to 40 hours of CPT time. She has worked at Pacific Elementary School for two years, and at C.P. Huntington Elementary School for three years. Both have a high EL student population and demographics comparable to Priority Schools.

The record and testimony of Ms. Adams establish that she possesses the special training and experience necessary to teach in the District's Priority Schools.

72. Loveleen Ashat (9/7/10). Ms. Ashat waived her right to a hearing by failing to file a timely notice of defense. (See Finding 29.)

73. Roy Baty (9/6/11). Mr. Baty is a mathematics teacher assigned to West Campus High School. He holds a single subject math credential, and is senior to one skipped Priority School math teacher. The four skipped mathematics teachers at HJHS all have training and experience in Data Decision Making Processes (Data Wise/Data Inquiry), Literacy and Engagement. Mr. Baty's transcript contains no record of training in data, literacy or engagement. He did not testify at hearing.

The record establishes that Mr. Baty does not possess the special training and experience necessary to teach mathematics at HJHS, a District Priority School.

74. William Cannady IV (9/8/08). Mr. Cannady is a history teacher assigned to teach at the High School of Engineering and Sciences (SES), having previously been assigned to Kit Carson Middle School. He teaches both United States and World History. Mr. Cannady has attended multiple trainings in 2010 and 2011 on "Data Analysis of Benchmarks and Curriculum Integration." SES uses Data Director, a program that accesses students' CST test scores, and allows for Mr. Cannady to make adjustments to address student needs. HJHS also uses a program that Mr. Cedros referred to as "Data Director." Mr. Cedros explained that his staff initially received training and onsite consulting in Data Inquiry. Mr. Cedros subsequently asked one of his staff ("techie guy") to develop a system similar to Data Inquiry for use at HJHS, which is now in place. It is not clear whether this is the same program used at SES. Dr. Noguchi noted that Data Director is an information storage system that allows for retrieval and management of summative test data. In contrast, Data Inquiry is a very different and more flexible program that allows one to "process" both summative and formative data in ways that Data Director cannot.

Mr. Cannady does not have literacy training that other Priority Middle and High School teachers have such as Write Tools and Common Core Standards Awareness.

Mr. Cannady has some engagement training including Home Visit training in 2010, equity classes, District Equity Fair, teaching special populations and incorporating technology (iPads) into the classroom. He has not done any home visits this year. Mr. Cannady teaches at a highly diverse campus, including a significant proportion of English Language Learners. His school is a Linked Learning career pathways site.

The record of training and testimony of Mr. Cannady were considered in determining that he does not possess the special training and experience necessary to teach in a District Priority School. Mr. Cannady lacks necessary training in both Data Inquiry and Literacy. He does not appear to have significant experience working collaboratively with data within his current teaching assignment. His student engagement experience is limited.

75. Jane Crumbley (9/6/05). Ms. Crumbley has a multiple subject credential and has taught at both the elementary and middle school levels. She is currently assigned to teach Language Arts and World History at California Middle School, which is designated as a Title 1 school and was in Program Improvement status the entire time she has been assigned there. Ms. Crumbley attended and completed 25 hours of Data Inquiry by May 31, 2012. She has other data training or experience related to Zangle for Teachers, Data Director, Benchmark Assessment Data, and Data and Instruction. She used Data Inquiry regularly at her prior elementary school assignment, less so in her current middle school assignment.

Ms. Crumbley has two days of training in Write Tools. She attended a summer training relating to Common Core implementation at California Middle School. She was part of the Cohort A work team from her school. California Middle School is one of the District's full inclusion schools, and is in Cohort B for early implementation of Common Core.

Ms. Crumbley has had Home Visit training in December 2009, and in June 2012 she went on four home visits with elementary school teachers to meet with families of students who were transitioning to middle school. She has taken 20 hours of Differentiated Instruction Professional Development training. Other trainings include Huck Fitterer engagement training and Apple Proof of Concepts. She has collaborated with other staff on data analysis during CPT at her middle school. She did not use Data Inquiry at the elementary school level because there "was not much data on first graders."

The record and testimony of Ms. Crumbley establish that she possesses the special training and experience necessary to teach in the District's Priority Schools.

