



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 6.1

Meeting Date: May 11, 2012

Subject: Oral Argument by Respondents and District Representatives Regarding Adoption of Resolution No. 2703: Resolution Regarding Proposed Decision of Administrative Law Judge and Implementing of Certificated Layoff

- ☒ Information Item Only
- ☐ Approval on Consent Agenda
- ☐ Conference (for discussion only)
- ☐ Conference/First Reading (Action Anticipated: _____)
- ☐ Conference/Action
- ☐ Action
- ☐ Public Hearing

Division: Human Resource Services

Recommendation: Receive Oral Arguments by Respondents and District Representatives Regarding Adoption of Resolution No. 2703: Resolution Regarding Proposed Decision of Administrative Law Judge and Implementing of Certificated Layoff

Background/Rationale: The administrative law judge submitted a proposed decision to the Board of Education on Tuesday, May 8, 2012. The Board, at this special meeting, shall either adopt the proposed decision or adopt, as modified, the proposed decision by its Resolution No. 2703; or the Board may decide to reject the proposed decision and adopt its own decision.

Staff has recommended rejecting several of the judge's findings and conclusions related to the priority schools. The Board will hear oral arguments from Respondents and District representatives regarding staff's recommendations.

Financial Considerations: N/A

Documents Attached:

1. Draft Resolution No. 2703 (subject to revision)

Estimated Time of Presentation: 60 minutes

Submitted by: Jess Serna, Chief Human Resources Officer

Approved by: Jonathan P. Raymond, Superintendent

**SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION**

RESOLUTION NO. 2703

**RESOLUTION REGARDING PROPOSED DECISION OF ADMINISTRATIVE LAW
JUDGE AND IMPLEMENTING CERTIFICATED LAYOFF**

WHEREAS, on February 16, 2012, the Board of Education of the Sacramento City Unified School District ("Board") adopted Resolution No. 2683, Resolution of Intention to Terminate Certificated Employees Due to a Reduction of Particular Kinds of Services; and

WHEREAS, the Superintendent or designee duly and properly served notice on the affected certificated employees on or before March 15, 2012 indicating that the Governing Board did not intend to reemploy them for the 2012-13 school year to the extent indicated in Resolution No. 2683; and

WHEREAS, a certificated layoff hearing was held on April 24 to 30, 2012 related to the Board's decision to notice certain certificated employees for layoff; and

WHEREAS, on May 8, 2012, the Honorable Ann E. Sarli, Administrative Law Judge, issued her proposed decision in the Matter of Certificated Layoffs of Sacramento City Unified School District, OAH Case Number 2012020744; and

WHEREAS, pursuant to Sections 44949 and 44955 of the California Education Code, the Board has considered the findings, recommendations, or determinations contained in the proposed decision by Judge Sarli, in OAH Case Number 2012020744; and

WHEREAS, the proposed decision sets forth the determination that sufficient cause exists for the elimination of full time equivalent positions, as described in the proposed decision set forth in Exhibit A, and recommends that notice be given the certificated employees holding these positions that their services will not be required for the 2012-2013 school year; and

WHEREAS, section 44949 of the California Education Code requires the Board to make the final decision as to the sufficiency of the cause and disposition regarding certificated employee layoffs.

NOW, THEREFORE, BE IT RESOLVED that the Board has considered the findings, recommendations, or determinations set forth in the proposed decision and adopts Legal Conclusions Nos. 1 – 6, and 14 and 15, of the proposed decision except as stated below, as the Board's final decision, which final decision is incorporated herein by this reference.

BE IT FURTHER RESOLVED that the Board objects to and rejects Legal Conclusions No. 7, 8, 9 and 10 and the Findings upon which they are based. Notwithstanding the Board's objections to and rejection of Legal Conclusions No. 7, 8, 9 and 10, the Board will adopt Legal Conclusions No. 7, 8, 9 and 10 of the Proposed Decision on the condition that none of the Respondents challenge the Proposed Decision as adopted by the Board and hereby preserves and reserves its rights to challenge in judicial proceedings Legal Conclusions No. 7, 8, 9 and 10 and the Findings upon which they are based. This conditional adoption of those Legal Conclusions does not constitute an admission or waiver of any legal arguments by the District related to Legal Conclusions No. 7, 8, 9 and 10 and the Findings upon which they are based.

BE IT FURTHER RESOLVED that the Board objects to and rejects Legal Conclusions No. 11, 12.A. and B. and 13, and the Findings upon which they are based. After review of the record from the hearing conducted April 24th – 27th and April 30th, and the consideration of any oral argument by the parties, the Board adopts the Findings and Conclusions attached hereto in Exhibit B as part of the Board's final decision in this matter on the issues stated therein. Any Findings and Conclusions in the Proposed Decision that conflict with the Findings and Conclusions contained in Exhibit B are rejected and are not a part of the final decision in this matter.

BE IT FURTHER RESOLVED that the adoption of the final decision by the Board shall not be considered the promulgation of District Board policy.

BE IT FURTHER RESOLVED that the services set forth in Resolution No. 2683 be eliminated commencing with the 2012-13 school year as outlined in that Resolution and the Superintendent or his authorized representative is directed to send appropriate notices in accordance with the provisions of California Education Code section 44949 and section 44955 to those employees whose positions will be eliminated pursuant to the final decision adopted by the Board. This resolution incorporating the final decision of the Board is effective immediately.

BE IT FURTHER RESOLVED that the Superintendent and his designee are hereby authorized to send final notices of lay off to all Respondents consistent with this Resolution and Education Code section 44955 before May 15, 2012.

BE IT FURTHER RESOLVED that if Respondents do not challenge this Decision, notices of lay off will be rescinded as to those Respondents affected by Legal Conclusions No. 7, 8, 9 and 10.

BE IT FURTHER RESOLVED that after the notices are sent to employees whose positions are to be eliminated for the 2012-13 school year, the Superintendent is directed, consistent with budget constraints, to continuously review for recommendation and restoration of positions in accordance with the needs of the District and the Education Code.

PASSED AND ADOPTED by the Board of Education of the Sacramento City Unified School District on this 11th day of May, 2012, by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

Darrel Woo
First Vice President

ATTESTED TO:

Jonathan P. Raymond
Secretary of the Board of Education

BEFORE THE
GOVERNING BOARD OF THE
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. 2012020744

Respondents.

PROPOSED DECISION

Administrative Law Judge Ann Elizabeth Sarli, Office of Administrative Hearings, State of California heard this matter in Sacramento, California on April 24-27, and April 30, 2012.

Dulcinea Grantham, Attorney at Law and Thomas R. Manniello, Attorney at Law, Lozano Smith, represented the Sacramento City Unified School District (District).

Margaret Geddes Attorney at Law and Costa Kerestenzis, Attorney at Law, Beeson, Tayer, & Bodine, APC, represented the respondents identified in Exhibit A attached hereto and incorporated herein by reference.

Respondent Miles Krier represented himself.

Respondents Annah Kiambati and Thellis Panacek timely filed Requests for Hearing and Notices of Defense, but did not appear at hearing.

Oral and documentary evidence was received and the parties made oral closing arguments. The record was closed and the matter submitted on April 30, 2012.¹

¹ On April 27, 2012, the final date set for hearing, the hearing was continued to April 30, 2012. Accordingly, pursuant to Education Code sections 44955 and 44949, subdivision (e), the date for service of the proposed decision on respondents (May 7) and the date for issuances of Final Notices to respondents (May 15) were extended by one day. The ALJ and the parties elected not to extend the dates by a period of time equal to the continuance (3 days).

FINDINGS

Jurisdiction

1. Jess Serna is the Chief Human Resource Officer for the District. Jonathan P. Raymond is the Superintendent of the District. Serna is the Superintendent's designee for the certificated layoff process. The actions of Raymond and Serna, and the actions of the District's Board of Education (Board), were taken in their official capacities.
2. On February 16, 2012, the Superintendent recommended that the Board reduce and/or discontinue particular kinds of certificated services (PKS) no later than the beginning of the 2012-13 school year in the amount of 397.8 full-time equivalent (FTE) positions. The Board adopted Resolution No. 2683 (PKS Resolution) that determined it was necessary to reduce and/or discontinue PKS in the amount of 397.8 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 2012-13 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, 2012, the District served 435 affected certificated employees (not including administrators), including respondents, with written notice, pursuant to Education Code sections 44949 and 44955,² 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. 2683, which listed the services to be reduced or discontinued, resulting in a proposed reduction in the certificated staff by 397.8 FTE positions.
5. Respondents herein timely filed requests for hearing to determine if there is cause for not reemploying them for the next school year.
6. 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 the respondents.

² All statutory references are to the California Education Code unless otherwise indicated.

7. All respondents 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 proceeding 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 41,000 students at 85 school sites in and surrounding the City of Sacramento. The District employs approximately 2,669 certificated employees.

11. The District has a projected budget deficit of \$28 million for the 2012-13 school year, and an additional \$15 million budget shortfall if the Governor's proposed budget is not passed. The District is at risk that it will be "certified with a negative budget" by the State, and will lose local control.

12. About 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 2012-13 school year.

Services to be Reduced or Eliminated

13. The PKS Resolution authorized the Superintendent or his designee to take action to reduce or discontinue the following particular kinds of services for the 2012-13 school year:

| Services | Number of FTE Positions |
|------------------------|--------------------------------|
| Assistant Principals | 9.0 |
| Elementary Teachers | 153.0 |
| Teacher, Middle (CORE) | 2.0 |
| Teacher, Resource | 9.0 |
| Training Specialist | 1.0 |
| Counselors | 23.8 |
| Librarians | 14.5 |
| Music | 11.6 |

| | |
|----------------------------|------|
| Nurse | 8.5 |
| School Psychologist | 1.0 |
| High School Math | 9.0 |
| Middle School Math | 10.0 |
| English | 27.0 |
| Spanish | 7.0 |
| Psychology | 1.0 |
| Physical Science | 5.0 |
| Social Science | 16.0 |
| PE | 21.0 |
| Life Science | 4.0 |
| Biology | 3.0 |
| Computer | 1.0 |
| Health Science | 1.0 |
| ROP Office Occupations | 2.0 |
| ROP: Computer Applications | 1.0 |
| Social Worker | 11.4 |
| Art | 2.0 |
| Family Consumer Education | 1.0 |

Sub-Total: 355.8 FTE

Adult Education Teachers 42.0 FTE

Total Full Time Equivalent Reductions 397.8 FTE

14. 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

15. 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 [NCLB];

(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 teaching 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 the Accelerated Academy, training in Accelerated Academy programs and experience relevant to working with the Accelerated Academy student population;

(F) 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;

(G) In order to be assigned to a high school math position, possession of a credential that authorizes the holder to teach the full breadth of math assignments up to and including calculus offered at the high school level.

Skipping Criteria

16. On February 16, 2012, the Board adopted Resolution No. 2685, 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 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.

- C. Individuals fully-credentialed to teach the full breadth of high school math assignments up to and including calculus.
- D. Individuals currently serving in a Priority School assignment, who will also be teaching in a Priority School assignment for 2012-2013.
- E. Individuals who have one (1) or more years of experience teaching in a Dual-Language Immersion Program.
- F. Individuals who have two (2) or more years of experience teaching and/or specialized training in a home or hospital setting.
- G. Individuals who have formal training/coursework in the Waldorf method of teaching.
- H. Individuals with specialized training and experience in the Accelerated Academy Program.

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

17. At the February 16, 2012, meeting, the Board also adopted Resolution No. 2684, Resolution of Determination for Tie-Breaking Criteria. 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

18. 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 November 2011, 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.

19. At hearing, the District made some changes to the seniority list based on application of Tie-Breaking Criteria, change in status from categorical/temporary to probationary status and other information requiring changes in seniority date. The District updated its records to reflect this information. One respondent argued at hearing that his seniority date should be changed.³ This contention is discussed below in Findings 22-23.

Method of Effectuating the Reduction in Services and Identifying Affected Employees

20. 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. 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.

21. The District identified and issued preliminary notices to employees occupying 37.2 FTE more than the 397.8 FTE positions identified in the PKS Resolution, to account for rescissions that might result from successful challenges at hearing, application of the Tie-Breaking Criteria or other causes. Prior to and during

³ Joan Cochrane and Melissa Becker also argued their seniority dates should be changed. During closing argument, respondents' counsel withdrew Cochrane's and Becker's challenges in this proceeding, reserving their right to challenge their seniority dates in other forums.

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 vacancies and leaves of absence). As a result of the rescissions, there are no valid arguments that the District has issued more preliminary notices than authorized under the PKS Resolution.

Individual Issues – Seniority Dates

22. Section 44845 provides; “Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position.”

23. Preston Jackson has a seniority date of September 5, 2006. He claims that his seniority date should be backdated to February 1, 2006, “at the latest.” Preston was hired as a substitute teacher in the beginning of the 2005-06 school year. In early November of the 2005-06 school year he was hired as a long-term substitute. On February 1, 2006, he received an emergency substitute permit and continued in his long-term substitute placement through the school year. He was employed by the District for the 2006-07 school year and obtained his teaching credential on September 5, 2006. The District then classified him as a probationary teacher with a seniority date of September 5, 2006. The District argues that Jackson could not be classified as a probationary employee until he obtained his teaching credential on September 5, 2006. The District’s argument is not persuasive. In *California Teachers Assn. v. Governing Bd. of the Golden Valley Unified School Dist.* (2002) 98 Cal.App.4th 369, the court held that teachers holding emergency permits may be classified as probationary employees. (*Id.* at p. 383.) The District offered no other argument or information that would bar Jackson from being classified as a probationary employee in February 2006. Accordingly Jackson’s seniority date shall be changed to the date in February 2006 on which he first rendered paid service to the District under an emergency substitute permit, according to the District records.

Individual Issues – Fred Jackson’s Bumping Rights

24. Fred Jackson has a seniority date of September 3, 1996. The seniority list indicates he is not assigned to a school site and that he is assigned to teach in the high school Regional Occupation Program (ROP). Jackson maintains he is teaching in regular high school classrooms and is not assigned under the ROP program. Jackson holds a vocational education teaching credential, clear designated subject business management and computer application, that authorizes him to teach business management and computer application to grade 12 and below and adults. This credential authorizes Jackson to teach these subjects in a technical, trade or vocational program. Jackson received a preliminary notice under the PKS reduction of “ROP: Computer Applications.” He maintains that he should bump into one of the positions

of teachers junior to him who are teaching computer applications and technology within the District. This argument was not persuasive. Jackson's credential limits him to teaching vocational, trade and technical classes. The classes he seeks to bump into are academic classes requiring multiple subject or single subject credentials. The fact that he may have been assigned to teach academic classes in the past does not compel the District to continue mis-assigning him. The District may not legally assign a teacher to teach a subject for which he is not certificated.