76. Camica Edwards (2/13/07). Ms. Edwards is a multiple subject credential holder assigned to John Still Elementary School. She was previously assigned to teach at Sutterville and Woodbine Elementary Schools. The latter school was in PI status when Ms. Edwards taught there, and feeds into a Priority School (Rosa Parks). Sutterville is a fairly high performing school. Ms. Edwards received Data Inquiry training indirectly from returning trained staff when she was at Woodbine. She received no formal training in Data Inquiry. She used Data Inquiry during CPT and Third Thursday meetings at Sutterville. Student data was discussed at these meetings approximately 25 percent of the time. She has no experience developing assessments, but has adapted teaching in response to data.

Ms. Edwards was trained in Write Tools (2008-2009) at Woodbine, with at least two follow-up trainings. She has additional training in 6 + 1 Writing Traits, Juicy Sentences –

ELD Strategy, RTI-ELA, and Integrating Arts and Literacy. She has had ongoing Common Core training since 2010.

Ms. Edwards's engagement training includes Home Visit Project training (2007-2008). She has also had PBIS training, Proactive Discipline, Classroom Behavioral and Instructional Strategies, Equity Fair and Inclusive Practices.

The record of training and testimony of Ms. Edwards were considered in determining that she does not possess the special training and experience necessary to teach in a District Priority School. Ms. Edwards received no direct training in Data Inquiry. She has some experience using it at three different elementary schools, but not to such extent that would address her lack of direct training. Ms. Edwards's training and service as a teacher with over six years experience with the District is in all other respects impressive.

77. Courtney Eller (9/7/10). Ms. Eller holds a single subject credential (Biological Sciences). She is assigned to Sam Brannon Middle School, which has been in PI status for several years. Sam Brannon is a full inclusion school with a diverse student population. Ms. Eller received Data Inquiry training in 2010. She represented her school for this District training, and then returned to train and work with others in her science department to prepare benchmarks. She completed a Cycle of Inquiry/High Quality First Instruction in May 2012. It included 21 hours of training that looked at basics of lesson design and use of data to drive the next instruction. The training has been incorporated during CPT time and she has collaborated in going through cycles of inquiry in her department.

Ms. Eller has received training in implementing writing across other disciplines and Six Plus One writing strategies. She has received District Common Core training and meets monthly to discuss critical planning and lesson development in connection with integrating new math and science standards. She is trained in AVID, a program to work with potential college-bound students who come from families in which they would be the first to attend college.

Ms. Eller taught four years in Arizona. She received training there in differentiated instruction, a practice in which teachers use different means of presenting the same lesson to address different levels of student knowledge or interest. She has not received training in home visits. She teaches five classes, all to students in the Gifted and Talented Education (GATE) program.

The record and testimony of Ms. Eller establish that she possesses the special training and experience necessary to teach in the District's Priority Schools. She has received direct training in Data Inquiry, and was responsible for implementing Data Inquiry and cycles of inquiry in her science department. Although she instructs GATE students exclusively, her training in High Quality First Instruction, AVID and differentiated instruction give her the necessary tools to adapt to the different instructional needs of lower performing students.

78. Joanna Evans (10/10/05). No skipping analysis is necessary. Ms. Evans is credentialed to teach English in grades 7-9, and may bump into either of two non-Priority Middle School English assignments held by junior teachers. The layoff notice to Joanna Evans should be rescinded. (See Finding 32.)

79. Michelle Goodwin (11/21/04). Ms. Goodwin holds a multiple subject credential and is assigned to teach a combination grade 4/5 class at Crocker Riverside Elementary School. She previously taught at Susan B. Anthony and Freeport Elementary Schools. She is a teacher with nearly 20 years experience, having also taught in Daly City.

Ms. Goodwin received direct training in both Data Inquiry (2011) and Data Director (2007). She also received training in Zangle for Teachers in 2009. She has documented participation in 48 hours of school-wide Collaborative Planning Initiatives and Common Planning Time over her past two years at Crocker-Riverside.

Ms. Goodwin's literacy training includes approximately 40 hours in Write Tools (2007) and Write Tools Modules and follow up training between 2008 and 2010. She has received much training in Open Court Reading. Ms. Goodwin has a strong personal interest in teaching writing skills, which was a focus of her masters work. She received other training in Improving Vocabulary Through Instruction, Best Practices in Teaching Vocabulary, Vocabulary by Word. Much of her teaching experience over the years has been with EL learners.