Individual Issues – Miles Krier's "Self-Skip"

25. Miles Krier has a seniority date of November 2, 2007. He holds a single subject teaching credential in physical education, with a CLAD and a supplemental authorization in biology and is highly qualified (HQ) in biology. The seniority list does not reflect the supplemental authorization and HQ in biology. Krier received a preliminary notice under the PKS reduction of "PE." The seniority list indicates the he teaches 1.0 FTE physical education at Bowling Green Elementary. He testified that he currently teaches physical education and fourth through sixth grade science. He testified that 57 percent of his assignment is PE and the remainder is biology. He maintains that he should not be laid off because he is important to Bowling Green Elementary for many reasons, but particularly because of his ability to teach both physical education and the core subject biology. Krier's argument is not persuasive. District layoff procedures are governed by sections 44949 and 44955. These sections establish a seniority-based lay off proceeding that mandates that employees shall be terminated in the inverse order in which they were employed. Under limited and specific circumstances, the District has the authority to deviate from seniority-based layoffs by skipping junior employees. The statute does not permit employees to establish that they should be skipped because their certifications and experience render them more valuable to the District than other employees. In *Martin v Kentfield* (1983) 35 Cal. 3d 294, the Supreme Court, while analyzing analogous language regarding reinstatement rights, held: "In section 44956, the Legislature has made seniority the *sole* determinant as to which tenured teachers on layoff status should be appointed to a vacant position. The only limitation is that the teacher selected be 'certificated and competent' to render the service required by the vacant position. Among employees who meet this threshold limitation, there is no room in the statutory scheme for *comparative* evaluation." (*Id.* At p. 299.) It is the District's right and burden, not the employee's, to demonstrate a specific need for personnel or services such that those qualifications may be skipped in the layoff process. (Ed. Code, § 44955, subd. (d); *Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 135 (*Bledsoe*).)

Individual Issues – Cheryl Sims's Constitutional Argument

26. Cheryl Sims has a seniority date of February 4, 2004. She is assigned to teach at C.P. Huntington Elementary School. She holds a multiple subject teaching credential with a CLAD. She argued that section 44955, subdivision (d)(2), exempts

her from seniority-based layoffs because she is of African-American descent and is the only teacher of this ethnicity in her school. Sims also alluded to an argument that she should be exempt from layoff because of protections against age discrimination. She presented evidence that there has been historical discrimination against African-Americans teaching in school districts. Section 44955, subdivision (d), provides that there may be deviations from seniority-based layoffs under certain specific circumstances. That section provides:

Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

[¶...¶]

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

27. There are no constitutional requirements that certificated employees of African-American descent or persons over 40 be exempt from layoff. There is no authority for the proposition that African-American employees or persons over 40 years of age do not receive equal protection of the law if they are subject to layoff with their colleagues, when the layoff is based on seniority with limited exceptions based on District needs. There is no evidence that the District is under a court order to comply with a particular affirmative action or other remedial plan in regards to the racial composition or age of the teaching staff. Extending preferential treatment to some employees based upon ethnicity or age would violate the equal protection rights of the remaining employees. The United States Supreme Court has held that a school board's policy of extending preferential protection against layoffs to some employees because of their race violated the Fourteenth Amendment. (*Wendy Wygant v. Jackson Board of Education etc., et al.* (1986) 478 U.S. 1014) Further, to the extent that Sims was maintaining that students were deprived of equal protection because of her layoff, her argument was not persuasive.

Individual Issues –Special Education Skip

28. Carol Lambert has a seniority date of August 18, 2003. She holds a pupil personnel services credential and is a school social worker at John Morse Therapeutic. Lambert received a preliminary notice under the PKS reduction of "Social Worker." She maintains that she should be skipped under skipping criteria B: "Individuals fully-credentialed to serve in a Special Education assignment." Lambert does not hold a special education teaching credential. Her argument was not persuasive.

Individual Issues –Home/Hospital Skips

29. Beth Conklin has a seniority date of September 6, 2005. She holds a multiple subject credential and is assigned to teach at Golden Empire Elementary. John Gorman has a seniority date of September 2, 2003. He holds a multiple subject credential and is assigned to teach at Abraham Lincoln Elementary. Both contend they should be skipped under Board skipping criteria F: “Individuals who have two (2) or more years of experience teaching and/or specialized training in a home or hospital setting.” They maintain that the language of criteria F includes them, because each has experience in one of these areas. Neither Conklin nor Gorman holds a special education credential, which is now a requirement to bump into a position in the home and hospital teaching program. But, they contend that if their experience and training qualifies under criteria F, they should be skipped regardless of their assignments and regardless of whether assignment to the home and hospital program now requires a special education credential. Their arguments illustrate that Criteria F is not related to District needs. The District has no need for individuals who have experience teaching and/or specialized training in a home or hospital setting, unless those individuals hold a special education credential as well.

30. No respondent challenged the implementation of Criteria F; indeed Conklin and Gorman want it implemented. Thus, no finding is made on whether Criteria F is an improper skipping criteria. However, assuming Criteria F is a proper skipping criteria, neither respondent would qualify for skipping. Gorman’s experience in home teaching has been on a part-time, as needed basis, after school, about five hours a week for 27 months and does not constitute two years of experience teaching in a home setting. Conklin garnered her experience in a hospital setting (Shriners Hospital) as a teacher’s aid in a classified position and for two months as a teacher’s assistant. Her experience does not constitute teaching and/or specialized training. The arguments of Conklin and Gorman were not persuasive.

Challenges to Skipping Criteria and to Competency Criteria For Bumping

31. Respondents contend that implementation of many of the District skipping criteria violates their rights to a seniority-based layoff proceeding under section 44955. Respondents challenge skipping of junior employees through implementation of: criteria B (Individuals fully-credentialed to serve in a Special Education assignment); criteria C (Individuals fully-credentialed to teach the full breadth of high school math assignments up to and including calculus); criteria D (Individuals currently serving in a Priority School assignment, who will also be teaching in a Priority School assignment for 2012-2013); criteria E (Individuals who have one (1) or more years of experience teaching in a Dual-Language Immersion

Program) and criteria H (Individuals with specialized training and experience in the Accelerated Academy Program).⁴

32. Additionally, individual respondents who assert bumping rights to positions held by junior employees challenge competency criteria C (In order to work in a Priority School, training and/or experience teaching in a Priority School setting); criteria E (In order to work in the Accelerated Academy, training in Accelerated Academy programs and experience relevant to working with the Accelerated Academy student population) ; criteria F (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) and criteria G (In order to be assigned to a high school math position, possession of a credential that authorizes the holder to teach the full breadth of math assignments up to and including calculus offered at the high school level).

Controlling Authority

33. Education Code section 44955 controls the order in which certificated employees shall be dismissed in a reduction in force. This section provides in pertinent part:

[¶ ¶]

(b) Whenever ... a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district,

⁴ It appeared at times in respondents' closing arguments that they were challenging the Waldorf training and experience skip (criteria G) and the Home/Hospital Setting skip (criteria F). However, during the hearing respondents stipulated that they were not challenging the Waldorf skip. No respondent claimed that he or she was adversely affected by the Home/Hospital Setting skip. During closing argument, respondents acknowledged that they were not challenging implementation of 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). Accordingly, there are no issues regarding these skips and they are not discussed herein.

permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render....

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed...

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render...

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

34. The Education Code was enacted in 1943 as a recodification of the School Code and other provisions of law related to education. No substantive changes were made in the law and the Education Code represented a definite and needed advancement in the clarification and arrangement of the laws therein.⁵ The

⁵ Governor's File- State Archives Center – letter from the Department of Education to Earl Warren, Governor of California, April 2, 1943.

Education Code has been amended numerous times since 1943. In 1983, the Legislature enacted various amendments and added subdivision (d) to section 44955, relating to deviating from the order of seniority during reeducations in force.

35. 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.) This requirement of seniority-based layoffs under 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.)

36. The Education Code permits school districts to implement layoffs of certificated employees to effect a reduction or discontinuance of a particular kind of service (PKS layoff). (§ 44955, subd. (d).) 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. (§§ 44955, 44956, 44957). 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.

37. 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, 405-06.)

38. In sum, respondents who have acquired permanent tenure in the District are entitled to preference over the probationary and less senior teachers therein whose services they are capable of performing. If respondents are competent to perform the service rendered by less senior employees, they are entitled to be assigned to that employment. Senior certificated employees have a conditional vested right to that preference. “[I]n the discretion of a school board a particular kind of service may be dispensed with, and when that is done in good faith, permanent employees of the district may be dismissed when, on that account, their services are no longer required.

But when such service is discontinued in a school where probationary teachers are employed, the permanent teacher may not be discharged if she is capable of performing the service rendered by any such probationary teacher. The permanent teacher thus is given preference over all probationary teachers whose particular service she is capable of performing. When a special service is discontinued it follows that it becomes the duty of the board, when probationary teachers are employed in the school, to ascertain and determine whether such probationary teachers, or any of them, are performing services which the permanent teacher is capable of doing. If there are probationary teachers in the school so engaged, the permanent teacher is entitled to her job, and if the services of both are not required, then the probationary teacher must be discharged and not the permanent teacher.” (*Davis v. Gray* (1938), 29 Cal.App.2d 403, 406-407.)”

39. It is well established that the rule making authority conferred on the governing boards of school districts by the Legislature is limited to the adoption of rules not in conflict with other statutory restrictions. “The governing board of each school district shall prescribe and enforce rules not inconsistent with law, or with the rules prescribed by the State Board of Education, for its own government.” (*Patton v. Governing Board* (1978) 77 Cal.App.3d 495, 501; see also *Education Code section 35010, subdivision (b).*) 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 (dissenting opinion of Langdon, J).

40. In *Bledsoe*,⁶ the court determined whether, given the protections afforded to seniority by section 44955, a school district could lay off a senior certificated employee when it skipped two junior employees who were teaching in a community day school, a self contained classroom for students who had been expelled or who had extreme behavioral difficulties. The *Bledsoe* court defined “skipping” thusly: “For purposes of a school district reduction in force, ‘skipping’ refers to a junior teacher being retained for specified reasons.” (*Id.* at p. 130, FN 3. The *Bledsoe* court determined there had been substantial evidence, including a seniority list showing their credentials and NCLB qualifications, district superintendent's testimony that both skipped teachers had the necessary temperament to serve students with extreme behavioral difficulties, and a prior administrative law decision⁷ showing that both teachers had a long period of continuous service in

⁶ As Modified on Denial of Rehearing Jan. 12, 2009.

⁷ The prior decision (authored by the undersigned) involved other senior teachers besides Bledsoe. It “involved consideration of the District's specific need for its community day school and the special training and experience of Gates and Sormano to meet those needs in the context of the exception provided by section 44955, subdivision (d). The decision concluded the District had met its burden to

community day schools and that they had extensive background and training in areas such as aggression management and drug abuse recognition. “Gates had 10 years of experience teaching as of 2004, eight of which involved working with disabled populations. Gates has a bachelor's degree in applied psychology. He has extensive training in mediation, aggression management, abuse recognition, and other areas of training related to working with difficult student populations. The administrative law decision [in 2004] indicates Sormano also has extensive background and training in specialized areas related to teaching at a community day school. Specifically, he has extensive training in management of assaultive behavior and drug abuse recognition. He has experience working with special needs children and utilizing behavioral modification techniques.” (Id. at pp. 139-140.)

41. In *Bledsoe*, the District presented substantial evidence that, even though the senior employee was credentialed and competent to teach in the positions the junior employees occupied, the District had a specific need for the two junior teachers to teach in the community day school, and the two junior teachers had special training and experience necessary to teach in a community day school that the senior teacher did not possess. The *Bledsoe* court therefore found 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 that subdivision (d)(1) of section 44955 “expressly allows a district to demonstrate its specific ‘needs.’” (Id. at p. 138.) “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.)

42. Not only does the District have the burden of showing it may skip a junior employee pursuant to section 44955, subdivision, (d)(1), the district also has an affirmative obligation to assess qualifications to determine if there is a senior credentialed employee who may bump into the position held by the junior employee who the District proposes to skip. (*Bledsoe, supra*, 170 Cal.App.4th at pp. 142- 43.)

43. The District’s skipping and bumping criteria challenged by respondents in Findings 31 and 32, are examined below in the light of the above authority.

Math Skips

44. The PKS resolution reduced high school math by 9.0 FTE and reduced middle school math by 10.0 FTE. In skipping criteria C, the Board determined that it

prove such exception when it retained Gates and Sormano and gave layoff notices to more senior teachers in the prior reduction in force. (*Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, 129 FN4)

was necessary to skip “[I]ndividuals fully-credentialed to teach the full breadth of high school math assignments up to and including calculus.”

45. Only those employees holding single subject math credentials are fully-credentialed to teach the full breadth of high school math assignments up to and including calculus. Those holding foundational math credentials are authorized to teach math through algebra II, but not trigonometry, math analysis, or calculus.

46. In applying skipping criteria C, HR staff skipped 26 employees holding single subject math credentials. As a result, there were several respondents senior to those skipped who hold foundational level math credentials and received preliminary notices. They challenge the skip of junior single subject credential holders because many of the junior single subject holders are not currently assigned to teach trigonometry, math analysis, or calculus (advanced subjects) and there is no current plan to assign them to teach advanced subjects. In essence, respondents argue that foundational level math credentials authorize the holder to teach the bulk of math courses offered in the District, and it is improper to lay off senior teachers in favor of junior teachers who are teaching the same classes as the senior teachers.

47. The District countered that it wishes to have “maximum flexibility” to assign math teachers to teach advanced subjects and that in the future there may be more advanced math classes taught throughout the District. The District has had difficulty recruiting teachers with a single subject math credential and wishes to retain those it has on staff. Additionally, the District argued that single subject holders have a deeper understanding of the theory of math than those who hold foundational credentials and are therefore superior teachers in their lower level math classes.

48. Because the junior teachers are not assigned to teach trigonometry, math analysis, or calculus and there are no immediate plans to have them teach these advanced subjects in the 2013-14 school year, the District is essentially retaining a group of junior employees to avoid *potential* difficulties recruiting *future* employees and to improve flexibility in *future* scheduling. As a result of these administrative planning concerns, junior employees are being retained to render services (teaching foundational level math) that senior employees are qualified and entitled to render, in violation of section 44955, subdivisions (b): “.... the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render....” and (c): “The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render...”