Ms. Goodwin's engagement trainings include Cultural Sensitivity Training, Culturally Responsive Pedagogy: A Strategy for Advancing Underachieving Students, Differentiating Instruction with Technology, and Behavior Management Strategies that Work. She has not participated in home visits. Although Crocker-Riverside is a high performing school, her experience at Susan B. Anthony, Freeport Elementary and in Daly City exposed her to a student demographic that was comparable to Priority Schools.

The record and testimony of Ms. Goodwin establish that she possesses the special training and experience necessary to teach in the District's Priority Schools.

80. Lorinda Johnson (9/29/04). Ms. Johnson waived her right to a hearing by failing to file a timely notice of defense. (See Finding 29.)

81. Davin Main (11/1/04). Mr. Main holds a multiple subject credential. He is a fourth grade teacher at Hubert Bancroft Elementary School. He received training in Benchmark Assessment Data Analysis (3.0 hours) and in Data Director (1.5 hours). Both trainings were in 2005. He has also received training in Zangle for Teachers. Mr. Main has received no Data Inquiry training. However, he used Data Inquiry at Mark Twain Elementary School and worked collaboratively with colleagues during CPT. He does not use Data Inquiry in his current assignment.

Mr. Main received Write Tools training, both foundational and advanced.

Mr. Main has received engagement training including Differentiated Instructional Strategies, Closing the Achievement Gap of Hmong, Mien, and Lao Students, Classroom Management/Student Engagement, and Equity. He has not been trained in home visits, but has done them in the past on at least three occasions.

The record of training and testimony of Mr. Main were considered in determining that he does not possess the special training and experience necessary to teach in a District Priority School. Mr. Main received no direct training in Data Inquiry. He has only limited experience using it Mark Twain elementary school, but not to such extent that would address his lack of direct training.

82. Kim Nguyen (10/20/04). Ms. Nguyen holds a multiple subject credential. She teaches grades one and two at Camellia Elementary School. She previously taught at Theodore Judah, Bret Harte, Erlewine, Edward Kemble and Pacific Elementary Schools. The latter two schools were in PI status.

Ms. Nguyen did not receive Data Inquiry training directly. She was trained by teachers who returned to her school site and received training from them. She used Data Inquiry during CPT when she was at Pacific and Erlewine, and has experience collaborating with staff to analyze students' writing, preparing assessments, and using benchmark scores to drive instruction. Her training transcript indicates that she will have completed nine hours of "Data Inquiry and Common Core Implementation 2012-2013" on May 31, 2013. This is in reference to this year's CPT. Ms. Nguyen has received training in Data Director. Her early lack of direct training in Data Inquiry has been addressed by her experience working collaboratively with the program and her recent Data Inquiry training at her school site.

Ms. Nguyen has received training in Write Tools, Write Tools Update and Write Tools Personal Narrative. Other literacy training includes GLAD, CLASS Team, Building vocabulary in Open Court, Vocabulary Development Strategies, Three Key Strategies, and Harcourt's Moving into English K-3 ELD Program.

Ms. Nguyen's engagement training includes Differentiation for EL Learners. She has experience using Smart Board, digital games, web-based communication, and creating concept maps and other tools to engage students in her classroom. She has had no home visit training or experience. Ms. Nguyen has worked at schools where 80 to 100 percent of students were socioeconomically disadvantaged (Camellia Basic and Edward Kemble) or had a high percentage of EL Learners (Edward Kemble and Pacific).

The record and testimony of Ms. Nguyen establish that she possesses the special training and experience necessary to teach in the District's Priority Schools.

83. Phuong Nguyen (9/12/05). Ms. Nguyen is a first grade teacher at Nicholas Elementary School and holds a multiple subject credential. Nicholas Elementary School is a title 1 school with a majority of EL students. Its student demographic is comparable to

Priority Schools and it feeds Will C. Wood Middle School. The school has a lower API than Oak Ridge and Father Keith B. Kenny Elementary Schools.

Ms. Nguyen was trained in Data Inquiry. She uses the program collaboratively with other staff within and across grade levels at Nicholas Elementary School. She has used the program every year she has been at Nicholas, both individually and during CPT with her grade level team.

Ms. Nguyen's literacy training includes a number of courses on "A Focused Approach to Frontloading English" in 2008, and training in Guided Language Acquisition and Design (GLAD). Other trainings include Fluency – Opportunities for Practice and Moving Into English K-3 ELD Program. She completed three Common Core training sections. She has not received Write Tools training.

Ms. Nguyen's engagement training includes four sections, three hours each, on Differentiating Instruction I. She received home visit training this year. Other trainings include Positive School Climates, Empowering Differences, and Caring School Communities. She has not had opportunity to go on home visits to date.

The record of training and testimony of Ms. Nguyen were considered in determining that she does not possess the special training and experience necessary to teach in a District Priority School. Ms. Nguyen received no direct training in Data Inquiry. She has not been trained in Write Tools or other of the more common literacy programs used in the Priority Schools. Although her experience as a teacher assigned to Nicholas Elementary School is significant, such does not address the noted deficits in her training.

84. Veasna Nim (10/4/04). Ms. Nim holds a multiple subject credential and is a first grade teacher assigned to Leonardo Da Vinci K-8 School. She did not testify. Ms. Nim's training transcript discloses no training in Data Inquiry. She has received training in Data Director and Student Achievement Analysis.

Her literacy training includes Writing Process, Writing Process Strategies, Building Vocabulary in Open Court, Teaching English Learners and World of Words. She has no training in Write Tools or other literacy programs commonly used in Priority Schools.

Her engagement training includes Differentiated Instruction, Using Technology to Support Student Learning, Positive Behavioral Support Strategies, and Language, Cultural Identity and Achievement. She participated in 38 hours of CPT over the past two years at Leonardo Da Vinci Elementary School.

The District's record of training for Ms. Nim was considered in determining that she does not possess the special training and experience necessary to teach in a District Priority School. Ms. Nim received no direct training in Data Inquiry. She has not been trained in Write Tools or other of the more common literacy programs used in the Priority Schools.

85. Christin O’Cuddehy (9/15/08). Ms. Cuddehy holds single subject credentials in English and Social Science. She is assigned to teach at Genevieve Didion Middle School and Arthur A. Benjamin Health Professions High School.

Ms. O’Cuddehy received direct training in Data Inquiry. She was a member of the team from her school who received the training and then trained her colleagues. She also received Data Inquiry training as part of her masters training. She has used Data Inquiry during CPT. She was also part of a team that received Common Core training (Cohort A) which then returned to her campus to train colleagues at Health Professions High School. Ms. O’Cuddehy wrote District common scope and sequence standards as part of her Cohort A work. She has collaborated during CPT on both Data Inquiry and Common Core.

Ms. O’Cuddehy has received literacy trainings in Write Tools, Reading Institute for Academic Prep (Academic Vocabulary), Literacy Across Content Areas, and Expository Reading & Writing.

Ms. O’Cuddehy’s engagement training includes Culturally Responsive Teaching and Learning, Teaching Reluctant Learner, Linked Learning, Positive Classroom Management, Equity Fair, and Positive Behavior Intervention Strategies. Ms. O’Cuddehy has considerable experience as a trainer and has used different techniques and tools to reach English Learners and students from disadvantaged backgrounds.

The record and testimony of Ms. O’Cuddehy establish that she possesses the special training and experience necessary to teach in the District’s Priority Schools.

86. Sara Pickering Pick (9/2/08). Ms. Pick waived her right to a hearing by failing to file a timely notice of defense. (See Finding 29.)

87. Nicole Scrivner (9/7/10). Ms. Scrivner has been employed by the District as an English/Language Arts teacher assigned to Luther Burbank High School. She did not testify.

Ms. Scrivner has no documented training in Data Inquiry, Write Tools or other literacy programs commonly used in Priority Schools. The District training transcript indicates that she completed 40 hours of CPT over the past two years at Luther Burbank and the High School of Engineering and Science. Her record also includes CPT at Parkway School.

The District’s record of training for Ms. Scrivner was considered in determining that she does not possess the special training and experience necessary to teach in a District Priority School.

88. Sarah Taylor (9/2/08). Ms. Taylor is employed by the District as a Social Studies teacher and has been assigned during recent years to the Sacramento Accelerated Academy (SAA). She has received training in the Aventa Learning Mentor program and Data Director. She has also received training related to her position on Closing the

Achievement Gap Through Online Learning, and Introduction to Online Learning/Credit Recovery and Student Navigation.

Ms. Taylor has no documented training in Data Inquiry, Write Tools or other literacy programs commonly used in Priority Schools. The District training transcript indicates that she completed 37 hours of CPT over the past two years at SAA. Her record also includes 14 hours of training in Growing Professionally Through Collaboration.

The District's record of training for Ms. Taylor was considered in determining that she does not possess the special training and experience necessary to teach in a District Priority School.