49. The District maintains that it has demonstrated under section 44955, subdivision (d)(1), that it may deviate from terminating certificated mathematics teachers in order of seniority. The District argues that it has demonstrated a specific

need for personnel to teach a specific course or course of study and that the certificated employee has special training and experience necessary to teach that course or course of study which others with more seniority do not possess. It is clear that only holders of single subject math credentials are authorized to teach advanced math classes. It is also clear that there are a limited number of advanced math classes being taught in the District, which are fully staffed by single subject credential holders. There was no evidence of a concrete plan to increase those advanced classes by any number in the 2012-13 school year, which would warrant skipping a corresponding number of junior single subject holders to staff those positions. Accordingly, the District has not identified a “specific need” for holders of single subject math credentials to teach any “specific [advanced math] course.”

50. The wholesale dismissal of senior math teachers who hold a foundational level credential for the simple reason that the District wishes to have a pool of single subject math teachers available in the event it could use them in the future completely defeats the intent of the Legislature in enacting seniority based retention rights. With this rationale, a district could skip any group of certificated employees based on a notion of what its future needs might be, or because a staff holding certain credentials affords the district more flexibility in assignments. The skipping exception set forth in section 44955, subdivision (d)(1), recognizes this tendency of a district to define its needs broadly and twice demands that the district invoking the skip demonstrate (prove) specificity: proof of a “specific need” to skip a senior person and proof of a “specific course or course of study” occupied by the skipped person.

51. The District’s argument that single subject holders have a deeper understanding of the theory of math than those who hold foundational credentials and are therefore superior teachers in their lower level math classes is not relevant to a layoff proceeding. In *Martin v Kentfield*, *supra*, 35 Cal.3d 294, the Supreme Court while analyzing analogous statutory language regarding reinstatement rights held: “In section 44956, the Legislature has made seniority the *sole* determinant as to which tenured teachers on layoff status should be appointed to a vacant position. The only limitation is that the teacher selected be ‘certificated and competent’ to render the service required by the vacant position. Among employees who meet this threshold limitation, there is no room in the statutory scheme for *comparative* evaluation.” (*Id.* at 299 (Italics in original).)

52. The District maintained that the undersigned, in a recent layoff proposed decision (Stockton Unified School District (SUSD) OAH No. 2011010763), determined that the District need not show that it planned to place skipped employees in specific teaching assignments in the upcoming school year in order to effectuate a skip. District counsel maintained that the proposed decision held that a district could retain junior employees to maintain flexibility of scheduling. The District is mistaken. As set forth in the proposed decision, SUSD proposed to skip one junior probationary employee who held single subject teaching credentials in biological

sciences; biological sciences (specialized); science: chemistry; science; geosciences and an administrative services credential. He taught honors chemistry to 10th-graders and a ninth-grade academic decathlon honors class at a Stockton charter school. The charter school provided accelerated and enriched honors and advanced placement classes. All the students were required to take math and pre-calculus, AP chemistry and biology and nine units of college classes. The district wished to skip this junior teacher so that he could teach chemistry classes at the charter school the following school year. The SUSD also wished to skip this junior teacher to provide teaching services under his other four credentials, because the school curriculum was expanding to include anatomy/physiology, physics, AP biology and AP chemistry over the next two years and the junior teacher's credentials would allow him to teach these courses. Those senior employees who challenged his skipping were not credentialed to teach chemistry or were not credentialed to teach the advanced honors courses the district proposed he teach.

53. SUSD did the opposite of what the District proposes here. It selected a junior employee who was teaching a specific course, chemistry, and proposed to have him continue teaching that specific course the following year and, in addition, demonstrated concrete plans to use his other credentials to teach specific courses in the same advanced program within two years. The SUSD was not proposing to develop a pool of teachers to have available in the event it could use them throughout the district in the future.

54. Finally, the District maintains that competency criteria (G) bars reassignment of senior respondents who hold a foundational math credential and wish to bump into positions at the high school level. Competency criteria G provides "In order to be assigned to a high school math position, possession of a credential that authorizes the holder to teach the full breadth of math assignments up to and including calculus offered at the high school level." Competency criteria must be reasonable and valid and must relate to teacher skills and credentialing. (*Duax v. Kern Community College District* (1987) 186. Cal.App.3d 555, 565-566.) They must relate to actual district needs. As discussed above, there is no real need to demand that all high school math teachers possess single subject math credentials. The District may feel the need to be prepared in upcoming years to offer more advanced math courses. But, the District may not, in the interests of achieving administrative goals, declare teachers who are certificated to teach certain high school classes, especially those now teaching those high school math classes, to suddenly be incompetent to teach them.

55. The parties have records of those respondents who hold foundational math credentials and who are senior to any of the 26 teachers who were skipped under criteria C. As set forth in the Legal Conclusions and the Order below, the District shall determine which, if any, of the 26 skipped teachers are currently teaching in a position requiring a single subject credential in math and who also will be teaching in

the 2012-13 school year in a position requiring a single subject credential in math.⁸ Those teachers are properly skipped. As regards the remaining of the 26 teachers who were skipped under criteria C, the District shall determine whether any of the respondents who received preliminary notices based on math reductions are senior to any of the 26 teachers who were not otherwise properly skipped. Pursuant to *Alexander v. Board of Trustees of Delano Joint Unified High School District* (1983) 139 Cal. App. 3d 567, 576-577, (*Alexander*) a corresponding number of the most senior of the respondents who received preliminary notices shall have their preliminary notices rescinded.

Special Education Skips

56. In skipping criteria B, the Board determined that it was necessary to skip “Individuals fully-credentialed to serve in a Special Education assignment.” The District skipped the following persons under criteria B.

Adam Eisner has a seniority date of September 4, 2008 and holds a single subject credential in physical education and an adaptive physical education specialist credential. According to the seniority list, he is currently assigned to teach physical education at the Edward Kemble Elementary School.

Thea Singleton has a seniority date of September 7, 2004 and holds a multiple subjects credential, a single subject credential in foundational math and an educational specialist instruction credential in mild and moderate disabilities. According to the seniority list, she is not currently assigned to any teaching duties.

Janet Spilman has a seniority date of September 3, 2002 and holds a resource specialist certificate of competence, a single subject teaching credential in social science, a specialist instruction credential in special education and a pupil personnel services credential in school counseling. According to the seniority list, she is currently assigned as a counselor at the West Campus High School.

57. As with the math skips, District personnel testified as to the difficulty in recruiting special education teachers, and the need for the District to retain teachers with special education credentials for special education positions. Respondents argued that the District did not meet its burden to demonstrate that Eisner, Singleton and Spilman should be skipped because they are currently assigned to teach special education classes or will teach special education classes in the upcoming school year.

⁸ Respondents contend that only 6 of the 26 skipped math teachers are currently assigned to teach a subject that requires a single subject math credential: trigonometry, pre-calculus or calculus. However, documentary evidence of this claim is unclear.

The evidence at hearing was not conclusive as to whether the assignments of Eisner and Spilman and the anticipated assignments, if any, of Singleton involved teaching or counseling under their special education credentials. The indications are that they are not performing services under special education credentials.

58. The skipping exception set forth in section 44955, subdivision (d)(1), requires that the district invoking the skip demonstrate (prove) specificity: proof of a “specific need” to skip a junior person and proof of a “specific course or course of study” occupied by the skipped person. The District did not present evidence that Eisner, Spilman or Singleton are being retained to teach or provide counseling services in special education.

59. As set forth in the Legal Conclusions, the parties have records of those respondents who are senior to Eisner, Singleton and Spilman and who have the credentials necessary to bump into the current assignments of Eisner and Spilman and the last assigned position of Singleton. Pursuant to *Alexander, supra*, 139 Cal. App. at pp. 576-577, a corresponding number of the most senior of the respondents who received preliminary notices shall have their preliminary notices rescinded.

Dual Language Immersion Competency Criteria - Carolina Avina Mora

60. In competency criteria F, the Board determined that competency required: “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.” Carolina Avina Mora has a seniority date of August 2, 2004. She holds a multiple subjects credential with a BCLAD in Spanish and teaches at the William Land Elementary School. She is senior to some of the employees with Spanish BCLADs, who are teaching in the Dual-Language Immersion Program (DLIP). Avina Mora did not testify and there was no evidence presented as to any experience she might have teaching in a DLIP. She challenges the competency criteria and maintains that she is certificated and competent to bump into one of the DLIP positions because she holds a BCLAD, and no specialized training or experience was required of new hires.

61. Iris Taylor, Ph.D., is the District’s assistant superintendent of curriculum and instruction. Her duties include oversight of the DLIP. She explained that the program goal is for students to exit the program being bilingual in English and their native (target) language. The students should be able to read and write in both languages and to understand the customs and traditions of both cultures. Students should be “bilingual, biliterate and bicultural.” The DLIP differs from bilingual programs in the District. Bilingual programs provide target language support, but the end goal is English acquisition. After a certain period of time a student in a bilingual program transitions completely out of the target language into English. The DLIP continues to teach both languages, with the target language decreasing over time. The curriculum of the DLIP is presented in both languages through a variety of instructional strategies that help students acquire both languages.

There are a host of second language acquisition strategies to help make the input of language comprehensible in a class, such as use of graphic organizers or visual aids and representations and modeling.

62. Taylor confirmed that a BCLAD is required for the DLIP positions. There is professional development training unique to DLIP teachers. When teachers enter as instructors in the DLIP they attended a dual language immersion conference. Taylor was unsure whether the conference lasted more than one day. She explained that DLIP teachers meet on a continuous basis once or twice a month, where they engage in professional learning. At a couple of the sites, particularly the newer sites like the Hmong DLIP, teachers meet with an outside consultant to help them understand teaching in a cultural context.

63. Taylor acknowledged that there were two new hires to the DLIP program on August 31, 2011, who did not have one year of experience teaching in a DLIP. Nor did the job description for these hires require one year of experience in the past five teaching in a DLIP. The new teachers will have the one year of experience at the conclusion of this school year, and the District intends to offer the DLIP programs in 2012-13 school year. The new hires attended the dual language immersion conference after they were employed and have been attending the ongoing teacher meetings.

64. The evidence is not persuasive that competency criteria F can be used to bar Avina Mora from bumping a junior employee being retained to teach in a Spanish DLIP program. The District did not establish that this competency criteria was reasonable as applied to Avina Mora. Avina Mora holds a BCLAD and has been teaching in the District for eight years. There is no persuasive evidence that a teacher holding a BCLAD is not competent to teach in a DLIP program without having previously taught in that program for a year. The evidence is to the contrary; new hires are not required to have one year of experience. Training requirements are minimal and are acquired at the commencement of the school year. Avina Mora, like the other DLIP teachers, can acquire this training rapidly and probably at the beginning of the 2012-13 school year as well.

65. There are several employees junior to Avina Mora who hold BCLADs in Spanish and are teaching in the District's Spanish DLIPs. As set forth in the Legal Conclusions, Avina Mora may bump the least senior of these employees and her preliminary notice shall be rescinded.

Accelerated Academy Program Skips

66. In skipping criteria H, the Board determined that it was necessary to skip "Individuals with specialized training and experience in the Accelerated Academy Program." The Board also determined that those wishing to bump into the Accelerated Academy Program (Accelerated Academy) would be deemed competent

only if they had “training in Accelerated Academy programs and experience relevant to working with the Accelerated Academy student population.”

67. The District proposed to skip five of the seven certificated teachers in the Accelerated Academy as well as the counselor. The skipped employees are:

Keoni Chock holds a single subject credential in social sciences with an ELA and has a seniority date of October 29, 2010.

Cory Fukuoka holds a single subject foundational math credential and a multiple subject credential with a CLAD and has a seniority date of September 5, 2006.

Jennifer Healey holds a single subject credential in math with an ELA and has a seniority date of October 31, 2007.

You Lor holds a single subject credential in English with an ELA and has a seniority date of October 4, 2010.

Sara Taylor holds a single subject credential in social sciences with an ELA and a multiple subject credential with an ELA, and has a seniority date of September 2, 2008.

Onisha Hardin holds a pupil personnel services credential in school counseling, school social work. She has a seniority date of December 1, 2004. She is employed in a .50 FTE position.

68. Respondents who are senior to these teachers maintain they are certificated and competent to bump into positions held by these teachers. Respondents with PPS credentials in counseling, senior to Hardin, contend that they are certificated and competent to bump into the .50 counselor position held by Hardin. (Hardin was laid off .50 FTE of her 1.00 FTE in counseling and is a respondent in this matter.) The District maintains that it has demonstrated a specific need to retain the employees in the Accelerated Academy and they have specialized training and experience which respondents do not possess.

69. The District’s Accelerated Academy is an alternative education program, serving primarily high school juniors and seniors. It is a “credit recovery program,” in that it assists students who would be unable to graduate from a comprehensive high school due to credit deficiency to graduate on time. It also assists students who are deficient in their credits to earn credits on an accelerated basis so that they may return to their home high schools at the same level as their classmates. The Accelerated Academy program addresses the needs of students who are not successful in a comprehensive high school environment for various reasons, including behavioral issues, as well as students who do not attend high school because

they are pregnant, have children, have been bullied or have other reasons not to attend high school. The students are predominantly African-American and Hispanic. Many of the students are 100 to 200 credits deficient for graduation when they enroll in the Accelerated Academy. The program has been effective in timely graduating students and in preventing students from dropping out of high school.

70. The Accelerated Academy students complete courses on the Internet, through Aventa Learning (Aventa), a vendor that provides the curriculum and on-line instruction. Aventa's teachers serve as the student's teacher of record. Students attend class five days a week, from 8 a.m. to noon or from noon to 4 p.m. The students work continuously for a four hour session. The students access class materials using the Aventa online computer software system. The program has six classrooms that are set up as computer labs, with 30 workstations with a computer at each workstation. There are 30 students in each four-hour class; a total of 360 students participate in the two sessions of the program. Due to the popularity of the program, there is a waiting list for enrollment and the District plans to increase the capacity of the classrooms/computer labs in the 2012-13 school year.

71. The Accelerated Academy has a "lead teacher" who oversees the day-to-day operation of the program, and seven teachers assigned to the program. There is a certificated District teacher in each classroom and an instructional aide who roams between classrooms to help students and supervise. The teachers are present throughout the school day to provide one-on-one assistance to students while they are working on-line.

72. Brandon Young has been a teacher and a lead teacher at Accelerated Academy for several years. He currently serves as coordinator of the program. He testified that although many of the students have come to the Accelerated Academy voluntarily because they had behavioral issues at comprehensive high schools, the school atmosphere was "pretty calm and very conducive to them getting their work done." He confirmed that there were not a lot of discipline issues or behavioral issues on campus. He explained that when students come to their placement office, behavioral rules are laid out very clearly for them. The students are there voluntarily and they "don't really have any issues with gangs."

73. Young testified that the staff members are certificated in a specific subject area, they possess a keen insight to the type of students and have a very good understanding as to the types of issues and circumstances that surround the students. They establish relationships with the students and their families, and they understand that empathy is a large part of dealing with this population of students. He testified that many students first come to school with a history of negative interactions with adults. In a couple of months, they "start to open up and maybe build a sense of trust." The program tries to build on this relationship and transition 11th-graders into the next school year with the same teacher.

74. Young testified that the lead teacher helps with the implementation and use of the online program at the Accelerated Academy, oversees disciplinary issues and attendance and serves as the conduit to the high schools in communicating with the registrars and reviewing transcripts. Accelerated Academy teachers do not deliver curriculum or instruction. They do not grade students. The Aventa certificated teachers are responsible for delivering curriculum. However, the Accelerated Academy teachers review and assess transcripts to determine where students are deficient, put together learning plans with students to meet these deficiencies and spend a lot of time facilitating the students in their use of the online program. The teachers make sure that the online teaching comports with a learning plan.

75. Young testified that when a teacher is assigned to the Accelerated Academy “we do some in-services during the latter part of the summer” to help them in developing learning plans. The teachers also are trained to distinguish between some of the titles of Aventa classes and the titles of comparable classes in the District. The new teachers are also trained by Aventa, which is contractually obligated to provide training. Aventa sends a representative late in the summer or early in the school year to train the staff for two days. All teachers participate in this training every year. Over the course of the year, Aventa sends a representative when Aventa is launching a new product or adding a feature to their Website. Young also pointed out that over the course of the year teachers collaborate and come up with best practices in terms of what is working for them in the classroom. They usually do this at the end of staff meetings. This collaboration is important because Young believes Aventa and a lot of other online companies “weren’t necessarily meant for this population of students... and so to adapt the program and then make it work for this population is something of an ongoing learning curve for us.” The program was meant more for general student populations than for struggling students. Currently, all of the staff are receiving ongoing training in positive behavioral intervention and support. The Accelerated Academy has also had registrars from high schools speak with staff about how to read transcripts, source codes, course offerings, graduation requirements from their districts.

76. Young testified that the part-time counselor (Hardin) facilitates the classroom. She assists the teachers in reviewing transcripts. “Largely, she helps students with their transition to higher education.” He pointed out that she has relationships with some of the community colleges in the area and helps students transition into community college and obtain financial aid. Hardin exposes students to different career Expos and workshops. She makes referrals for social and emotional counseling as well. Hardin has not had the Aventa training and does not work with the Aventa website at the Accelerated Academy.

77. Young acknowledged that teachers Lor and Chock were first employed at the Accelerated Academy at the start of the present school year. They are both probationary employees. Both were trained in a brief summer program before the start of their school years. In addition, the Accelerated Academy increased its

positions by two in the 2011-12 school year. Erlinda Villahermosa and Kirk Arnoldy (lead teacher) are new hires and are not included on the skip list. The Accelerated Academy was able to train them when they began work.

78. Many of the respondents use Aventa and are familiar with the program. Most have worked or are working in schools that have similar population demographics as the Accelerated Academy: historically low performing students, students from disadvantaged families, students in single parent families, students whose financial circumstances entitled them to free school breakfast and lunch and students with behavioral issues. Many respondents have had training in managing student behavior. Several have performed work which involves analyzing transcripts. Many respondents have worked or work in schools that assist students with credit recovery.

79. It was clear from the evidence that the “specialized training and experience” provided to Accelerated Academy employees was minimal and could easily be obtained in the summer before the school year or at the inception of the school year. The District acknowledged that the “most important” reason it wanted to retain Accelerated Academy employees was because the employees have established relationships with students, and sometimes with their families. The District speculates that students will lose their trust in adults, and that the effectiveness of the program would be devastated if these bonds were severed when senior teachers arrive on the scene.⁹ This is not a valid ground for skipping junior employees. In all Districts, in all programs, employees and students develop relationships. To allow a District to set aside the seniority-based protections of the Education Code in favor of vague, subjective and mercurial matters like employee-student relationships, would allow a District to skip junior employees with minimal justification and would defeat the intentions of the statute.

80. Finally, the District maintains that competency criteria H (Individuals with specialized training and experience in the Accelerated Academy Program) bars reassignment of senior respondents to the Accelerated Academy. Competency criteria must be reasonable and valid and must relate to teacher skills and credentialing. *Duax v. Kern Community College District* (1987) 186. Cal. App 3d 555, 565-566. Criteria H is not reasonable and valid. As set forth above, there is minimal training or experience required to provide services in the Accelerated

⁹ The District points out that in vulnerable student populations, when there are layoffs, students can lose the one adult in their lives they can trust. But, it is inevitable that if a teacher is the one adult a student can trust, the student will lose that relationship when the student graduates or moves back to her/his home school or when the teacher voluntarily transfers or leaves employment. Vulnerable students in all of the District schools, not just the Accelerated Academy, lose trusted adults in the event of layoffs.

Academy, and for those who are not already familiar with the Avanta program, or with analyzing transcripts, that training and experience can be acquired in advance of and during the first few months of employment.

81. The parties have records of those respondents who are senior to any of the five teachers who were skipped under criteria H and records of those respondent counselors who are senior to Hardin. As set forth in the Legal Conclusions and pursuant to *Alexander, supra*, 39 Cal. App. 3d at pp. 576-577, a corresponding number of the most senior of the respondents who received preliminary notices shall have their preliminary notices rescinded.

Superintendent's Priority Schools Skips

82. In skipping criteria D, the Board determined that it was necessary to skip "Individuals currently serving in a Priority School assignment, who will also be teaching in a Priority School assignment for 2012-2013." The Board also determined that those wishing to bump into Priority Schools would be deemed competent only if they had "training and/or experience teaching in a Priority School setting."

83. The District proposed to skip all of the 100 certificated teachers, counselors and social workers currently serving in the seven Superintendent's Priority Schools. Many of the respondents are senior to the employees skipped. At least 37 of the skipped employees have seniority dates in 2010 or 2011.¹⁰

Threshold Issue-Counselor and Social Worker Skips at Priority Schools

84. Respondents' first challenge to the skip of Priority School employees is that counselors and social workers cannot be skipped because the Skipping Resolution only refers to individuals who will be "teaching" in a Priority School assignment. The District contends that counselors and social workers are part of the "teaching team," and thus are properly skipped under the language of the Skipping Resolution. This contention is not persuasive. However, there is no statutory or other authority that requires a District to adopt skipping criteria by resolution. In contrast, there is authority that requires that a District adopt FTE reductions and tie-breaking criteria by resolution. In *Bledsoe*, the court upheld the district's right to skip less senior employees with special training and experience to teach a particular course of study without the district's governing board having adopted a resolution authorizing the skip.

85. The District may skip counselors and social workers assigned to Priority Schools if it can "demonstrate a specific need for personnel to provide

¹⁰ For example, 19 employees have seniority dates of August 31, 2011 and 12 have seniority dates of September 7, 2010.

services authorized by a services credential with a specialization in . . . pupil personnel services . . . [and] the certificated employee has special training and experience necessary to . . . provide those services, which others with more seniority do not possess.” (§ 44955, subd, (d)(1).) That analysis is conducted below

Threshold Issue-Course of Study

86. Respondents’ second challenge to the skip of Priority School employees is that the Priority Schools do not constitute a “specific course or course of study,” and therefore the District may not skip Priority School employees under section 44955, subdivision (d)(1). This section provides in pertinent part:

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a *specific course or course of study*, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess. (Italics added)

87. Section 51014 defines “course of study” as “the planned content of a series of classes, courses, subjects, studies, or related activities.”

88. Section 51002 states:

The Legislature hereby recognizes that, because of the common needs and interests of the citizens of this state and the nation, there is a need to establish a common state curriculum for the public schools, but that, because of economic, geographic, physical, political and social diversity, there is a need for the development of educational programs at the local level, with the guidance of competent and experienced educators and citizens. Therefore, it is the intent of the Legislature to set broad minimum standards and guidelines for educational programs, and to encourage local districts to develop programs that will best fit the needs and interests of the pupils, pursuant to stated philosophy, goals, and objectives.

89. Section 51204 states: “Any course of study adopted pursuant to this division shall be designed to fit the needs of the pupils for which the course of study is prescribed.”

90. Section 51224 states:

The governing board of any school district maintaining a high school shall prescribe courses of study designed to provide the skills and knowledge required for adult life for pupils attending the schools within its school district. The governing board shall prescribe separate courses of study, including, but not limited to, a course of study designed to prepare prospective pupils for admission to state colleges and universities and a course of study for career technical training.

91. The District maintains that the Education Code in the above sections defines the “broad minimum standards” of “adopted” courses of study for elementary and high school students statewide. The District argues that inherent in this language is the understanding that a “course” and a “course of study” includes the programs and techniques designed to deliver course content in various settings, such as the Priority Schools.

92. As recited above, section 51014 defines “course of study” as “the planned “content” of a series of classes, courses, subjects, studies, or related activities.” Clearly, the “delivery” of content is the medium, not the message. The method of instruction is not the content of the course being studied. However, as the District pointed out, section 44955, subdivision (d)(1), which allows deviation from seniority if the District demonstrates that the skipped employee has special training and experience necessary to teach a course or course of study, would be meaningless if only the content of the course was at issue, as anyone with the appropriate credential could teach the course. This section contemplates that the skipped employee will have skills beyond command of content. Accordingly, respondent’s argument that the skip of Priority School employees should be denied because Priority Schools do not constitute a “specific course or course of study” is rejected.

93. Additionally, this “issue” appears to be merely a semantic problem. The District actually seeks to skip every certificated employee in all its Priority Schools. Each certificated employee teaches a course or provides a service under a PPS credential. The District is really proposing to skip 100 or so persons who are teaching courses/providing PPS services. The issue has been mischaracterized as a skip of a “school or a program” rather than a skip of persons teaching or providing services under a PPS credential.

Priority School Skips

94. In the spring of 2010, the Superintendent announced the Priority Schools Initiative for the 2010-11 school year. The Superintendent designated the following six schools as Priority Schools: Oak Ridge Elementary; Father Keith B. Kenney Elementary; Jedediah Smith 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 2011-12 school year.

95. The Priority Schools were established to provide additional assistance and resources to focus on improving underperforming schools. The seven designated schools are 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 have been in Performance Improvement status (PI) for seven years, and all had been in PI for five or more years. They had had low yearly improvement rates in the Academic Performance Index 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.

96. 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 84 schools.

97. 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. The Priority Schools are "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.

98. The District seeks to exempt all certificated employees at the seven District Prior to Schools for several reasons, among them: (1) The programs have a unique and experimental design and the District wishes to keep all personnel in place to properly assess the program and its effects, (2) Many certificated employees voluntarily have left the program, and to lay off the remaining employees would "devastate" the programs and (3) the teachers and counselors have formed relationships and bonds with the students and families and breaking those bonds

would be detrimental to students. None of these rationales constitute grounds for deviating from the seniority-based order of layoff under the specific and narrow provisions of section 44955, subdivision (d)(1), which relate to the employee's specialized training and experience necessary to teach a course/course of study or provide services.¹¹

99. 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*, this analysis should be conducted on a case-by-case basis, where the District establishes that a particular assignment requires a teacher with special training and experience, the District establishes that the individual teacher assigned has the necessary training and experience and the District establishes that the individual senior employees do not have the necessary training and experience.

100. Here, the District maintains that all of the 100 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 training and experience, by virtue of the fact that they have not been working at the Priority Schools and did not receive the same training as Priority School personnel. Respondents contend that the District's failure to analyze the training and experiences of the individuals skipped and their seniors violates section 44955, subdivision (d)(1), and voids the skip of Priority School employees. This argument is not persuasive. The lengthy hearing in this matter provided parties with the opportunity to present evidence of the training and experiences of the affected individuals.¹²

101. The District maintains that intensive training is required to teach in its Priority Schools. At a minimum, the District required the following training during the two years the Priority Schools have been in operation:

- a. DataWise/ Data Inquiry Training (DataWise) 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 DataWise analysis process in

¹¹ The District also advances constitutional arguments which are discussed below.

¹² In *Bledsoe*, *supra*, 170 Cal.App.4th at p. 143, the court found that the District should have assessed Bledsoe's qualifications prior to issuance of the preliminary notice, but he was not prejudiced by this failure because his qualifications were assessed at the hearing.)

their classrooms. The DataWise 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, implementation of the plan and measurement of the outcome is collaborative, and completion of each round of the process is known as a “cycle of inquiry.” Staff use Common Planning Time (CPT) in addition to other meeting time, for collaboration and implement the DataWise process.

- b. WriteTools 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 WriteTools techniques. 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.
- c. Culturally Responsive Teaching Strategies (CRTS) addresses the various learning styles of students, and provides strategies and techniques to design lessons to appeal to these styles of learning (visual, auditory, and kinesthetic). The purpose of this training is to enhance the ability of teachers to deliver content to students in a way that is accessible through different learning modalities.
- d. Home Visit Training is provided to train staff in how to conduct home visits of students and their families.

Skip of HJHS Staff

102. Due to the size of the staff at HJHS (120 teachers), the District did not provide DataWise/Data Inquiry training to the entire staff. Rather, in the 2010-11 school year, the District provided the multi-day DataWise training to a team of HJHS teachers who were to train their colleagues during common planning time, a “train the trainer” model.” The “train the trainer” model” proved unsuccessful and the District acknowledges that such training is not comparable in intensity or scope to the direct DataWise training provided in its other Priority Schools. Transformation by Design did provide some training to teachers in the HJHS English and mathematics departments to assist with implementation of the DataWise/Data Inquiry process. According to District Exhibit 38 c, a record of professional development activities of HJHS certificated employees, in the 2011-12 school year, no certificated staff engaged in the trainings identified in Finding 101 a through d. Mary Shelton, District Chief Accountability Officer, testified that HJHS elected to participate in GLAD

(Guided Language Acquisition Design) because of its large EL population. There was no evidence that the HJHS staff was involved in the cycle of inquiry, or that it devoted more common planning time or professional development time to DataWise/Data Inquiry or Write Tools/Area-3 Writing than did any other District high school.

103. The evidence established that although HJHS is a Priority School, its staff has not been intensely trained in the teaching strategies the District maintains are critical to the Priority School mission. And without these strategies in place, it follows that merely working in the HJHS does not provide specialized experience. Accordingly, the District did not meet the requirements of section 44955, subdivision (d)(1). It did not establish a specific need for specially trained personnel to provide services at HJHS, or that its personnel had special training or experience that more senior employees do not possess.

104. Finally, the District maintains that competency criteria C (In order to work in a Priority School, training and/or experience teaching in a Priority School setting) bars reassignment of senior respondents to the HJHS. Competency criteria must be reasonable and valid and must relate to teacher skills and credentialing. (*Duax v. Kern Community College District, supra*, 186 Cal.App.3d at pp. 565-566.) Criteria C is not reasonable and valid as it pertains to HJHS. As set forth above, there is minimal specialized training or experience required to provide services in the HJHS.

105. The parties have records of those respondents who are senior to any of the employees who were skipped due to their assignment to HJHS. As set forth in the Legal Conclusions, pursuant to *Alexander, supra*, 139 Cal.App.3d at pp. 576-577, a corresponding number of the most senior of the respondents who received preliminary notices and are certificated to serve in these assignments shall have their preliminary notices rescinded.

Skip of Staff at Oak Ridge Elementary, Father Keith B. Kenney Elementary, Jediah Smith Elementary, Fern Bacon Basic Middle, Will C. Wood Middle

106. The District has provided Data Wise and Data Inquiry training, Write Tools/Area-3 Writing, CRTS and Home Visits training as well as coaching and support to its teams of teachers at these schools. These school staffs spend a significant amount of time in common planning devoted to these teaching and assessment strategies. Several respondents testified that they have participated in DataWise training and, as trainers, provided the training to the staffs at their schools. Many respondents testified that they used the DataWise process and collaborated on these strategies during common planning time. Other respondents testified that they have received training in the DataWise process from teachers at their schools who attended District training. Many respondents have had CRTS, Write Tools and Home Visit training and use these trainings in their teaching.

107. The DataWise process is in various stages of implementation at many, if not most, of the schools in the District. However, the Priority Schools identified here have fully integrated the DataWise process into instruction and assessment, and the teachers have received much more coaching and support to integrate the DataWise process in their day-to-day teaching. Many of the Priority School teachers have completed one to three of the lengthy cycles where data is reviewed, strategies devised and tested and results assessed. In contrast, the training and experience of the respondents in these techniques is dated or has been sporadic and the DataWise and Write Training techniques, with the dedicated common planning time, have not been fully integrated into the school programs in which they teach. Respondents' training has not been to the level of focused intensity, school-wide, or with the ongoing follow-up and support that has been given to the Priority Schools.

108. The evidence is persuasive that many of the employees at these Priority Schools have specialized training in the priority school setting which senior teachers do not possess. Many, though, do not. Counselors, social workers and physical education teachers do not participate in DataWise and Write Tools Training. They participate in the common planning time in which assessments are made and strategies are designed, but they do not deliver academic instruction and thus do not implement any of the teaching strategies adopted by the Priority Schools. The evidence is persuasive that senior counselors, social workers and physical education teachers are competent to perform the functions of those junior to them in these Priority Schools.

109. The parties have records of those respondents who are senior to any of the employees who were skipped due to their assignment to counselor, social worker or physical education positions at the Priority School Middle and Elementary Schools. As set forth in the Legal Conclusions, pursuant to *Alexander, supra*, 139 Cal.App.3d at pp. 576-577, a corresponding number of the most senior of the respondents who received preliminary notices and are certificated to serve in counselor, social worker or physical education assignments shall have their preliminary notices rescinded.

110. In addition, there are numerous teachers at these schools who are in their first year of service in a District Priority School. Although the schools in which they work are in their second year of operation, these employees will have completed only one year of experience when the 2012-13 school year commences. They will not have completed even one cycle of inquiry. Their experience in implementing their trainings has been limited. Senior employees, by virtue of their tenure and experience with the District and its largely disadvantage student population, can step into the shoes of these employees and complete the DataWise, Write Training/Area-3 Writing, CCR and Home Visit training to the extent they have not already completed this training. It is noted that most of the staff in these school received their intensive DataWise/Data Inquiry training during the summer months before their employment.

111. The parties have records of those respondents who are senior to any of the first year employees who were skipped due to their assignment to teaching positions at the Priority School Middle and Elementary Schools. Pursuant to *Alexander, supra*, 139 Cal.App.3d at pp. 576-577, a corresponding number of the most senior of the respondents who received preliminary notices and are certificated to serve in these assignments shall have their preliminary notices rescinded.

112. Competency criteria C does not bar reassignment of senior respondents to these elementary and middle schools. Competency criteria must be reasonable and valid and must relate to teacher skills and credentialing. (*Duax v. Kern Community College District, supra*, 186 Cal.App.3d at pp. 565-566. Criteria C is not reasonable and valid, for the reasons set forth above.

Skip of Staff at Rosa Parks Middle School

113. Rosa Parks Middle School is in its first year of operation. Between August 1, and August 5, 2011, 22 of its 29 certificated employees took 40 hours of training in Data Inquiry/Project Design through Transformations by Design. (Exhibit 38 e, a record of professional development activities of Rosa Parks certificated employees, in the 2011-12 school year, through 1/25/12). One of the 22 trainees is a librarian and one is a physical education teacher. Denise Lee has not taken the DataWise training and is a probationary 2 science teacher with a seniority date of September 7, 2010. Christine Ha has not taken DataWise training and is a probationary 1 teacher with a seniority date of November 30, 2010. In addition, Exhibit 38 e shows that none of the Rosa Parks employees has taken Write Tools/ Area3 Writing, CCR or Home Visit training. Accordingly, the claim that Rosa Parks Middle School employees have special training rests on the 40 hours of DataWise training most, but not all, of the teachers have taken.

114. The claim that Rosa Parks Middle School employees have special experience rests on their service in a priority school for six months (September through February 2012 as of the date of the Skipping Resolution). While it is true that most if not all of the employees will complete the 2012-13 school year, one year of experience is not sufficient to engage in the cycles of data inquiry, the District maintains is so critical to Priority School teaching. It is axiomatic that a District resolution which skips employees based on their specialized training and experience cannot be based on the prospective training and experiences of the skipped employees.

115. The District has not demonstrated that the employees it seeks to skip at Rosa Parks Middle School have the specialized training or experience required under section 44955, subdivision (b)(2) and articulated in *Bledsoe*.

116. The parties have records of those respondents who are senior to any of the employees who were skipped due to their assignment to Rosa Parks Middle

School. As set forth in the Legal Conclusions, pursuant to *Alexander, supra*, 139 Cal.App.3d at pp. 576-577, a corresponding number of the most senior of the respondents who received preliminary notices and are certificated to serve in these assignments shall have their preliminary notices rescinded.

117. Competency criteria C does not bar reassignment of senior respondents to Rosa Parks Middle School. Competency criteria must be reasonable and valid and must relate to teacher skills and credentialing. *Duax v. Kern Community College District, supra*, 186 Cal.App.3d at pp. 565-566. Criteria C is not reasonable and valid, for the reasons set forth above.

Constitutional/Equal Protection Argument (Section 44955, subdivision (d)(2))

118. As a separate basis for skipping certificated employees at the seven Priority Schools, the District asserted that it was entitled to deviate from terminating certificated employees in order of seniority “[f]or purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.” (section 44955, subd. (d)(2).) The District contended that, for the seven Priority Schools, the imposition of layoffs would violate the fundamental right of the students at those schools to “basic equality of educational opportunity” guaranteed by the State Constitution (*Butt v. State of California* (1992) 4 Cal.4th 668, 685.) The District further contended that, because the fundamental right of education is at issue, strict scrutiny is triggered. (*Id.*, at pp. 685-686 [“heightened scrutiny applies to State-maintained discrimination whenever...the disparate treatment has a real and appreciable impact on a fundamental right or interest.”].) For that reason, the District claims that there must be a compelling state interest justifying seniority-based layoffs at particular schools where layoffs negatively impact students’ educational opportunities.

119. The District’s argument is not persuasive. Even assuming that it is true that laying off junior employees and replacing them with seasoned senior employees deprives students of an equal education (an unproven and counter-intuitive hypothesis), all of the District schools are affected by layoffs, not just the Priority Schools. At least 44 of the District’s 85 schools are currently in Program Improvement status, and have been for two years or more, many for five years or more. Approximately 68 percent of the District’s students live at or near the poverty line, and an estimated 60 to 65 schools are designated as Title 1 schools. The testimony of many of the respondents demonstrated the devastating effect that layoffs will have on other District schools with demographics similar to the Priority Schools that are not being skipped.

120. The District did not establish that it needed to skip the entire certificated staff of the Priority Schools in order to provide equal educational opportunity to Priority School students. Moreover, the District’s argument ignores the “equal protection” rights of students at the many other low-performing schools.

These students would not be treated equally with Priority School students and would be disproportionately burdened by the additional layoffs necessitated by skipping staff at the seven Priority Schools. Layoffs are clearly disruptive and detrimental to the academic programs of all low-performing schools, not just the Priority Schools. The Priority School skip cannot be justified based on section 44955, subdivision (b)(2).

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.”¹³ 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.¹⁴

3. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, “in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction.” The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Board’s decision to reduce services was a proper exercise of its discretion.

4. Legal cause exists to reduce or eliminate 397.8¹⁵ FTE of particular kinds of services offered by the District as set forth in detail in the Findings. Cause

¹³ *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.

¹⁴ *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 807-808

¹⁵ The District requested that the Administrative Law Judge find legal cause to reduce or eliminate 398 FTE, pursuant to District policy to avoid partial FTE layoffs and to round up fractional FTEs. Respondents did not contest this policy. However,

for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils, within the meaning of Education Code section 44949.

5. Legal cause also exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services.

6. As set forth in Finding 23, Preston Jackson's seniority date shall be changed to the date in February 2006 on which he first rendered paid service to the District under an emergency substitute permit, according to the District records.

7. *Math Skip*: As set forth in Findings 44 through 55, the proposed math skipping criteria is invalid. In accordance with Finding 55, the parties have records of those respondents who hold foundational math credentials and who are senior to any of the 26 teachers who were skipped under criteria C. The District shall determine which, if any, of the 26 skipped teachers are currently teaching in a position requiring a single subject credential in math and who also will be teaching in the 2012-13 school year in a position requiring a single subject credential in math. Those teachers are properly skipped. As regards the remaining of the 26 teachers who were skipped under criteria C, the District shall determine whether any of the respondents who received preliminary notices based on math reductions are senior to any of the 26 teachers who were not otherwise properly skipped. Pursuant to *Alexander, supra*, 139 Cal.App.3d at pp. 576-577, a corresponding number of the most senior of the identified respondents who received preliminary notices shall have their preliminary notices rescinded.

8. *Special Education Skip*: As set forth in Findings 56 through 59, the proposed special education skipping criteria is invalid. In accordance with Finding 59, the parties have records of those respondents who are senior to Eisner, Singleton and Spilman and who have the credentials necessary to bump into the current assignments of Eisner and Spilman and the last assigned position of Singleton. Pursuant to *Alexander, supra*, 139 Cal.App.3d at pp. 576-577, a corresponding number of the most senior of the identified respondents who received preliminary notices shall have their preliminary notices rescinded.

9. *Dual Language Immersion Competency Criteria - Carolina Avina Mora*: As set forth in Findings 60 through 65, there are several employees junior to Avina Mora who hold a BCLAD in Spanish and are teaching in the District's Spanish DLIP. Avina Mora may bump the least senior of these employees and her preliminary notice shall be rescinded.

legal cause exists only to reduce or eliminate the actual number of FTEs adopted pursuant to Board resolution. The Administrative Law Judge is without authority to find legal cause for reduction of another .2 FTE.

10. *Accelerated Academy Program Skip*: As set forth in Findings 66 through 81, the proposed Accelerated Academy Program skipping criteria is invalid. In accordance with Finding 81, the parties have records of those respondents who are senior to any of the five teachers who were skipped under criteria H and records of those respondent counselors who are senior to counselor Hardin. Pursuant to *Alexander, supra*, 139 Cal.App.3d at pp. 576-577, a corresponding number of the most senior of the identified respondents who received preliminary notices shall have their preliminary notices rescinded.

11. *HJHS Priority School Skip*: As set forth in Findings 94 through 105, the proposed Priority School skip of HJHS employees is invalid. The parties have records of those respondents who are senior to any of the employees who were skipped due to their assignment to HJHS. Pursuant to *Alexander, supra*, 139 Cal.App.3d at pp. 576-577, a corresponding number of the most senior of the respondents who received preliminary notices and are certificated to serve in HJHS assignments occupied by junior employees shall have their preliminary notices rescinded.

12. *Skip of Staff at Oak Ridge Elementary, Father Keith B. Kenney Elementary, Jedediah Smith Elementary, Fern Bacon Basic Middle, Will C. Wood Middle*: As set forth in Findings 94 through 101 and Findings 106 through 111, this skip is invalidated in part.

A. The skip of counselor, social worker and physical education positions is invalid. The parties have records of those respondents who are senior to any of the employees who were skipped due to their assignment to counselor, social worker or physical education positions at the Priority School Middle and Elementary Schools. Pursuant to *Alexander, supra*, 139 Cal.App.3d at pp. 576-577, a corresponding number of the most senior of the respondents who received preliminary notices and are certificated to serve in counselor, social worker or physical education assignments shall have their preliminary notices rescinded.

B. The skip of employees in their first year of service in a District Priority Schools is invalidated. The parties have records of those respondents who are senior to any of these employees who were skipped due to their assignment to teaching positions at the Priority School Middle and Elementary Schools. Pursuant to *Alexander, supra*, 139 Cal.App.3d at pp. 576-577, a corresponding number of the most senior of the respondents who received preliminary notices and are certificated to serve in these assignments shall have their preliminary notices rescinded.

13. *Skip of Staff at Rosa Parks Middle School*: As set forth in Findings 94 through 101 and Findings 113 through 117, this skip is invalid. The parties have records of those respondents who are senior to any of these employees who were skipped due to their assignment to teaching positions at Rosa Parks Middle School. Pursuant to *Alexander, supra*, 139 Cal.App.3d at pp. 576-577, a corresponding

number of the most senior of the respondents who received preliminary notices and are certificated to serve in these assignments shall have their preliminary notices rescinded.

14. 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 Board may give the remaining respondents whose preliminary notices have not been rescinded final notice before May 16, 2012, that their services will not be required for the 2012-13 school year.


15. All other contentions and claims not specifically discussed herein were considered and are DENIED.

ORDER

1. The District shall comply with Legal Conclusions 7 through 13.

2. Except as noted above, notices may be given to respondents that their services will not be required for the 2012-13 school year because of the reduction or discontinuation of particular kinds of services. Notice shall be given to respondents in inverse order of seniority.

DATED: May 8, 2012



ANNE ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

LIST OF RESPONDENTS

| | | | |
|-----|------------------------|---|-----------|
| 1. | Aasen | Tina | |
| 2. | Abdo | Tammy | |
| 3. | Acquisto | Yvette | |
| 4. | Ahmadzai | Zolaikha | |
| 5. | Ainslie | Thomas | |
| 6. | Alair-Saito | Allison | Rescinded |
| 7. | Alvarado | Olivia | |
| 8. | Amioka | Courtney | |
| 9. | Anderson | Teresa | |
| 10. | Arellano | Alejandra | Rescinded |
| 11. | Arnott | Michelle | |
| 12. | Avina Mora | Carolina | |
| 13. | Avis | Heidi | |
| 14. | Bachman-Tavianini | Theresa | |
| 15. | Ballante | Anne-Catherine | |
| 16. | Baradat | Nicole | |
| 17. | Barsotti-Hopson | Rhonda | |
| 18. | Baty | Roy (dual notice) only temp. notice rescinded | |
| 19. | Beall | Julie | Rescinded |
| 20. | Becker | Melissa | |
| 21. | Beckett | Erik | |
| 22. | Benzing | Ebony | |
| 23. | Boe | Jeri | |
| 24. | Boettner | Julie | |
| 25. | Borcich | Cynthia | |
| 26. | Borgman | Christina | |
| 27. | Borrelli | Hillary | |
| 28. | Bradshaw | Patricia | |
| 29. | Bristow | Laura | |
| 30. | Brown | Amy | |
| 31. | Brown | Anne | |
| 32. | Brown | James | |
| 33. | Bryant | Zachary | |
| 34. | Burkhouse | Craig | |
| 35. | Campbell | Jill | |
| 36. | Campbell | Rebekah | |
| 37. | Campos | Danilo | |
| 38. | Campos | Ramon | |
| 39. | Cannady IV | William | |
| 40. | Catlett | Emily | |

| | | | |
|-----|----------------------------|---|------------------|
| 41. | Cazel-Mayo | Michelle | |
| 42. | Chadwell | Norma | |
| 43. | Chang | Ian | |
| 44. | Chapman | Ellen | Rescinded .7 FTE |
| 45. | Chen | Wendy | |
| 46. | Chu | Chris | |
| 47. | Chufar-Comstock | Bonnie | |
| 48. | Clarín | Rachel | |
| 49. | Cleland-Brinzer | Jennifer | |
| 50. | Cluff | Kristen | |
| 51. | Cochrane | Joan | |
| 52. | Cole | Whitney | |
| 53. | Conklin | Beth | |
| 54. | Conner | Brandie | |
| 55. | Cooperman | Jody | |
| 56. | Corona | Alejandro | |
| 57. | Costello-Toomey | Kelly | Rescinded |
| 58. | Crivelli | Erin | |
| 59. | Daigle | Janelle | |
| 60. | Davis | Andrienne | |
| 61. | de Anda | Sandra | |
| 62. | Dillingham | Bennae | Rescinded |
| 63. | Dobbins | Erica | |
| 64. | Doll | Lorraine | |
| 65. | Downey | Elissa | |
| 66. | Downing | James | |
| 67. | Dyer | Monica | |
| 68. | Edwards | Camica | |
| 69. | Eid | Diane | |
| 70. | Elazier | Brenda | Rescinded .2 FTE |
| 71. | Elias-Morales | Ana (dual notice) only temp. notice rescinded | |
| 72. | Elkins | Jason | |
| 73. | Eller | Courtney | |
| 74. | Esquivel-Abrahams | Anna Lisa | |
| 75. | Evans | Joanna | Rescinded |
| 76. | Feagins | Char | |
| 77. | Feliciano | April | |
| 78. | Fernald | Ryan | |
| 79. | Finegan | Sean | |
| 80. | Flores | Mia | |
| 81. | Fong | Adrienne | |
| 82. | Forman | Rebecca | |
| 83. | Frazier | Steven | |
| 84. | Gallardo-Martinez | Leticia | |
| 85. | Galvan | Katrina | |

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|------|-----------------------|------------------------|------------------|
| 86. | Garcia | Jose E. | |
| 87. | Garcia | Lucille Ann | |
| 88. | Garcia | Lyudmila | |
| 89. | Garrett | Sarah | |
| 90. | Geronimo-Uribe | Josefina | |
| 91. | Gonzalez | Jenny | |
| 92. | Goodwin | Michelle C. | |
| 93. | Gordon | Julie | |
| 94. | Gorman | John | |
| 95. | Gosney | Chris | |
| 96. | Griffen | Janene | |
| 97. | Hack | Brandy | |
| 98. | Hammond | Jeremy | Rescinded .1FTE |
| 99. | Hansen | Barbara | Rescinded .4 FTE |
| 100. | Hardin | Onisha | |
| 101. | Harris | Kathryn | |
| 102. | Hensley | Katherine | |
| 103. | Hernandez | Jesse | |
| 104. | Hernandez | Jose Ramiro | Rescinded |
| 105. | Herzog-Kruse | Joy | |
| 106. | Hetzel | Danielle | Rescinded |
| 107. | Hill | Megan | |
| 108. | Hoekstra | Lara | |
| 109. | Hogan | Kathryn | Rescinded |
| 110. | Hoffhines | Amy | |
| 111. | Irwin-DiLoreto | Kevin | |
| 112. | Ishimaru | Susan | |
| 113. | Jackson | Adriane | |
| 114. | Jackson | Fred | |
| 115. | Jackson | Preston | |
| 116. | Jaime-Razo | Alicia | Rescinded |
| 117. | Jarvis | Lisa | |
| 118. | Jensen | Erika | |
| 119. | Jewett | Irene | Rescinded |
| 120. | Johnson | Audrey | |
| 121. | Johnson | Cristopher | |
| 122. | Johnson | Elisabeth | |
| 123. | Johnson | Jeffrey | |
| 124. | Johnson | Wallace | |
| 125. | Johnston | Michael | Rescinded |
| 126. | Jones | Phillip Marc | |
| 127. | Jones | Rory | |
| 128. | Kachagin | Anna Lisa | |
| 129. | Kapp | William | Rescinded |
| 130. | Kerns | Patricia | |

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|------|-----------------------|---|------------------|
| 131. | Kerze | Michael | |
| 132. | Koren | Alexis | |
| 133. | Kuroda | Stephanie | |
| 134. | Lam | Christina | |
| 135. | Lambert | Carol | |
| 136. | Lanzaro | Christina | |
| 137. | Lee | Danny | |
| 138. | Lee | Mary | |
| 139. | LeRiche | Cynthia | Rescinded |
| 140. | Liuzzi | Joanie | |
| 141. | Lo | Tiffany | Rescinded |
| 142. | Lobese | Robert | |
| 143. | Lofton | Kristi | |
| 144. | Lofton | Louise | |
| 145. | Lopez | Angela | |
| 146. | Love | Janet | Rescinded .5 FTE |
| 147. | Lucca | Mary | |
| 148. | Maddox | William S. | |
| 149. | Maestas | Frank | |
| 150. | Main | Davin | |
| 151. | Mangan | Ryan(dual notice) only temp. notice rescinded | |
| 152. | Manning-Taormina | Saralyn A | |
| 153. | Martin | Danielle | |
| 154. | Martinez | Juan | |
| 155. | Mashinini-Nigl | Siphiwe | |
| 156. | Matoba | Marge | |
| 157. | Mayer | Julia | Rescinded |
| 158. | Mayer | Karen | |
| 159. | McAfee | Leslie | Rescinded |
| 160. | McCaffrey | Geoffrey | |
| 161. | McCoy | Monica | |
| 162. | McCumiskey | John | Rescinded |
| 163. | McGee | Jim | |
| 164. | McPeters | Kenneth | |
| 165. | Mego | Maria | |
| 166. | Messineo | Vincent | |
| 167. | Meyer | Todd | |
| 168. | Millard | Consuelo | |
| 169. | Miller | Katie | Rescinded .3 FTE |
| 170. | Miller | Kristie | |
| 171. | Mitchell | Brian | |
| 172. | Moore | Brian | |
| 173. | Moua | Si | |
| 174. | Moua-Yang | Mai | |
| 175. | Musleh | Cristina | |

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|------|--------------------|--------------------|------------------|
| 176. | Nakamura | Howard | |
| 177. | Navarette | Ray | |
| 178. | Navarro | Lecenia | Rescinded |
| 179. | Newman | Jean | |
| 180. | Nguyen | Kieu | |
| 181. | Nguyen | Kim Anh | |
| 182. | Nickel | Kimberly | |
| 183. | Nim | Veasna | |
| 184. | Noma | Lisa | |
| 185. | Norris | Claire | Rescinded .4 FTE |
| 186. | Nouchi | Nadine | |
| 187. | O'Flaherty | Kenneth | |
| 188. | O'Hara | Sheilah | |
| 189. | Pattow-Vigil | Barbara | |
| 190. | Pedley | Sandra | |
| 191. | Perez | Herson | Rescinded |
| 192. | Perez | Mirna | |
| 193. | Perez | Rafael | Rescinded |
| 194. | Pineda | Marcos | |
| 195. | Plant | Gregory | Rescinded |
| 196. | Power | Deborah | |
| 197. | Prabhjot | Rai | |
| 198. | Prentice | Gary | |
| 199. | Price | Lauren | |
| 200. | Pullano | Jacquelyn | |
| 201. | Rambo | Sonia | |
| 202. | Reeder-Esparza | Pamela | |
| 203. | Reilly | Patrick | |
| 204. | Reinke | Jennie | |
| 205. | Reyes | Kim | Rescinded |
| 206. | Roach | Michael | |
| 207. | Ruiz | Rosario | Rescinded |
| 208. | Rule | Daniel | |
| 209. | Ryan | Kelly | |
| 210. | Saldana | Juanita | |
| 211. | Salk | Heidi | |
| 212. | Samaan | Lynne | |
| 213. | Sanchez | Debra | |
| 214. | Sandoval | Adriana | |
| 215. | Schmelling | Evelyn | |
| 216. | Schnack | Sarah | |
| 217. | Schon | Julie | |
| 218. | Selseleh | Mary | |
| 219. | Shaffer | Kimberly | |
| 220. | Simonsen | Nicole | |

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|------|----------------------|--|-----------|
| 221. | Sims | Cheryl | |
| 222. | Skvarla | Julieann | Rescinded |
| 223. | Slagle | Antonia | |
| 224. | Smith | Nicole | |
| 225. | Smith | Philip | |
| 226. | Sorkin | Ellen | |
| 227. | Springmeyer | Shannon | |
| 228. | Stansfield | Curtis | |
| 229. | Stephens | Joyce | |
| 230. | Stevens | Lisa | Rescinded |
| 231. | Stincelli | David | |
| 232. | Stinson | Lisa | |
| 233. | Sunahara | Heather | Rescinded |
| 234. | Swoboda | Dawn | |
| 235. | Synhorst | Ryan | |
| 236. | Tamanaha | Fumi | |
| 237. | Tapia | Esmeralda | |
| 238. | Taylor | Christopher | |
| 239. | Taylor | M. Kathryn (dual notice) only temp. notice rescinded | |
| 240. | Tellez | Mayra | |
| 241. | Tewele | Benjamin | Rescinded |
| 242. | Thao | Chia | Rescinded |
| 243. | Thao | Shoua | |
| 244. | Thompson | Ena | |
| 245. | Thompson | Kelly | |
| 246. | Thurman | Melissa | |
| 247. | Triche | David | |
| 248. | Tsue | David | |
| 249. | Udell | Bertha | |
| 250. | Van Vliet | Kelli | Rescinded |
| 251. | Vang | Jade | |
| 252. | Vang | Kenneth | Rescinded |
| 253. | Vaughn Bechtold | Kerry | |
| 254. | Viggiano | Linda | |
| 255. | Vue | Vanessa | |
| 256. | Wagers | Heather | |
| 257. | Webb | Rachel | |
| 258. | Webb | Terri | |
| 259. | Wells-Artman | Christie | |
| 260. | White | David | |
| 261. | Whitehead | Tony | |
| 262. | Willover | Valerie | |
| 263. | Winick | Judy | |
| 264. | Wolthius | Thomas | |
| 265. | Wong | Rose-Kit | Rescinded |

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|------|------------|---------|
| 266. | Xiong | Nhia |
| 267. | Yaangh | Stacy |
| 268. | Yang | Chong |
| 269. | Yang | Julia |
| 270. | Yang | Ka |
| 271. | Yates | Grace |
| 272. | Young | Gregory |
| 273. | Zierenberg | Carolyn |
| 274. | Nevarez | Jackie |

EXHIBIT B

Decision by the Governing Board Regarding Certificated Layoff Proceedings OAH Case. No. 2012020744

1. Skip of Employees Assigned to Hiram Johnson High School

a. The ALJ's Findings of Fact and Conclusion of Law Related to HJHS are Not Supported by the Record

In Findings of Fact 102-105 and Conclusion of Law 11, the ALJ rejected the skip of employees assigned to Hiram Johnson High School ("HJHS"). The ALJ determined that:

"Due to the size of the staff at HJHS (120 teachers), the District did not provide DataWise/Data Inquiry training to the entire staff. Rather, in the 2010-11 school year, the District provided the multi-day DataWise training to a team of HJHS teachers who were to train their colleagues during common planning time, a "train the trainer" model." The "train the trainer" model proved unsuccessful and the District acknowledges that such training is not comparable in intensity or scope to the direct DataWise training provided in its other Priority Schools. Transformation by Design did provide some training to teachers in the HJHS English and mathematics departments to assist with implementation of the DataWise/Data Inquiry process. According to District Exhibit 38 c, a record of professional development activities of HJHS certificated employees, in the 2011-12 school year, no certificated staff engaged in the trainings identified in Finding 101 a through d."

In further support of her findings and conclusions, the ALJ determined that the record of trainings from HJHS does not demonstrate that any certificated staff engaged in the home visit, Write Tools, Culturally Responsive Teaching Strategies ("CRTS") or Data Inquiry Training during the 2011-12 school year. While the ALJ is correct that the employees at HJHS did not receive CRTS or Write Tools Training, she is incorrect that the employees at HJHS did not receive Home Visit or Data Inquiry training. In addition, the ALJ ignored the myriad of other trainings that employees at HJHS receive, which are unique in content and/or extent, to the trainings received by employees in non-Priority Schools in the District.

The ALJ's Findings of Fact and Conclusions of Law relative to the skip of employees at HJHS should be rejected for the following reasons: They are inconsistent with the testimony of Ms. Shelton, they are inconsistent with the testimony of Mr. Cedros, and they are inconsistent with the documentary evidence admitted during the hearing at District Exhibit 38(c).

EXHIBIT B

i. Testimony of Mary Shelton

Mary Shelton testified that the train-the-trainer model utilized for HJHS staff during the 2010-11 school year did not work effectively. (HT III at 76:25-78:2; HT II at 90:11-91:12.) Ms. Shelton further testified that for the 2011-12 school year, the District hired the consultants to go and work with the departments at HJHS to ensure that they understood the Data Inquiry process and to do deeper work with those departments in terms of scope and sequence and quality of instruction in each of the subject areas. (HT III at 76:25-78:2.) Ms. Shelton further testified that the Priority Schools, including HJHS, have had the “advantage of having those trainers [from Transformation by Design, the company that developed DataWise/Data Inquiry Training] come back to the school to assist with implementation to support in the classroom, to co-teach and co-plan with teachers, so they’ve had some very intense support and training in terms of the subject area groups this past year.” (HT II at 90:11-91:12.)

Ms. Shelton also testified about other trainings unique to HJHS, including training in GLAD strategies for language acquisition. (HT II at 90:11-91:12.) Ms. Shelton further testified that to her knowledge, other high schools at the District were not provided the type of training that employees at Hiram Johnson received this school year. (See HT III at pp. 47:1-6; 107:13-108:25; HT II at p. 76: 25-78:2; HTII at p.92:24-93:3)

ii. Testimony of Felisberto Cedros

Mr. Cedros testified that his staff is currently receiving DataWise training for the current 2011-12 school year. Mr. Cedros said that his staff refers to this training as “data analysis”. (HT III at p. 47:1-6.)

Mr. Cedros testified specifically that his staff receives home visit training. (See HT III at p. 57:25-58:3.) Mr. Cedros testified about the importance of that training for his staff, to enable them to connect with students and families and help to improve student academics. (HT III at p. 56:1 to 61:25.)

Mr. Cedros further testified about the myriad of trainings that his staff has received during the 2011-12 school year, including trainings to all staff members in classroom management, lesson development, and physical environment of the classroom. (HT III at p. 56:1 to 61:25.) In addition, due to the departmental nature of the high school curriculum, Mr. Cedros testified about the trainings offered to different groups of teachers, such as Read 180, training provided to English teachers at the school on a reading and writing intervention program for students who are far below basic in reading; RTI Math, training for math teachers, on how to help students who struggle with algebra and conceptual math. (HT III at p. 56:1 to 61:25.) Mr. Cedros testified about the training that his “core” (i.e. math, science, English and social science) teachers receive based on a partnership that his school has with UC Davis, where teachers are trained to review

EXHIBIT B

benchmark cycles and determine strategies and delivery methods to prepare the student to meet a particular benchmark within a given period of time. (HT III at p. 56:1 to 61:25.)

iii. District's Evidence

District's Exhibit 38(c) is the training matrix for HJHS for the 2011-12 school year. That matrix details many of the trainings that employees at HJHS received during the 2011-12 school year. Exhibit 38(c) is 47 pages, due to the varied trainings undertaken by HJHS staff during the school year, and reflecting that many of the trainings are broken down by department or Small Learning Communities. Some of the trainings testified to by Mr. Cedros, such as home visit training, classroom management training, lesson development training, are not specifically listed on the matrix, in part because those trainings may have been received during a Department or SLC-specific meeting. In Finding of Fact 102, the ALJ determined that based on Exhibit 38(c), none of the HJHS staff received the trainings that she detailed in Finding of Fact 101 (a)-(d), which she found to be the "intensive training" that Priority School teachers have that other teachers with more seniority do not have. The ALJ's finding ignores the direct testimony of Ms. Shelton and Mr. Cedros that the HJHS staff does have the DataWise training and the Home Visit training. The ALJ apparently, and mistakenly, substituted her interpretation of the trainings listed on Exhibit 38(c) for the testimony provided relative to the trainings received by HJHS staff, which testimony explains and/or supplements the trainings listed on Exhibit 38(c).

As discussed above, the ALJ's Findings of Fact 102-105 and Conclusions of Law 11, are directly contrary to the testimony and evidence presented by the District during the hearing in this matter. The ALJ specifically and erroneously focused on four primary trainings that Priority School teachers have, i.e. DataWise, Culturally Responsive Teaching Strategies ("CRTS"), Write Tools, and Home Visit Training, in determining that the employees at Oak Ridge, Jedediah Smith, Father KB Kenny, Will C. Wood and Fern Bacon, have unique training and experience that other employees with more seniority do not have. The ALJ ignored the myriad of other trainings received by Priority School teachers, which are unique to those teachers. Even accepting the ALJ's determination that the four trainings named above are the trainings that distinguish Priority and non-Priority School teachers, the evidence and testimony relative to HJHS demonstrates that HJHS have the relevant training in Home Visits and DataWise. Write Tools is not designed for the high school level and is therefore not relevant to HJHS.

b. The ALJ's Findings of Fact 102-105 and Conclusion of Law 11 Should Be Rejected and Modified

For the foregoing reasons, the District staff recommends that the Governing Board modify Findings of Fact 102-105 and Conclusion of Law 11, as follows:

EXHIBIT B

Findings of Fact

102. Due to the size of the staff at HJHS (120) teachers, the District did not provide DataWise/Data Inquiry training to the entire staff during the 2010-11 school year. Rather, in the 2010-11 school year, the District provided the multi-day DataWise training to a team of HJHS teachers who were to train their colleagues during common planning time, a “train the trainer” model. The “train the trainer” model proved unsuccessful in the 2010-11 school year and the District acknowledges that such training was not comparable in intensity or scope to the direct DataWise training provided in its other Priority Schools during the 2010-11 school year. For the 2011-12 school year, consultants from Transformation by Design provided training to all of the departments at HJHS to assist with implementation of the DataWise/Data Inquiry process and to support in the classroom, to co-teach and co-plan with teachers. According to the testimony of Mary Shelton, District Chief Accountability Officer, and Felisberto Cedros, Principal at HJHS, the employees at HJHS received training in DataWise during the 2011-12 school year in the same manner as that received by employees at the other Priority Schools during the 2010-11 school year. The nature and extent of the DataWise training offered to HJHS employees during the 2011-12 school year was more extensive and intensive than that offered at any other high school in the District. According to District Exhibit 38(c), a record of professional development activities of HJHS certificated employees in the 2011-12 school year, employees at HJHS engaged in a myriad of trainings, many of which were unique to and only received by employees at that site.

103. The evidence established that HJHS is a Priority School and its staff has been intensely trained in the teaching strategies the District maintains are critical to the Priority School mission. With these strategies in place, working in HJHS does provide specialized experience. Accordingly, the District did meet the requirements of section 44955, subdivision (d)(1) because it established a specific need for specially trained personnel to provide services at HJHS and its staff has special training or experience that employees with more seniority do not possess.

104. Finally, the District maintains that competency criteria C (in order to work in a Priority School, training and/or experience teaching in a Priority School setting) bars reassignment of senior respondents to the HJHS. Competency criteria must be reasonable and valid and must relate to teacher skills and credentialing. (Duax v. Kern Community College District, *supra*, 186 Cal.App.3d at pp. 565-566.) Criteria C is reasonable and valid as it pertains to HJHS. As set forth above, there is specialized training or experience required to provide services in HJHS.

105. Recommend deleting this finding as unnecessary

EXHIBIT B

Conclusion of Law

11. *HJHS Priority School Skip*: As set forth in Findings 94 to 104, the proposed Priority School Skip for employees at HJHS is upheld.

2. **Skip of First Year Employees Assigned to Priority Schools in the 2011-2012 School Year**

a. **The ALJ's Findings of Fact and Conclusion of Law Related to Skip of First Year Employees Assigned to the Priority Schools are Not Supported by the Record**

In Finding of Fact 110 and Conclusion of Law 12B, the ALJ rejected the skip of employees in their first year of service in the District who are assigned to any of the Priority Schools. The ALJ specifically determined that:

“...there are numerous teachers at these schools who are in their first year of service in a District Priority School. Although the schools in which they work are in their second year of operation, these employees will have completed only one year of experience when the 2012-13 school year commences. They will not have completed even one cycle of inquiry.”

In further support of her findings, the ALJ concluded that “Senior employees, by virtue of their tenure and experience with the District and its largely disadvantaged student population, can step into the shoes of these employees and complete the DataWise, Write-Training/Area-3 Writing, CCR and Home Visit training to the extent they have not already completed this training.” (Finding of Fact No. 110). While the District could arguably pour more money and resources into training respondents to take over the positions held at Priority Schools by first year teachers, the ALJ erroneously minimizes the depth of training and experience gained by serving even one year at a Priority School. The ALJ ignored the myriad of other trainings that employees at the Priority Schools received during the 2011-2012 school year, which are unique in content and/or extent, to the trainings received by employees in non-Priority Schools in the District.

The ALJ's Findings of Fact and Conclusions of Law relative to the skip of employees in their first year of service in the District who are assigned to any of the Priority Schools should be rejected for the following reasons: They are inconsistent with the testimony of Mary Shelton, Doug Huscher, and Nancy Purcell and they are inconsistent with the documentary evidence admitted during the hearing at District Exhibits 38(A)-(G).

EXHIBIT B

i. Testimony of Mary Shelton

Mary Shelton testified that the District trained “all of the Priority School staff” in the data inquiry cycle, which would include teachers serving in their first year at a Priority School. (HT II at 55: 16-17). In contrast to the ALJ’s conclusion that teachers in their first year at Priority Schools will not have completed one cycle of inquiry, Ms. Shelton testified that most of the Priority Schools, which the District has divided into cohorts, have completed an instructional round. (HT II at 78: 21-79: 2) By the end of the 2011-2012 school year, all of the cohorts will have participated in instructional rounds. (HT II at 79:2-5). Ms. Shelton confirmed that *all* of the middle Priority Schools have continued their Data Inquiry training into the 2011-2012 school year. (HT II at 81:23-82:6)

With respect to Hiram Johnson, Ms. Shelton confirmed that all employees are receiving Data Inquiry training for the current 2011-2012 school year (HT II at 77: 15-18). According to Ms. Shelton, Hiram Johnson employees did not receive thorough enough training from the District in Data Inquiry during 2010-2011. Therefore, the District hired the same group of consultants who had trained employees the previous year to go to the Hiram Johnson site and work directly with the departments. (HT II at 77:18-22.) The purpose of hiring the Data Inquiry consultants for the 2011-2012 school year at Hiram Johnson was to “ensure they understood the Data Inquiry process and also to do some further deeper work in terms of scope and sequence training.” (HT II at 77:23-78:1.) Therefore, the teachers serving in their first year at Hiram Johnson in 2011-2012 arguably received more in-depth training than had been offered at other Priority School sites in the previous school year.

Because Rosa Parks was designated as a Priority School starting in the 2011-2012 school year, Ms. Shelton testified that the same Data Inquiry consultants used to train Hiram Johnson employees in the 2011-2012 school year went to Rosa Parks to provide the “intense work” to its employees. (HT II at 82:23-83:2; 88:2-7.) A number of the teachers at Rosa Parks Middle School in 2011-2012 who would have received this Data Inquiry training directly from consultants, were first year teachers (See Exhibit 38.)

Ms. Shelton also provided testimony which conflicts with the finding made by the ALJ that senior respondents currently at non-Priority Schools can easily “step into the shoes” of the first year teachers serving at Priority Schools. Ms. Shelton had no knowledge of employees at non-Priority elementary schools in the District being offered the same types of trainings that were offered to the Priority elementary schools. (HT II at 86: 22-87: 3) Ms. Shelton testified that the Data Inquiry training provided by consultants to the middle priority school employees was “deeper” than the train the trainer model used at some of the District’s other sites. (HT II 89:24-10) Ms. Shelton noted that employees at Hiram Johnson had an “advantage” by being trained in Data Inquiry directly by consultants at their site, and that they have received “very intense support and training” over the

EXHIBIT B

2011-2012 school year from these consultants. Ms. Shelton is not aware of any employees at the District's non-Priority high schools being provided with the type of training received by Hiram Johnson's employees during the 2011-2012 school year. (HT II at 92: 24-93: 3). Ms. Shelton confirmed after looking at Exhibit 23 that all of the Priority School employees, including first year teachers, have special experience that more senior employees do not have. (See Exhibit 23; HTII at 98:25-99: 4) According to Ms. Shelton, the training provided to Priority School employees is "unique" compared with that received by employees at non-Priority Schools (HT II at 98:25-99:4)

The ALJ erroneously concluded that more senior non-Priority School respondents can bump into the positions held by first year Priority School teachers based solely on her analysis of the first year teachers' Data Inquiry training (Finding of Fact 110). The ALJ fails to take into account the fact that first year teachers at the Priority Schools have received other types of trainings identified as requirements for working in Priority Schools, such as Write Tools and Culturally Responsive Teaching Strategies (Finding of Fact 101). Ms. Shelton testified that in the 2011-2012 school year, employees at Will C. Wood have continued to receive Write Tools training. (HT II at 82:7-17). Ms. Shelton confirmed that all of Fern Bacon's teachers are using the First Instruction method during the 2011-2012 school year, which builds upon the foundations learned previously during Write Tools training. (HT II at 82:18-22). Ms. Shelton testified that employees at Oak Ridge Elementary built on the Write Tools training by becoming "heavily involved" in Area 3 Writing Project (HT II at 83: 12-21). While Area 3 and First Instruction are not exactly the same as the Write Tools strategy learned by Priority School employees in 2010-2011, Ms. Shelton confirmed that these new strategies build on the foundations of Write Tools. Therefore, first year teachers at the Priority Schools would have received a type of training that incorporates the foundation of Write Tools and even advances the Write Tool training to the next level.

ii. Testimony of Doug Huscher

Mr. Huscher confirmed Ms. Shelton's testimony regarding the unique and special trainings that first year teachers assigned to Priority Schools received during the 2011-2012 school year. For example, employees at Oak Ridge Elementary were trained in Area 3 by consultants who came to the site and worked directly with the employees. (HT II at 251: 17-252: 12.) This training is "very different" from trainings provided to non-Priority School employees at the District office because the consultants actually worked with Oak Ridge employees while they were in the classroom with students. (HT II at 252: 7-12.) Mr. Huscher also testified that "just about everyone" at Oak Ridge participated in home visit training during summer pre-service prior to the 2011-2012 school year (HTII at 283:14-18; 285: 16-21.)

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iii. Testimony of Nancy Purcell

Ms. Purcell testified that her staff at Fern Bacon Middle School is currently receiving Data Wise training from specialists during the 2011-2012 school year (HTII at 298:22-299: 10.) According to Ms. Purcell, her employees have completed four cycles of inquiry to date in English and perhaps even five in Math (HTII at 299:4-6.) Ms. Purcell also testified that her employees have received Culturally Responsive Teaching Strategies training and home visit training in the 2011-2012 school year (HTII at 304:2-20.) When examining District's Exhibit 23, Ms. Purcell confirmed that all of the Fern Bacon employees listed received the trainings about which she testified. (HTII at 309:18-310:10)

The ALJ cites no specific testimony or Exhibit in support of her finding that teachers assigned to the Priority Schools for their first year in the District will not have completed even one cycle of inquiry (Finding of Fact 110).

As discussed above, the ALJ's Finding of Fact 110 and Conclusion of Law 12B, are directly contrary to the testimony and evidence presented by the District during the hearing in this matter. The ALJ specifically and erroneously focused on four primary trainings that Priority School teachers have, i.e. DataWise, Culturally Responsive Teaching Strategies ("CRTS"), Write Tools, and Home Visit Training, in determining that the first year employees at Oak Ridge, Jedediah Smith, Father KB Kenny, Will C. Wood and Fern Bacon, do not have trainings that other employees with more seniority do not have. In fact, the first year employees at *all* Priority Schools received these trainings, as applicable. In addition, the ALJ ignored the myriad of other trainings received by Priority School teachers, which are unique to those teachers. Even accepting the ALJ's determination that the four trainings named above are the trainings that distinguish Priority and non-Priority School teachers, the evidence and testimony relative to first year Priority School teachers demonstrate that they have received DataWise, Write Tools or the next phase of such a program, Culturally Responsive Teaching Strategies, and Home Visits, as applicable to their particular segment. The testimony of Ms. Shelton, Mr. Huscher and Ms. Purcell contradict the ALJ's conclusion that the tenure of non-Priority School respondents automatically makes them qualified to "step into the shoes" of Priority School employees with an entire year of experience and training in these unique environments.

iii. District's Evidence

As detailed above, District's Exhibit 38(c) is the training matrix for Hiram Johnson High School for the 2011-2012 school year. Many of the Hiram Johnson employees skipped for layoff by the District were first year teachers in the 2011-2012 school year. Exhibit 38 further shows the multitude of trainings that employees, including first year employees, at the other Priority Schools received.

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Mr. Huscher and Ms. Purcell examined Exhibit 38 and determined that all of their employees, which would have included the first year employees, had received the trainings listed in the exhibit.

Without referencing Exhibit 38 or any other exhibit in evidence, the ALJ generally concludes that first year Priority School teachers “will not have completed even one cycle of inquiry” and that their experience in implementing trainings has been “limited.” (Finding of Fact 110). The ALJ apparently, and mistakenly, substituted her interpretation of the trainings listed on Exhibit 38 for the testimony provided relative to the trainings received by all Priority School staff, which explains and/or supplements the trainings listed on Exhibit 38.

The ALJ upheld the skip of non-first year Priority School teachers based partially on the finding that “Respondents’ training has not been to the level of focused intensity, school-wide, or with the ongoing follow-up that has been given to the Priority Schools.” (Finding of Fact 107). The ALJ also determined that the non-first year Priority School teachers “have fully integrated the DataWise process into instruction and assessment, and the teachers have received much more coaching and support to integrate the DataWise process in their day-to-day teaching.” (Finding of Fact 107). Exhibit 38 as well as the testimony of Mary Shelton, Dough Huscher, Nancy Purcell, and Felisberto Cedros supports a finding that during the 2011-2012 school year, the first-year teachers at the Priority Schools had access to the same depth of training as was received in the prior year. Additionally, the teachers had an entire year to collaborate with the other Priority School staff members to integrate that training into their instruction and assessment.

b. The ALJ’s Finding of Fact 110 and Conclusion of Law 12B Should Be Rejected and Modified

For the foregoing reasons, the District staff recommends that the Governing Board modify Finding of Fact 110 and Conclusion of Law 12B, as follows:

110. In addition, there are numerous teachers at these schools who are in their first year of service in a District Priority School. Although the schools in which they work are in their second year of operation, these employees will have completed only one year of experience when the 2012-2013 school year commences. While they have had limited time to implement the trainings they have received, the testimony presented by the Districts’ witnesses supports a finding that they have received sufficient training in DataWise, Write Training/Area-3 Writing, CRTS and Home Visit to justify the District’s skip of these first year employees. While a number of respondents have more tenure and experience in the District than the first year employees assigned to the Priority Schools, the evidence supports a finding that the training and experience of even one year at a Priority School is special and unique enough to distinguish it from the training and experience offered at non-Priority Schools.

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12B. The skip of employees in their first year of service in a District Priority School is validated.

3. **Skip of Counselors Assigned to Priority Schools**

a. **The ALJ's Findings of Fact and Conclusion of Law Related to the Priority School Counselors are Not Supported by the Record**

In Findings of Fact 84-85, 108 and Conclusion of Law 12A, the ALJ rejected the skip of counselors assigned to any of the Priority Schools. The ALJ stated that "Counselors ... do not participate in the Data Wise and Write Tools Training."

This is contrary to the testimony of Ms. Shelton. (See HT II at p.74:20-75:13; 76:10-24; 229: 3-16). Ms. Shelton testified that for the 2010-2011 school year, the priority school employees received "very intense training" in DataWise. (74:20-75:1; 229: 3-16) The District had the priority schools "bring pretty much their entire staffs" to participate in the training. (HTII at 76:10-18) When looking at Exhibit 23 and discussing the District's decision to skip the Priority School teachers, Ms. Shelton testified that the District's intent was to include certificated counselors and social workers in that skip. (HT II p. 229:3-16.)

b. **The ALJ's Findings of Fact 84-85, 108 and Conclusion of Law 12A Should Be Rejected and Modified**

Findings of Fact

84. Respondents' first challenge to the skip of Priority School employees is that counselors and social workers cannot be skipped because the Skipping Resolution only refers to individuals who will be "teaching" in a Priority School Assignment. The District contends that counselors are part of the "teaching team," and thus are properly skipped under the language of the Skipping Resolution. The District's contention is persuasive. In *Bledsoe*, the court upheld the district's right to skip less senior employees with special training and experience to teach a particular course of study without the district's governing board having adopted a resolution specifically authorizing the skip.

85. The District may skip counselors assigned to the Priority Schools if it can "demonstrate a specific need for personnel to provide services authorized by a services credential with a specialization in ... pupil personnel services ... [and] the certificated employee has special training and experience necessary to ... provide those services which others with more seniority do not possess. (Section 44955, subd. (d)(1).) That analysis is conducted below.

108. The evidence is persuasive that the employees at these Priority Schools, including counselors, have specialized training in the Priority School setting

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which more senior employees do not possess. These employees, including counselors, participate in DataWise training and participate in common planning time in which assessments are made and strategies are designed to help meet the needs of the students in these Schools.

Conclusion of Law

12.A. The skip of counselors assigned to Priority Schools is valid.

4. Skip of Employees Assigned to Rosa Parks Middle School

a. The ALJ's Findings of Fact and Conclusions of Law Related to RPMS are Not Supported by the Record

In Findings of Fact 113-117 and Conclusions of Law 13, the ALJ rejected the skip of employees serving at RPMS. In Finding of Fact 113, the ALJ states that “the claim that [RPMS] employees have special training rests on the 40 hours of DataWise training most, but not all, of the teachers have taken.” In Finding of Fact 114, the ALJ stated that “[T]he claim that [RPMS] employees have special experience rests on their service in a Priority School for six months While it is true that most if not all of the employees will compete [sic] the 2012-13 [sic] school year, one year of experience is not sufficient to engage in the cycles of data inquiry, the District maintains is so critical to Priority School teaching.”

The ALJ's Findings of Fact and Conclusions of Law relative to the skip of employees at HJHS should be rejected for the following reasons: They are inconsistent with the testimony of Ms. Shelton and they are inconsistent with the documentary evidence admitted during the hearing at District Exhibit 38(e).

i. Testimony of Mary Shelton

Ms. Shelton testified that the same consultant that trained the other priority schools in Data Inquiry (Transformation by Design) went into Rosa Parks to do “intense work” and “deeper training” than what can be done at the District level. (See HT II at p. 81:23-83:8; 88:2-10.). Ms. Shelton testified that “[a]t Rosa Parks, we really need to do foundational work there. So we have trained those staff in Data Inquiry [DataWise] process, but also spent a great deal of time making sure that they were trained in the scope and sequence, that they're trained in their subject area, and also in strategies to delivering those subject areas in a way that is accessible to all of their students in a very diverse population.” (HT II at p. 88:2-10.) Ms. Shelton testified that the trainings offered at the middle Priority Schools, like RPMS, is different than that received by other middle school employees, in that the trainings are “deeper” than the “train the trainer” trainings conducted at the District level. (HT II at p. 89:24-90:10.) Ms. Shelton further testified that all of the employees skipped under the Priority School skipping criteria had special and unique training and experience which more

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senior employees working at non-Priority Schools do not have. (HT II at p. 98:25-99:13.)

Ms. Shelton testified that during the 2010-11 school year, several of the Priority Schools were able to complete two or three cycles of inquiry. (HT II at p. 72:1-17.) Similarly, Ms. Shelton testified that for the 2011-12 school year, that several of the Priority Schools again completed one or more cycles of inquiry and were moving on to “instructional rounds”.

ii. District’s Evidence

District’s Exhibit 38(E) is the training matrix for RPMS. That training matrix demonstrates that all but two RPMS employees received the intensive DataWise training that Ms. Shelton testified about. (Dist. Ex. 38(E) at p. 1.) The matrix also demonstrates that the employees at RPMS received Common Core Training, training on the inclusion model, and training in classroom management.

As discussed above, the ALJ’s Findings of Fact 113-117 and Conclusion of Law 13, are directly contrary to the testimony and evidence presented by the District during the hearing in this matter. The ALJ specifically and erroneously focused on solely on four primary trainings that Priority School teachers receive, i.e. DataWise, Culturally Responsive Teaching Strategies (“CRTS”), Write Tools, and Home Visit Training, in determining that the employees at Oak Ridge, Jedediah Smith, Father KB Kenny, Will C. Wood and Fern Bacon, have unique training and experience that other employees with more seniority do not have. The ALJ ignored the myriad of other trainings received by Priority School teachers, which are unique to those teachers. Even accepting the ALJ’s determination that the four trainings named above are the trainings that distinguish Priority and non-Priority School teachers, the evidence and testimony relative to RPMS demonstrates that the majority of the RPMS employees have the relevant training in DataWise. In addition, Ms. Shelton testified that the staff at RPMS has received extensive training in DataWise, scope and sequence training, and training in the common core. Exhibit 38(E) further demonstrates the unique and extensive training that the employees at RPMS have. Finally, the ALJ makes an erroneous assumption, unsupported by the evidence, that the staff at RPMS could not have completed even one cycle of inquiry during the current, 2011-12 school year. Finally, the ALJ’s exclusion of RPMS from application of the Priority School skip directly conflicts with the findings and conclusions of the 2011 layoff decision where in the Judge upheld the Priority School skip for Oak Ridge, Jedediah Smith, Father KB Kenny, Will C. Wood and Fern Bacon when all of the teachers and counselors skipped were in their first year as a Priority School.

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b. The ALJ's Findings of Fact 113-117 and Conclusions of Law 13 Should Be Rejected and Modified

113. Rosa Parks Middle School is in its first year of operation. Between August 1, and August 5, 2011, 22 of its 29 certificated employees took 40 hours of training in Data Inquiry/Project Design through Transformation by Design. (Exhibit 38 e, a record of professional development activities of Rosa Parks certificated employees, in the 2011-12 school year, through 1/25/12). From August 1, 2011 to February 14, 2012, RPMS employees received training in Common Core, Cooperative Learning, Proactive Classroom Management, CLR Training, Inclusion Training, Co-Teaching, Rigor, Supporting English Learners, Reading Strategies and Apple Technologies. Some of these trainings were specific to a particular segment, such as English or Social Science Teachers, core teachers, etc., and the participants were limited accordingly. Based on these trainings, RPMS employees have special training, including the intense DataWise Training that is only offered at the Priority Schools, that employees at other non-Priority Schools do not possess.
114. In addition to unique training, RPMS employees have special experience based on their service at RPMS during the 2011-12 school year, including implementation of the DataWise training at a deep and intense level.
115. The District has demonstrated that the employees it seeks to skip at RPMS have the specialized training or experience required under section 44955, subdivision (d)(1) and articulated in *Bledsoe*.
116. Recommend deleting this finding as unnecessary
117. The District maintains that competency criteria C (in order to work in a Priority School, training and/or experience teaching in a Priority School setting) bars reassignment of senior respondents to the HJHS. Competency criteria must be reasonable and valid and must relate to teacher skills and credentialing. (*Duax v. Kern Community College District*, *supra*, 186 Cal.App.3d at pp. 565-566.) Criteria C is reasonable and valid as it pertains to RPMS. As set forth above, there is specialized training or experience required to provide services in RPMS.
13. *Skip of Staff at Rosa Parks Middle School:* As set forth in Findings 94 through 101 and 113 through 117, this skip is valid and upheld.