89. Monica Dyer (12/4/06). Ms. Dyer holds a multiple subject credential. Her bumping rights to teach middle school English were considered in Finding 34. Ms. Dyer is currently assigned to Oak Ridge Elementary School, a designated Priority School. On that basis alone she meets District competency standards to teach in a Priority School. The District acknowledged that Ms. Dyer's training and experience is complete and to the same degree as other Priority School elementary teachers. Accordingly, she may bump into positions held by junior teachers at its Priority Schools.

90. Katherine Hensley (9/8/09). Ms. Hensley holds a single subject English credential and is assigned to teach at the MET High School. Although she appeared at hearing, she did not testify regarding her training and experience. A review of Ms. Hensley's District training transcript disclosed no Data Inquiry, Write Tools or other literacy programs commonly used in Priority Schools. She has participated in 35 hours of CPT over the past two years at the MET. Ms. Hensley's transcript was considered in tandem with the testimony of Pamela Patterson, who is also assigned to the MET, and who described the collaborative environment and engagement trainings on that campus. The MET was described as similar to HJHS and other Priority Schools with regard to serving its students within a Small Learning Community (SLC).

The District's record of training for Ms. Hensley was considered in determining that she does not possess the special training and experience necessary to teach in a District Priority School.

91. Pamela Patterson (9/22/10). Ms. Patterson holds a single subject Mathematics credential and is assigned to the MET High School. The MET's 13 teachers serve approximately 300 students on its campus in downtown Sacramento. It has a diverse population, approximately half qualifying for free or reduced lunch. All teachers meet every Friday for CPT, and collaborate across the curriculum. The MET emphasizes project and work-based learning.

Ms. Patterson has had no significant Data Inquiry training. She noted that part of a 2011 training program did include a section on "Longitudinal Study/Data Inquiry." This was neither foundational nor advanced Data Inquiry training, and Data Inquiry is not used at the

MET. The MET uses “Schoolology” which is based on social networking technology accessible to teachers, students and parents.

Ms. Patterson has had EL Learner training. She has had no training in Write Tools or other literacy programs commonly used in Priority Schools. She cited relevant engagement training as Project and Work-Based Learning, Equity in the Math Classroom and Home Visits.

The District’s record of training and testimony of Ms. Patterson was considered in determining that she does not possess the special training and experience necessary to teach in a District Priority School.

92. Chanh Yip Tek (9/30/04). Ms. Yip Tek is a kindergarten teacher at Nicholas Elementary School. She also taught first and fourth grade classes at Theodore Judah over her close to nine years with the District. Nicholas Elementary School has a diverse student population and is a feeder school for Will C. Wood Middle School. Nicholas Elementary is a Title 1 school and is in PI status.

Ms. Yip Tek has received training in Data Director, and Data Analysis and Goal Setting. She does not have training in Data Inquiry. She works collaboratively during CPT, staff meetings and on Third Thursdays. She has done so across and at grade level. She has training in Zangle for Teachers.

Ms. Yip Tek’s literacy training includes Write Tools advanced training, refresher training and a three-day workshop on Write Tools that was not reflected on the District’s training transcript. Other literacy training includes Refining Student Writing and Getting Started to Dig in to Open Court. She has participated on the Common Core planning while on a Cohort A work team at Theodore Judah.

Ms. Yip Tek’s engagement training includes Culturally and Linguistically Responsive Pedagogy for African-American Students, Tools and Solutions to Manage and Control Classrooms, and Differentiated Instruction.

The District’s record of training and testimony of Ms. Yip Tek was considered in determining that she does not possess the special training and experience necessary to teach in a District Priority School. Although Ms. Yip Tek has a background in computer applications, she has not been trained in Data Inquiry. She also does not have significant experience working with student data or cycles of inquiry, in part because she works at the kindergarten level. Ms. Yip Tek otherwise impresses as one of the District’s more experienced, knowledgeable and skilled teachers.

Welfare of the District and Its Students

93. Other than that set forth particularly above, the Superintendent’s designees correctly identified the certificated employees providing the particular kinds of services that

the Board directed be reduced or discontinued. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, unless skipped, as set forth above.

LEGAL CONCLUSIONS

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

2. A District may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The burden is on the District to demonstrate that the reduction or elimination of the particular kinds of services is reasonable and that the District carefully considered its needs before laying off any certificated employee. (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 807-808.)

3. Legal cause exists to reduce or eliminate 134.9 FTE of particular kinds of services offered by the District as set forth in detail in the Factual Findings. Although the PKS Resolution identified 153.9 FTE reductions, the District is restoring 19.0 FTE Counselor positions. (Finding 21.) Cause for the reduction or discontinuance of services relates solely to the welfare of the District’s schools and pupils, within the meaning of Education Code section 44949.

4. Pursuant to Board adopted Resolution No. 2736 cause exists to retain the following classes of teachers: 1) individuals who are fully-credentialed to serve in classes requiring BCLAD certification, to the extent necessary to staff BCLAD required positions; 2) individuals who are fully credentialed to serve in a Special Education assignment; 3) individuals who have one or more years of experience teaching in a Dual-Language Immersion Program; 4) individuals who have two or more years of experience teaching and/or specialized training in a home or hospital setting; and 5) individuals who have formal training/coursework in the Waldorf method of teaching. Respondents do not contest these skips.

5. As set forth in Finding 21, the preliminary notices of layoff issued to 42 temporary certificated employees are rescinded. The District will reclassify Jennifer Kadry as a probationary employee, and she may be laid off as a probationary employee. Although the District has rescinded all of the precautionary notices that it had issued, the temporary release notices issued to employees receiving dual notices remain in effect.

As set forth in Finding 22, the District rescinded layoff notices to the following certificated employees: Judianne Alves-Powell, Michelle Carroll, Sandra DeAnda, Kim Reyes, Rosario Ruiz, Ramona Schlect, Marea Silva, and Rosaline Vincent.

6. The District was required to exercise tiebreak criteria with respect to four teachers. The District will make corrections to seniority dates occasioned by application of Tie-Breaking Criteria for Anita Carapiet, Evelyn Ramos, Sara Taylor and Gavin Williams. An additional correction is made to the seniority date for Sharon Bertrand. (Finding 18.)

7. The District applied bumping rules with some consistency, and generally allowed bumping based upon the more senior employee holding a credential or authorization to teach the assignment of the less senior teacher. The District articulated the rationale for its bumping rules. However, review of the District's bumping resulted in the following corrections:

- a. As set forth in Finding 32, the layoff notice to Joanna Evans should be rescinded.
- b. As set forth in Finding 33, the District shall review the rights, if any, of Tracy Adams to bump into a junior resource teacher position in light of Article 8.2.16 of the Collective Bargaining Agreement.
- c. As set forth in Finding 34, the layoff notices to Joanna Evans and Monica Dyer should be rescinded.
- d. As set forth in Finding 35, the layoff notice to Sean Finnegan should be rescinded.

8. The matters set forth in Findings 37 through 69 have been considered in determining that the District properly deviated from seniority in skipping certificated employees currently serving in a Priority School assignment, and who will also be teaching in a Priority School assignment for the 2013-2014 school year. Skipped employees have special training and experience necessary to teach in the District's Priority Schools.

9. In evaluating whether senior respondents also possessed the necessary training and experience to teach in the District Priority Schools, the matters set forth in Findings 51 through 56, and 61 through 64 were considered in conducting an individualized skipping analysis for certain respondents. (See Findings 71 through 92.) As a result of this analysis, preliminary notices of layoff to the following individuals shall be rescinded:

- a. Tracy Adams
- b. Jane Crumbley
- c. Courtney Eller
- d. Joanna Evans
- e. Michelle Goodwin

- f. Kim Nguyen
- g. Christin O'Cuddehy
- h. Monica Dyer

10. Cause exists for the reduction of the particular kinds of services and for the reduction of full-time equivalent certificated positions at the end of the 2012-2013 school year pursuant to Education Code sections 44949 and 44955. Other than the foregoing, no employee with less seniority than any respondent is being retained to render a service which any respondent is certificated and competent to render. Except as set forth above, the District's Governing Board may give final notice to remaining respondents whose preliminary notices have not been rescinded before May 15, 2013, that their services will not be required for the ensuing school year, 2013-2014.

RECOMMENDATION

Cause exists for the reduction of 134.9 full-time equivalent certificated positions at the end of the 2012-2013 school year. After making the adjustments set forth in the Factual Findings and Legal Conclusions, notice shall be given to remaining respondents that their services will be reduced or will not be required for the ensuing school year, 2013-2014, because of the reduction and discontinuance of particular kinds of services. Notice shall be given in inverse order of seniority.

DATED: May 9, 2013

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings