

# LAYOFF SUMMARIES

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**2007-08 ADMINISTRATIVE LAW JUDGE  
LAYOFF DECISION SUMMARIES**

**I. PROCEDURAL ISSUES**

**A. Failure To Request Hearing Or File Notice Of Defense**

1. Employee failed to file Notice of Defense Form provided by District and waived her right to hearing. La Grange (Woollard).
2. District may lay off employee who failed to request a hearing. Maxwell (Skarda).
3. The District served an Accusation and Notice of Defense upon an employee via certified mail, but the employee claimed not to have received it. The employee had received a layoff notice and requested a hearing. Despite her failure to file a notice of defense, the employee was permitted to participate in the layoff hearing. Western Placer (Lew).
4. Employees who failed to request a hearing, or withdrew their request for a hearing, have waived their right to a hearing and may be laid off. Madera (Woollard).
5. Where two of the individual Respondents did not file their individual Notice of Defense documents until two days after the statutory deadline and where legal counsel for Respondents timely served District with a "Special Notice of Defense" that purported to be a Notice of Defense for "all Respondents" without naming any individual Respondents, the "Special Notice of Defense" was deemed to satisfy the requirements of Government Code section 11506 and the two individuals who filed their individual Notices of Defense late were entitled to a hearing. El Monte (Flores).
6. Respondent teacher that did not file notice of defense was permitted to attend hearing. Respondent was permitted to participate in the hearing in the interest of fairness and because there was no prejudice to the district. See Government Code section 11506(c). Konocti (Rasmussen).

**B. Motivation For Reducing Services**

1. The Governing Board's resolution to reduce or discontinue particular kinds of services was made in order to reduce costs without reducing core subject areas. The Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious and was a proper exercise of its discretion. Western Placer (Lew).
2. Governing Board's decision to reduce particular kinds of services, including one nursing position, based on projected budget deficit and a

projected drop in enrollment was not arbitrary or capricious and constituted a proper exercise of the Board's discretion. Gateway (Brandt).

3. Decision to reduce particular kinds of services due primarily to uncertain level of state funding was not abuse of discretion, even though District was also concerned about further loss of state revenue due to declining enrollment but did not conduct ADA calculation. Oak Park (Reyes).
4. An existing budget shortfall, expected decline in enrollment and the anticipation of receiving less money from the State for the next school year are appropriate bases for a reduction in services under Education Code section 44955. The Board's decision was a proper exercise of its discretion. Amador (Sarli).
5. Where Governing Board's resolution to reduce particular kinds of services was made to reduce costs without reducing core subject areas, the Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949. Davis (Lew).
6. The District's decision to reduce particular kinds of services was based on the District's desire to retain financial flexibility to deal with problems created by declining enrollment in some of the District's schools, as well as problems indirectly caused by the current state budgetary crisis. The ALJ found that these bases were neither arbitrary nor capricious. Murrieta Valley (Sawyer).
7. The anticipated receipt of less money for the next school year is an appropriate basis for a reduction in services under section 44955. Gold Oak (Skarda).
8. Cause exists within the meaning of Education Code sections 44949 and 44955 for not reemploying Respondents due to the fact that the Governing Board has decided to reduce or discontinue particular kinds of services for the 2008-2009 school year. The reduction of the particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to decrease the number of certificated employees of the District as determined by the board, resulting from budget reductions. San Marino (Ruiz).
9. Where Resolution to reduce certificated services specified that reduction in ADA (average daily attendance) as reason for layoff, testimony from a personnel clerk that student enrollment had declined by several thousand students in a year was irrelevant and immaterial, and Respondents'

argument that layoff was due to a decline in ADA rather than lack of funds was rejected. The evidence showed that the Board decided to reduce "particular kinds of services" and that the decline in enrollment (2,500 students over two years) was relatively small when compared with the massive nature of the projected budget shortfall. Rialto (Ahler).

10. Evidence that district was reducing 24% of certificated staff when the projected budget shortfall was only 10% did not compel conclusion that reduction of services was unreasonable, arbitrary, or capricious. Rialto (Ahler).
11. Where Resolution stated that the layoff of employees was due to the reduction or elimination of particular kinds of services ("PKS") and was not due to a decrease in average daily attendance ("ADA"), ALJ rejected Respondents' claim that preliminary notice of layoff inadequately described the proposed layoff as being based on the reduction of PKS instead of being based on the alleged "real" reason – a decline in ADA. Yucaipa-Calimesa (Cole).
12. Respondent teachers unsuccessfully asserted that the layoff was predicated upon the district's intent to eliminate the class size reduction program and the layoff was arbitrary and capricious because the district had decided to maintain this program. However, respondents failed to establish that the sole basis for the governing board's resolution, or that the board has taken any new action with the respect to the class size reduction since the resolution was adopted. Southern Kern (Benjamin).
13. Respondent teacher unsuccessfully argued his industrial technology course should not be eliminated because it provides a unique opportunity to prepare students for certification in a very lucrative field. ALJ determined district governing boards are given wide discretion in managing their budgets determining what courses to offer. While elimination of the course may have a negative affect some students, when viewed in the broad picture of budgetary concerns, it cannot be found that the board abused its discretion in recommending this reduction. Travis (Cohn).

### **C. Jurisdiction**

1. Categorically-funded employees and employees replacing regular teachers were filling in for regular teachers assigned to categorically-funded positions, were not entitled to participate in layoff process. After *Bakersfield* discussed, ALJ reasoned the Board had adopted a resolution specifically identifying the 47 FTEs of categorically-funded programs for reduction/elimination and thus the programs to which those FTEs were assigned are slated to expire within the meaning of Education Code section 44909. (Caution: Specifically referenced there is no waiver of

rights by the categorically-funded employees if categorically-funded programs resume next school year.) Chico Unified (Lew).

2. District issued precautionary notices to nurses who were to be reduced from 193 days to 183 days per year (equivalent of .052 FTE), aligning them with the teachers' work year. Jurisdiction does not exist under sections 44949 and 44955 to address a "minor reduction in hours" (*Black v. Compton USD*). Madera (Woollard).
3. ALJ granted District's motion to dismiss the Accusations against, thus excluding from the hearing, two University Interns on whom District had served the jurisdictional documents and whom the District had included in its list of Respondents, since Education Code section 44464 establishes that the rights established under Education Code sections 44498 and 44494 are not afforded to interns. Calexico (Knopf).
4. Administrator being released from administrative position who does not have sufficient seniority to give rise to bumping rights as teacher has no due process right to hearing and hearing officer lacks jurisdiction to hear administrator's claim that statutory scheme violates her constitutional rights. Poway (Johnson).
5. District properly served respondent teachers classified as certificated temporary employees serving in categorically funded positions. The precautionary notices were properly served on respondents since categorical funding for the positions had not ended and therefore the respondents were entitled to the same rights in the layoff proceedings as probationary employees. While teachers serving in categorically funded programs are often considered "temporary" they may be terminated only if the program has expired. If the program does not expire, these teachers cannot be dismissed without the procedural protections due permanent and probationary employees. Whittier (Eisman).
6. District demonstrated that its determination regarding the classification of individual teachers as being temporary certificated employees, although about a dozen of those individuals performed work in categorically funded programs, was lawful and correct. Ukiah (Johnson).

#### **D. Standing**

1. Nine "unnamed precautionary respondents," teachers who were non-re-elected pursuant to section 44929.21(b) and who were not named as Respondents in the layoff, lack standing to request or participate in the layoff hearing. There was no evidence to indicate financial motive to non-reelect (*Cousins v. Weaverville ESD*). Madera (Woollard).

**E. Notice**

1. The date and time of the evidentiary hearing was changed upon mutual request of counsel for the District and counsel for most of the Respondents. Satisfactory proof was made that appropriate notice of the change was given to unrepresented Respondents (one such Respondent appeared and testified the change was made abundantly clear and that other unrepresented Respondents with whom she worked were aware of the change). The ALJ concluded the requirements of Government Code sections 11505 and 11509 were met. Folsom Cordova (Smith).
2. District did not act in an arbitrary and capricious fashion in pursuing and implementing the layoff by issuing more preliminary notices of layoff than number of FTE being reduced or eliminated. Under the circumstances of grave financial uncertainties and continuing worsening news from Sacramento, the District's actions were not inappropriate. Grossmont (Hjelt).
3. Respondent teacher was not prejudiced by any form of deprivation of due process rights because of the misaddressed envelope that contained the preliminary notice of layoff. Respondent failed to assure that the address of record on file with the district was correct. Moreover, district provided respondent with verbal notice of the return of the envelope that bore the preliminary notice of the pending layoff action. Vallejo (Johnson).

**F. Estoppel**

1. Where Teacher was qualified to receive Highly Qualified (HQ) designation under NCLB but did not actually receive HQ designation before the hearing because "her school" failed to timely process the paperwork for Teacher to attain HQ designation despite Teacher's numerous inquiries regarding status and despite repeated assurances to Teacher that the paperwork would be taken care of and that Teacher would receive the tie-breaker point – District was estopped from denying to Teacher a tiebreaker point with regard to NCLB compliance / HQ designation. Temecula Valley (Cole).

**G. Miscellaneous**

1. The District's motion for a ruling on the classification of temporary certificated employees was moot. (Preliminary Issue No. 1.) According to the ALJ, that "the District did not serve any temporary employees with preliminary notices of layoff," but rather, "received Notices of Release" presumably pursuant to Education Code section 44954, compelled a conclusion that "temporary teachers were not parties to this layoff proceeding." (Preliminary Issue No. 1.) The ALJ agreed that "[t]o the extent that individual respondents were challenging their placement on the

seniority list, issues of seniority and classification were addressed on a case-by-case basis, and only to the extent relevant to the issue of layoff.” (Preliminary Issue No. 1.) Sacramento City (Frink).

2. Prior to March 15, 2008, district erroneously notified teachers that they were to be laid off pursuant to collective bargaining agreement which provided substantially fewer rights and protections than under the Education Code. On March 26, 2008, the district gave notice to teachers of the error and notified teachers that they were entitled to appear in the layoff hearings as permanent teachers. ALJ determined the error did not legally disadvantage the teachers and the teachers were not prejudiced in any way. San Diego (Hjelt).
3. District properly permitted teachers currently teaching at year round schools that extend two weeks into July, despite the fact that June 30/July 1 represents the beginning and end of the fiscal year. The district’s decision to retain the teachers to finish the school year in the year round schools is reasonable and appropriate. San Diego (Hjelt).
4. Respondent teacher made an unsuccessful motion for dismissal of the accusation on the ground that the district failed to comply with her request for discovery. Respondent’s request for discovery was not received by district’s attorney and respondent failed to show prejudice. Sonoma Valley (Johnson).
5. No merit in respondent’s argument that layoff was not authorized where there was a typographical error in the layoff resolution authorizing termination of employees at the end of the 2008-2009 school year. Travis (Cohn).
6. Respondent teacher unsuccessfully argued that once a teacher raises issue of whether an assignment is a mandated service, the burden shifts to the district to prove the assignment is not a mandated service or that, if it is, the district will meet mandated levels of service. Education Code section 44955 requires district to prove that its governing board has determined particular kinds of service must be reduced or discontinued; that, because of the reduction or discontinuance, it is necessary to decrease the number of permanent or probationary employees of the district; and that no employee with less seniority than respondent is being retained to perform services that respondent is certificated and competent to render. Respondent is required to prove that such an impermissible reduction will occur and without evidence to support respondent’s claim, it is presumed that the district has complied with the law. Healdsburg (Benjamin).

## II. REDUCTIONS OR DISCONTINUANCES IN SERVICES ALLOWED

### A. Services Described With Sufficient Specificity

1. Motion to invalidate Resolution to reduce or discontinue PKS and layoff employees denied. No authority supports holding that Resolution fails to reduce or eliminate PKS. Golden Valley (Walker).
2. Because this was a Charter school, PE teaching services were "non-core, non-college preparatory courses," with result that PE teaching services were properly included in the broad classification of "middle school teaching" (as opposed to being separately stated as "PE teaching services") in the Resolution to Reduce or Eliminate Particular Kinds of Services. Memorial Academy of Learning & Technology (Ahler).
3. Because this Charter school used a team teaching approach for all classes except music, PE, and art, and because its teachers were credentialed to teach "multiple subjects," the phrase "middle school teaching" was sufficiently specific description of the particular kinds of services being reduced or eliminated, [despite fact that teaching services at middle school are generally departmentalized]. Memorial Academy of Learning & Technology (Ahler).
4. ALJ rejected claim that identifying the particular kind of service being reduced as "elementary teachers" was insufficient because it was identification of the *position* being eliminated rather than identification of the *particular classroom services* being reduced. Logically, "elementary grade classes are a particular kind of service," and, "at the elementary level, reduction of classroom teaching can be a reduction of a particular kind of service." Rialto (Ahler).
5. Respondent teachers unsuccessfully argued that the FTE's identified in the layoff resolution did not constitute "particular kinds of service" under Education Code section 44955. The particular kinds of service included "Senior Project" classes, Administrative Intern, Instructional Coach, Site Coordinator, and Intervention services. Respondents' arguments included these were not particular kinds of service because the assignments were performed on a part-time basis, were special assignments, or remedial classes. ALJ determined that the above-mentioned assignments were particular kinds of service in that there was sufficient information describing the categories. Antelope Valley (Rosenman).

### B. Services Reduced Or Performed In A Different Manner

1. Statement of legal principle, "The Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner." (Citing *Gallup and Goleta*.) Curtis Creek (Woollard).

2. District's determination to eliminate teaching services for ELL students using the pull-out model was allowed where the services would be provided in a different manner. Maxwell (Skarda).
3. District permitted to reduce school psychologist services, even though reduction would result in layoff of District's only Behavior Case Intervention Manager ("BCIM"), where District had provided BCIM services in the past using private vendors, and could do so again in the future, and where Respondent made no contention that his termination would cause District to fail to provide state mandated services. Culver City (Reyes).
4. There was insufficient evidence to support claim that reduction of 5.4 FTE of "Health Teacher" services was improper, even though the Board had not made a final decision on how it will provide these mandatory services in the ensuing year, where evidence showed that board intends to provide these mandatory services but that instruction in the health program will continue but in a different manner or method – such as by providing the instruction through fewer teachers for a similar number of students (i.e., higher student-teacher ratio). Lake Elsinore (Johnson).
5. Teachers unsuccessfully argued that the district did not retain sufficient number of teachers in order to meet the number of sections that will be required for the following school year. In addition, teachers unsuccessfully argued that they should not be laid off because increased class sizes would cause the district to be in violation of building and fire codes. ALJ determined that teachers' concerns are, at the time of hearing, were speculative. Fortuna (Crowell).
6. Respondent math teacher unsuccessfully argued the district was not retaining a sufficient number of math teachers in order to cover legally mandated math classes. The district presented sufficient evidence that it retained sufficient number of teachers in order to meet the needs of the district based on its projected enrollment. Because of the financial uncertainties of the district, it cannot be said that the board's decision to reduce or eliminate the service is either arbitrary or capricious. Eureka (Crowell).
7. District properly exercised its discretion to reduce teachers assigned to Spanish immersion classrooms. Respondents argued the district's Spanish immersion program was effective and the district could not properly staff the program based on the projected student enrollment. District had not yet decided whether to discontinue participation in the class size reduction program but had a contingency plan to restructure the Spanish immersion program in the event it discontinued participation. McKinleyville (Crowell).

8. Respondents unsuccessfully argued that *Daniels v. Shasta-Tehama-Trinity Jr. Comm. College District* (1989) 212 Cal.App.3d 909, school district is required to have a plan that is sufficiently concrete to permit a determination of whether services are actually being reduced or simply shifted to other employees. In *Shasta*, the court simply noted that the “hearing procedure presupposes some sort of plan on the part of the District as to which employees are to be retained.” Here, school district produced evidence of its plan to reduce positions, shift services and the reduction would not fall below mandated levels. Berryessa (Tompkin).

**C. Services Reduced Or Performed In A Different Manner – Nursing Services**

1. The District is required to provide all the health care services mandated by the Education Code, however, the law grants the District discretion to determine how and in what manner the services will be provided to students. No evidence was presented to show that the District would not be able to provide all legally mandated health care services to students if it reduced its certificated school nursing staff from two to one, thus the District did not abuse its discretion. Gateway (Brandt).
2. Cause existed within the meaning of Education Code sections 44949 and 44955 for not reemploying Respondent. Governing Board allowed to reduce nursing director position in order to either contract out nursing services to county office of education or by changing title of Director of Health Services to School Nurse and reduce days worked and hours per day. Delhi (Engeman).
3. District must have plan in place for provision of nursing services for the 2008-2009 school year; however, District need not have plan finalized at the time District decides to reduce or eliminate nursing services and give notice to affected employees. It must be presumed that the District will comply with its legally mandated obligations, because District has discretion to determine manner in which mandated services are to be provided. Delhi (Engeman).
4. Even though the California School Nursing Organization recommends a ratio of one nurse to every 750 students, there is no state mandated ratio and the District is only required to provide services specified under the Education Code. If the District is unable to meet the State mandates, it may provide mandated services by contracting with outside agencies authorized to perform the services by the County Superintendent of schools. Amador (Sarli).
5. Cause existed within the meaning of Education Code sections 44949 and 44955 for not reemploying Respondent. Governing Board allowed to reduce nursing director position in order to either contract out nursing services to county office of education or by changing title of Director of

Health Services to School Nurse and reduce days worked and hours per day. Delhi (Engeman).

6. District must have plan in place for provision of nursing services for the 2008-2009 school year; however, District need not have plan finalized at the time District decides to reduce or eliminate nursing services and give notice to affected employees. It must be presumed that the District will comply with its legally mandated obligations, because District has discretion to determine manner in which mandated services are to be provided. Delhi (Engeman).
7. Respondent nurse unsuccessfully argued that district will not be able to provide all mandated nursing services for the 2008-2009 school year. District established that many of the nursing services currently being offered by the district to its students are not mandated services. Respondent did not establish that mandated services are being reduced below the level required by law because of the reduction in school nursing services. In addition, district is not required to provide screening services by a certificated school nurse and district may eliminate a particular kind of service of an employee if the service continues to be performed or provided by the district in a different manner. Southern Humbolt (Crowell).

#### **D. Mandated Services Not Being Discontinued**

1. District's determination to eliminate teaching services for ELL students using the pull-out model was allowed where the services would be provided in a different manner. Maxwell (Skarda).
2. Respondent psychologists failed to establish district's reduction of psychological services would be reduced below state mandated levels and that district failed to consult with individual psychologists regarding what services should be cut or adopt the special education director's recommendation that no psychologist positions be reduced. District successfully established that it can comply with statutory mandates with a reduced staff and remaining staff members will have increased caseload. Moreover, there is a presumption that the district will perform its official duties and comply with legislative mandates. Finally, the particular kinds of services to be reduced are a management decision and a school district does not have a legal obligation to consult with individual psychologists or adopt the recommendation of the special education director. Antioch (Tompkin).

#### **E. Special Education Services**

1. The District properly prohibited a high school counselor from bumping into a proposed counseling position in the special education department as

the proposed position would require additional certifications in behavioral analysis, or applied behavioral analysis, which the employee did not possess. Western Placer (Lew).

**F. Counseling And Psychological Services**

1. District permitted to reduce school psychologist services, even though reduction would result in layoff of District's only Behavior Case Intervention Manager ("BCIM"), where District had provided BCIM services in the past using private vendors, and could do so again in the future, and where Respondent made no contention that his termination would cause District to fail to provide state mandated services. Culver City (Reyes).
2. Even though the District contended that the psychologists who received precautionary layoff notices were temporary employees because they performed services in a categorically funded program and there was no evidence that any categorically funded program would lose funding, the evidence did not establish that Board's decision to reduce psychologist services by 1.0 FTE was arbitrary. [I.e., a District does not have to establish a loss of categorical funds in order to not reemploy someone who is a temporary employee because their assignment is in a categorically funded program.] El Monte (Flores).
3. Although District received \$2.7 million in each of the past two years in funding pursuant to Assembly Bill 1802, those funds are required to be used to provide counselor services to its students, and some evidence showed that the District would have approximately \$1.5 million of these funds left at the end of the 2007-2008 school year, the Board has discretion regarding the operation of the District and it intends to provide mandatory counselor services in a different manner. Therefore, Respondents's claim that the reduction of 17.0 FTE of counselor services for the 2008-2009 school year was an abuse of discretion, arbitrary or capricious cannot be upheld. Sweetwater (Johnson).

**G. Elementary Classroom Teaching**

1. Motion to invalidate Resolution with respect to Board's determination to reduce PKS of six elementary teachers and eliminate Charter School Academy denied. Elementary teaching is a PKS that may be reduced or eliminated. District's decision to eliminate Charter School Academy was not arbitrary or capricious. La Grange (Woollard).

**H. Reductions Upheld Despite Contentions That Services Were Not Actually Being Reduced**

1. Statement of legal principle, "A school board may reduce services within the meaning of the statute either by determining that a certain type of

service shall not be performed at all or by reducing the number of district employees who perform such services.” (Citing *Rutherford*.) Curtis Creek (Woollard).

**I. Services Not Reduced Below The Level Required By Law**

1. Mandated services were not reduced below the level required by law where District reduced nursing services but will provide mandated health services through independent contractors on an as-needed basis. Carlsbad (Hjelt).
2. Although District has not yet determined exactly how it will continue to meet mandated service levels after laying off a "Health Itinerant Teacher/ TOSA" position, the reduction in services was upheld because it was established that other means do exist through which the District will provide mandated health-related services. Additionally, this reduction was upheld even though District will continue receiving funding for the position for at least one more year after implementation of this layoff. (Para. 16-f.) Temecula Valley (Cole).

**J. Miscellaneous**

1. Cause existed within the meaning of Education Code sections 44949 and 44955 for not reemploying Respondents due to Governing Board’s decision to reduce or discontinue particular kinds of services in the District for the 2008-2009 school year. Riverbank (Walker).
2. Cause existed within the meaning of Education Code sections 44949 and 44955 for not reemploying Respondents due to Governing Board’ decision to reduce or discontinue particular kinds of services in the District for the 2008-2009 school year as set forth in Governing Board Resolution Nos. 07-43 & 07-44. Stockton (Frink).
3. School district had 80 teachers assigned to teach 1.2 FTE. District acknowledged that if it would reduce those assignments to 1.0 FTE for each teacher, it would not have to lay off as many teachers. Notably, the Decision does not make any kind of ruling or decide any issue of law or fact on this issue. (See pg. 10.) Grossmont (Hjelt).
4. Respondent teacher unsuccessfully argued that he should not be laid off when the district is retaining teachers who are not as experienced, as well-trained, or as well-credentialed as he is. ALJ determined that state law requires (with certain exceptions) that employees must be terminated in the inverse of the order in which they were employed by the district. Mojave (Benjamin).

### III. SENIORITY

#### A. Entitled To Retroactive Seniority

1. Employee entitled to one additional date of service credit based on evidence that she was “ordered” to attend an orientation the day before her contract began. (Finding of Fact No. 47.) Employee “so convincingly, credibly testifying, with corroboration, that she was physically presented, worked the day and was paid for her service on August 20.” (Finding of Fact No. 47.) Elk Grove (Smith).

#### B. Not Entitled To Retroactive Seniority

1. Employees (math teachers) were required to meet for two days in the summer to develop the curriculum, and were paid a stipend for the two days. (Finding of Fact No. 48.) According to the ALJ, since “[t]here was no other service between the two day period and the commencement of her contract,” “[u]nder these circumstances she is not entitled to have the first of two days in the summer treated as her first day of paid service.” (Finding of Fact No. 48.) Elk Grove (Smith).
2. Two kindergarten teacher and an elementary school teacher were not entitled to have their seniority dates adjusted because of their attendance at non-mandatory pre-employment trainings and workshops (buy back days). Western Placer (Lew).
3. Teachers who are required, as part of their regular assignment, to report earlier than the start of the school year [i.e., for training] may be entitled to an earlier seniority date. The questions to consider are whether the early appearance was voluntary versus mandatory, and whether the employee was docked in pay for non-attendance versus being paid extra for the early appearance. Centralia (Eisman).
4. In 2003 layoffs, Teacher working under Pre-Intern Permit received both a RIF notice and a Notice of Non-Reelection. Half way through the next school year, District hired Teacher and assigned current seniority date (did not use her first date of prior employment), without protest by Teacher. On assertion that she had been rehired due to layoff re-employment rights, Teacher claimed entitlement to original seniority date / no break in service. ALJ determined the evidence did not support claim that the mid-year hire was due to layoff reemployment rights, thus Teacher not entitled to retroactive seniority. Rialto (Ahler).
5. Respondent teacher was not afforded retroactive seniority for prior service as a tenured teacher in the district’s Child Development Program. Respondent transferred to the K-12 program in accordance with the provisions of the union contract. ALJ found that there is no provision in the Education Code which authorizes respondent to add or “tack” her

years of service in the Child Development Program. San Francisco (Crowell).

6. Respondent counselors unsuccessfully argued that they were entitled to earlier seniority date. Respondents testified their principal directed them to report for work nine days before teachers arrived at the work site. Respondents did not possess written documentation that was issued by the district. In addition, district presented testimony establishing counselors are paid a stipend for nine “per diem” days that are not part of the contract salary paid to counselors for services performed during the school year. Berkeley (Johnson).

### **C. Early Reporting Or Orientation Effect On Seniority**

1. Employee entitled to one additional date of service credit based on evidence that she was “ordered” to attend an orientation the day before her contract began. (Finding of Fact No. 47.) Employee “so convincingly, credibly testifying, with corroboration, that she was physically presented, worked the day and was paid for her service on August 20.” (Finding of Fact No. 47.) Elk Grove (Smith).
2. The District was required to adjust the seniority dates of eight teachers who attended a new teacher workshop. Although they were only requested to attend, and were not disciplined for failing to attend the workshop, it was accounted for in the teachers’ 184 contract days. Accordingly, the workshop was considered a duty day and the teachers were entitled to seniority credit for attending the workshop. Western Placer (Lew).
3. Employee was not entitled to seniority credit for early reporting. (Finding of Fact No. 72.) According to the ALJ, “[e]ven if she were to be paid, this service was not ‘mandatory,’ or otherwise required as a condition of her employment, and would not result in a change in her seniority date. . . .” (Finding of Fact No. 72.) Sacramento City (Frink).
4. Teachers who are required, as part of their regular assignment, to report earlier than the start of the school year [i.e., for training] may be entitled to an earlier seniority date. The questions to consider are whether the early appearance was voluntary versus mandatory, and whether the employee was docked in pay for non-attendance versus being paid extra for the early appearance. Centralia (Eisman).
5. Returning teacher who was required to and did report to school for a day of preparation one day before the seniority date reflected in his contract was not entitled to change seniority date from that noted on the contract to the date of the preparatory work. Nuview (Cole).

6. Where new teacher reported to (based on District's "high encouragement" to attend) and was paid for participation in teacher buy-back day that occurred two days before the effective date of his employment contract, District was correct in using the contract date rather than the buy-back day as the seniority date. Riverside (Cole).
7. Respondent teachers unsuccessfully argued the district's seniority list was substantively defective and improper regarding their respective first date of paid service. Respondents attended an "in service" training for which they were paid before the beginning of the school year or before the date specified in their contracts and therefore were not entitled to a revised seniority date. Vallejo (Johnson).
8. Respondent teachers not entitled to retroactive seniority date because they attended training before school started. Although respondents felt they had to attend the training, it was not actually mandatory. The stipend that was paid for attendance was not a per diem rate related to a teacher's salary but a flat amount for work in excess of a teacher's contract. Konocti (Rasmussen).

**D. Prior Temporary Or Substitute Service**

1. The District was required to adjust the seniority date of a certificated employee was classified as a temporary teacher, but assigned to a "growth classroom." The ALJ concluded that the employee should have been classified as "probationary" when she began her assignment in the growth classroom. Murrieta Valley (Sawyer).
2. Employee and her fellow new math teachers were required to meet for two days in the summer to develop the curriculum, and were paid a stipend for the two days. (Finding of Fact No. 48.) According to the ALJ, since "[t]here was no other service between the two day period and the commencement of her contract," "[u]nder these circumstances she is not entitled to have the first of two days in the summer treated as her first day of paid service." (Finding of Fact No. 48.) Elk Grove (Smith).
3. Employment of a temporary teacher for two consecutive years does not compel a District to classify the temporary teacher as a probationary teacher. Cajon Valley (Gammill).
4. Based on the 2006 *Bakersfield* decision (145 Cal.App.4th 1260), Respondents argued that teachers assigned to categorically funded programs could only be classified as "temporary" when the [funding for the] categorical program expired and that since there was no evidence at the time of hearing that [the funding for] any of the categorically-funded programs in which Teachers performed services under temporary contracts would be terminated, therefore none of those Teachers could be classified

as temporary. There was insufficient evidence to establish that any Respondent was providing service in a categorically funded program, that any Respondent was improperly classified as temporary, or that a change in any Respondent's classification based on the above arguments would affect whether s/he should have received a layoff notice. [Thus, no ruling on the merits of Respondents' argument.] Escondido Union [Elementary] (Johnson).

5. Respondent teachers were not entitled to earlier seniority dates for attending voluntary buyback days that were not included in their contractually-required work days and for which they were paid an agreed upon stipend in excess of their contractual salaries. Southern Kern (Benjamin).
6. Respondent teacher unsuccessfully argued that she should receive an earlier seniority date because of her previous service on a temporary contract. Teacher's initial seniority date on district records was April 27, 2005 but was subsequently changed to August 8, 2005. Teacher worked for the district in the 2004-2005 school year as a temporary teacher and in the 2005-2006 school year as full-time temporary employee. In the 2006-2007 school year, teacher was classified as a second year probationary teacher. Teacher was properly allowed to tack one year for temporary service as authorized under Education Code section 44917, thus resulting in a seniority date of August 8, 2005, the first date of her paid service in the 2005-2006 school year. Dixon (Crowell).

#### **E. Specific Cases**

1. Where District allowed "tacking" seniority dates back one year for certificated employees who served at least 75% of the days of the previous school year in a temporary position, an employee who the District believed only worked 50% and was unable to show that she worked at least 75% of the days was not entitled to retroactive credit to her seniority dates. Davis (Lew).
2. Respondent teacher unsuccessfully argued that school district should consider employee seniority in deciding which courses to keep and which courses to eliminate. Respondent, a senior industrial arts teacher, argued district should eliminate agriculture classes taught by junior teacher. ALJ determined that the governing board has broad discretion to determine which services will be reduced or discontinued. Upper Lake (Rasmussen).

#### **F. Categorically-Funded Employees**

1. Certificated employees contracted for services under the authority provided in Education Code sections 44909 and 44920 are properly classified as "temporary." (Findings of Fact Nos. 30, 37, 40.) According

to the ALJ, “[t]he all out warfare against Districts classifying teachers as temporaries, under the banner of probationary status being the presumptive classification for all certificated employees, ignores the Legislature’s creation of temporary classifications pursuant to sections 44909 and 44920.” (Finding of Fact No. 40.) Analysis of *Bakersfield*, *Zalac*, and *Hart* leads to conclusion that temporary classification is appropriate. (Findings of Fact Nos. 38 and 39 and fn. 5.) Elk Grove (Smith).

2. District’s practice of classifying certificated employees as “contingent temporary contracts” is permissible because “[t]here was no evidence that any such contingent temporary employee in the District accepted such a temporary contract position without full knowledge of their status or the effects of the contingency, or the potential for termination if sustaining enrollment failed to materialize and the employee did not have credentials and competencies to permit reassignment to another open position in the District.” (Finding of Fact No. 32.) ALJ did not cite to an applicable authorization for classification as “contingent temporary” employees. Elk Grove (Smith).
3. Respondents who were classified as "temporary employees" because they were substituting or "backfilling" for employees serving in categorically funded programs were appropriately slated for layoff. Such employees were properly categorized because they knew that they were temporary employees and that their employment was contingent on the continuation of the categorically funded program of the person for whom they were backfilling. Lemon Grove (Hewitt).

#### **G. Proper Notification Of Temporary Status**

1. The District did not fail to give notice to two temporary teachers as those teachers were replacing full-time teachers who were on leave, both teachers signed temporary employment contracts and the Respondents did not establish that the District would be using temporary teachers for purposes not authorized by state law. The Respondents did not establish that the District classified those employees as temporary in order to avoid having to include them in layoff proceedings. San Marino (Ruiz).
2. Motion to invalidate Resolution with respect to layoff of temporary employee granted. District failed to notify employee of temporary status when first hired in 2005, and when rehired in 2006. District attempted to confirm temporary status in subsequent writings. Employee deemed probationary employee as of 2005 due to District’s failure to notify her of temporary status. (Ed. Code § 44916.) Subsequent writings to confirm temporary status with employee thereafter were ineffective to waive her statutory rights. (*Bakersfield*.) Employee’s placement on seniority list

incorrect and Accusation for layoff against employee dismissed. Camino (Woollard).

3. Respondents classified by the District as temporary should have been classified as probationary. The District cannot classify certificated employees as temporary unless the Education Code's classification scheme allows. Education Code section 44915 makes probationary status the default classification for certificated employees who are not otherwise required to be classified as permanent, substitute, or temporary. Employees became probationary on the dates they were hired as "temporary." Citing *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App. 4th 1260. San Juan (Sarli).

#### **H. Effect Of Resignation On Seniority**

1. Where a very senior Teacher resigned and subsequently was rehired within 39 months of the resignation, her seniority date upon rehire became the date of rehire, but she regained permanent status immediately. As a "permanent" employee, Teacher could not be laid off while any probationary employee was retained to perform services that Teacher was certificated and competent to render. El Monte (Flores).
2. Where teacher testified that, in response to her request to be reassigned to different school site, District asked that she resign her position at site #1 before she would be assigned to Site #2 and assured that she would "pick up right where she left off," principles of promissory estoppel prevented District from counting the resignation as a break in service, and Teacher's resignation did not effect her original seniority date. Rialto (Ahler).
3. Where an employee's failure to return to work for medical reasons was "deemed a resignation" by the District, the ALJ upheld District's position that employee's seniority date upon rehire was the rehire date, not her original seniority date. San Ysidro (Johnson).
4. Respondent teacher, that resigned her permanent position in June 2006, unsuccessfully argued that district should have granted her a seniority date to the beginning of her initial period of employment with the district in 1978. While respondent returned to the district within 39 months, Education Code section 44848 provides that teacher does not reacquire seniority date. Vallejo (Johnson).

#### **I. Issues Involving Interns, Coaches And Exchange Teachers**

1. Respondents alleged there were errors in seniority dates and permanency status for some who held emergency credentials or intern permits. Any such mistakes did not affect the order of layoff (would only affect re-

employment). Thus the Decision does not further examine this contention. Grossmont (Hjelt).

2. Respondents alleged there were errors in seniority dates and permanency status for some who held emergency credentials or intern permits. Any such mistakes did not affect the order of layoff (would only affect re-employment). Thus the Decision does not further examine this contention. Ramona (Hjelt).

#### **J. Emergency Permit Holders (Prob 0's)**

1. Respondents alleged there were errors in seniority dates and permanency status for some who held emergency credentials or intern permits. Any such mistakes did not affect the order of layoff (would only affect re-employment). Thus the Decision does not further examine this contention. Grossmont (Hjelt).
2. Respondents alleged there were errors in seniority dates and permanency status for some who held emergency credentials or intern permits. Any such mistakes did not affect the order of layoff (would only affect re-employment). Thus the Decision does not further examine this contention. Ramona (Hjelt).

#### **K. Miscellaneous**

1. District was not required to reclassify temporary employee as probationary when teacher whom temporary teacher was hired to replace resigned; status as temporary teacher not dependent on teaching classes of particular teacher on leave; rather, School District only needs to ensure that number of temporary teachers does not exceed total number of probationary and permanent employees on leave at any one time. Beverly Hills (Schrenger).
2. The use of subject-specific seniority lists for P.E. and music, rather than a District-wide seniority list, was allowed under a presumption that the District has regularly and correctly performed its official business (Evid. Code § 664), and lacking any evidence of prejudice against the teachers. Madera (Woollard).
3. Under Evidence Code section 664, District is presumed to have carried out its duty of correctly determining Respondent's seniority date, and Respondent bore burden of proof under Evidence Code section 500 to establish entitlement to different seniority date. Beverly Hills (Schrenger).
4. Districts do not have to depart from the seniority scheme in order to maintain ethnic or racial balance of staff in order to comply with Constitutional requirements pertaining to equal protection of the laws. Lancaster (Montoya).

5. Because the requested modifications of seniority date would not impact whether those Respondents should have received a layoff notice (rather they would affect the order of re-employment after layoff), the seniority date issues raised were not relevant to the proceedings. Poway (Johnson).
6. Administrative Hearing on layoff of employees is not proper forum for determining claim that ranking for purpose of re-employment should be the same as ranking for purposes of layoff. Poway (Johnson).

#### **IV. CREDENTIALS**

##### **A. Late Receipt**

1. Respondent's multiple subject credential was pending completion. "In making its layoff decisions for reduction in services, the District is entitled to rely on Respondent's credentials as of March 15, 2008. (*Campbell Elementary Teachers Ass., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 814-5.)" (See part 15 of lengthy factual findings.) Curtis Creek (Woollard).
2. Because the District was on notice that an employee would have finished her CLAD coursework by the end of January 2008 (because it asked the employee about the status of her CLAD), District required to credit an employee with her CLAD despite the fact that the employee failed to report that fact to the District. Western Placer (Lew).

##### **B. Miscellaneous**

1. Where assignment teaching middle school in departmentalized setting required not only multiple subject credential but also local Governing Board authorization and consent of teacher pursuant to Education Code section 44256(b), District correctly retained junior teacher while terminating senior Respondents who held multiple subject credentials but did not have local Governing Board authorization and had not given consent to assignment; granting of local authorization under 44256 is discretionary, and without such authorization Respondents were not "certificated and competent to render" the service in question. Beverly Hills (Schrenger).
2. District has no duty to apply for a waiver on behalf of Respondent pending completion of Respondent's multiple subject credential, citing Education Code section 44225, subdivision (m), and 44225.7, subdivision (a). Waiver is also conditioned on certain findings by the Commission and requires passage of a resolution by the local Board that it has made reasonable efforts to recruit a fully prepared teacher for the assignment. Furthermore, Respondent took no action himself to request such a waiver from the District and/or the Commission (citing Education Code section 44225). (See part 15 of lengthy factual findings.) Curtis Creek (Woollard).

3. Several teachers taught study skill periods to fill in the balance of their work days. Without any particular credential or competency, teachers assist students with whatever subjects need help. Respondents with greater seniority should bump any such more junior employees, whether Respondent gets a full-time or part-time position. Atwater Elementary (Walker).
4. Counselor challenged his credential status, as shown on Seniority List. Although possessed a "clear" (opposed to "provisional") Single Subject credential prior to March 15th, there was no evidence that teacher filed the "Clear" credential with District before the hearing. San Bernardino City Unified School District (Johnson).

## V. COMPETENCY

### A. **Competency Standard Upheld – Employee Not Competent**

1. Competency criterion requiring previous experience in the same subject and grade level was upheld. Teacher without experience in High School math was not competent to bump into that assignment. Maxwell (Skarda).
2. Competency criterion requiring at least one complete year of teaching experience in a comprehensive high school assignment within the last five years was upheld under the rationale that the District has shifted all academics, physical education, and counseling services to the standards-based model in the last five years. Corning UHSD (Skarda).
3. Since all classes within the District contain at least one student who is an English Learner, a very senior PE Teacher who does not possess a CLAD or equivalent authorization to teach EL students is not certificated and competent to teach any PE class in the District, and therefore was properly laid off. Alhambra (Cabos-Owen).
4. The Decision is unclear regarding whether EL authorization was deemed to be a general competency for all District teachers or whether skipping criteria for EL authorizations was stated in the PKS Resolution or elsewhere. Nevertheless, the ALJ upheld the District's act of issuing preliminary layoff notices to two senior teachers who failed to obtain authorizations to teach English Learner students and file the EL authorizations with the District in a timely manner. After refusing for approximately six years to acquire EL authorization in defiance of District requests, Teacher #1 completed course requirements for the authorization in January 2008 but failed to provide that information to the District until after the preliminary layoff notices had already been served in March 2008. Teacher #2 testified that she learned about the requirement for EL authorization a year before the layoff hearing and that she was scheduled

to take the required courses in August 2008. The layoff notices to both teachers were upheld. Lake Elsinore (Johnson).

5. Where District's PKS Resolution specified that competency included possession of EL authorization and District notified (in January) all teachers who did not possess EL authorizations that they must immediately apply for an emergency CLAD certificate and that they were expected to obtain EL authorization by August 15th, the District's decision to grant bumping rights only to persons with formal EL authorizations and application of that criteria to deny bumping rights was within Board's discretion and was not arbitrary or capricious. In addition, alleged statement (at an undetermined time) by District staff member telling a Respondent that she would not be fired on the basis of not yet possessing formal EL authorization did not prevent District from invoking its decision to refuse bumping rights to those who did not possess EL authorization, as the evidence did not establish that the comment was made after the Governor revealed the existence of the budget crisis. Nuview (Cole).
6. Where District's PKS Resolution specified that competency required "at least one (1) year of experience in the position or assignment within the past three (3) years" in order to bump a junior teacher out of the assignment, ALJ upheld the validity of that criteria and its application to a senior teacher whose one year of experience was experience gained under an intern permit. Nuview (Cole).
7. Although the nature of Teacher's assignment prevented District's tie-breaking and competency criteria of being NCLB certified in the present assignment was not applied to her, Teacher claimed the NCLB certification criteria deprived her of right to retain employment. ALJ rejected the argument because Teacher did not establish that the standard had actually been applied to her detriment or that she was certificated and competent to render services for which a more junior employee was being retained to perform. However, ALJ recommended that District review its tie-breaker criteria to ensure that each element (i.e., NCLB certification in the current assignment) is available to all employees. Rialto (Ahler).
8. District properly adopted competency criteria which required "actual and recent experience (within 3 years) in teaching the particular skill or domain within a broad subject area and the skill/domain is a service being retained by the District." Ukiah (Johnson).

## **B. Employee Competent**

1. Respondent teacher holding single subject music credential with supplemental authorization in photography held to be competent to teach leadership classes, which did not require a specific credential or NCLB

certification. Teacher was entitled to bump a junior teacher working in a .33 FTE leadership position. Caruthers (Sarli).

**C. Employee Not Competent**

1. Respondent teacher holding single subject music credential with supplemental authorization in photography was not competent to render services in alternative education program because she neither held a credential authorizing instruction of core subjects in a self-contained classroom nor was highly qualified to teach those core subjects under NCLB. Caruthers (Sarli).
2. Respondent teacher holding single subject music credential with supplemental authorization in photography was not competent to teach life skills classes taught by more junior employee, as class required multiple subject credential. Prior assignment of teacher to life skills and other classes outside the scope of her credential was not pertinent to the issue of whether she is certificated and competent to teach life skills in the current school year. Caruthers (Sarli).

**D. Particular Cases**

1. Several teachers taught study skill periods to fill in the balance of their work days. Without any particular credential or competency, teachers assist students with whatever subjects need help. Respondents with greater seniority should bump any such more junior employees, whether Respondent gets a full-time or part-time position. Atwater Elementary (Walker).

**E. Types of Credentials**

1. Since all classes within the District contain at least one student who is an English Learner, a very senior PE Teacher who does not possess a CLAD or equivalent authorization to teach EL students is not certificated and competent to teach any PE class in the District, and therefore was properly laid off. Alhambra (Cabos-Owen).
2. Competency, for purposes of bumping and rehire rights," included possession of valid credential, Highly Qualified status under NCLB Certification in relevant subject matter & EL Certification (allowed, but Decision does not indicate whether these were specifically challenged). Rialto (Ahler).
3. Where PKS Resolution contained provision to skip those authorized to teach English Learner (EL) students, skipping of junior teachers who held authorizations to teach EL students survived challenge by senior teachers who did not possess EL authorizations but who were otherwise certificated to provide services at issue – even though the senior teachers were "in the

process of securing such authorization." The senior teachers had been afforded adequate notice and a reasonable opportunity to secure EL authorization during the course of their employment, but did not do so in a timely manner. Yucaipa-Calimesa (Cole).

## **VI. CRITERIA FOR BREAKING SENIORITY TIES**

### **A. Criteria Invalid And/Or Not Properly Applied**

1. The District failed to properly credit a certificated employee with commensurate "credentialed teaching experience outside the District." The employee taught as a day to day and long term substitute teacher at another school district, but the District only credited outside teaching experience pursuant to a contract. The ALJ concluded that there was no such limitation in the District's tie-breaking resolution. Murrieta Valley (Sawyer).
2. Where tie-breaking criteria mentions "language skills," not possession of a BCLAD authorization, District erred by withholding tie-breaking point for "foreign language skills" based on lack of BCLAD credential. Parlier (Sarli).
3. Where Highly Qualified status under the No Child Left Behind Act was used as a tie-breaking criteria for all certificated employees but HQ status is not available for some types of certificated positions, the persons employed in positions for which HQ status is available were unfairly advantaged over those employed in types of positions for which HQ status does not exist. The HQ status tie-breaking criteria was prejudicial. However, there was insufficient evidence that the application of this criteria impacted ranking for the purpose of layoff. San Bernardino City Unified School District (Johnson).
4. Where tie-breaking criteria included comparing the employees' most recent evaluation or observation (among other criteria), this tie-breaking criteria involved subjective evaluation of the evaluator's comments, so (1) teachers whose evaluators did not include comments were at an unfair disadvantage, and (2) there was insufficient evidence to establish that the manner of comparing the evaluations or observations had sufficient consistency. Although this tie-breaking criteria was prejudicial, there was insufficient evidence that the application of this criteria impacted ranking for the purpose of layoff. San Bernardino City Unified School District (Johnson).

### **B. Criteria Valid And Properly Applied**

1. Use of the term "including but not limited to" in each of the tie-breaking criteria was reasonable and appropriate and not vague and ambiguous. While the criteria permitted consideration of additional factors not

specifically delineated, it was clear that any additional factor had to relate to the criteria. Oroville (Brandt).

2. Although the Tie-Breaking Resolution did not explicitly provide that criteria be applied in the order listed, District's decision to apply the criteria in the order presented in the resolution was not unreasonable, arbitrary, capricious, or an abuse of discretion. The District also showed it had applied criteria in this order in the past and applied the criteria consistently in the present lay-off. Oroville (Brandt).
3. District's "tie-breaking" criteria included consideration of employee's education, experience, specialized training, and other factors such as participation in committees, coaching and clubs. Point system assigned to nineteen different criterions, which were rational and objective, and appropriately applied to employees. Pacheco (Geren).
4. The District's tie-break criteria were properly applied in the following order: certificates allowing instruction of English language learners; if ties not broken, credentials allowing instruction in "the greatest number of different K-8 teaching position; if ties not broken, a lottery is used to determine seniority. Gold Oak (Skarda).
5. Tie-breaking criteria approved by the Governing Board were valid even though limited to only two factors prior to lottery. (Finding of Fact No. 21.) District's criteria were: (A) multiple single subject credentials; and (B) earned degrees beyond the BA/BS level. (Finding of Fact No. 10.) "In the event that common day hires have equal qualifications based on application of the above criteria, the District will then break ties by utilizing a lottery" (Finding of Fact No. 10), and "[n]o additional guidance was provided regarding how to conduct such a lottery," and "how to group employees potentially affected by the application of the tie-breaker rating system and criteria." (Finding of Fact No. 11.) Employees contended that the tie-breaking criteria constituted an impermissible delegation of discretion to administration (Finding of Fact No. 19), however, according to the ALJ "[t]he methodology selected may not have been the most efficient or effective possible under the circumstances, but no one pointed out any better or more even handed method." (Finding of Fact No. 21.) Elk Grove (Smith).
6. District's methodology of "group[ing] employees subject to the tie-breaking process by subject matter taught and the employee's eligibility to teach in that subject matter area due to having the appropriate credentials" before applying the tie-breaking criteria was valid. (Finding of Fact Nos. 17 and 18.) Employees contended that the tie-breaking criteria constituted an impermissible delegation of discretion to administration (Finding of Fact No. 19), however, according to the ALJ "[t]he methodology selected may not have been the most efficient or effective

possible under the circumstances, but no one pointed out any better or more even handed method.” (Finding of Fact No. 21.) Elk Grove (Smith).

7. Tie-breaking criteria approved by the Governing Board were valid even though limited to only two factors prior to lottery. (Finding of Fact No. 21.) District’s criteria were: (A) multiple single subject credentials; and (B) earned degrees beyond the BA/BS level. (Finding of Fact No. 10.) “In the event that common day hires have equal qualifications based on application of the above criteria, the District will then break ties by utilizing a lottery.” (Finding of Fact No. 10.) Respondents contended that the District failed to recognize or give credit for qualifications that are also highly valued by the District. (Finding of Fact No. 23.) This included a contention that the District should have included possession of “CLAD or BCLAD, cleared credentials, highly qualified certification, or a host of other valued additional qualifications, when determining how to rank employees against one another who have the same first day of paid service to the District as probationary employees.” (Finding of Fact 23.) Elk Grove (Smith).
8. Tie-breaker criterion favoring teachers with higher salary schedule placement was proper. Madera (Woollard).
9. District's use of random drawing as last tie-breaking criteria to establish order of termination of employment for employees who first rendered paid service to the District on the same date was based on program or subject matter requirements, the needs of the District and its students. Escondido Union [Elementary] (Johnson).
10. Where teacher was eligible for but did not possess a BCLAD authorization when the seniority list was constructed or at time of hearing, teacher was not entitled to tie-breaking point for additional credential or authorization. School districts are not responsible for knowing about credentials that have been obtained but were not registered. It is the credential-holder's responsibility to ensure that her credentials are registered with the District or the County Office of Education. Parlier (Sarli).
11. Where a single tie-breaking criteria contains two components, District may uniformly require that *both* components be met before awarding the point for that tie-breaking criteria. Parlier (Sarli).
12. When the Board had authorized awarding tie-breaking "points" for completing District-offered BTSA or for GATE training within a specified time period, there was no abuse of discretion where District declined to award tie-breaking points to Teachers for BTSA and GATE training that Teachers received prior to employment with the District and/or from an entity other than the District itself. Temecula Valley (Cole).

13. Despite claim that the criteria was irrational and unfair, Board's establishment of a tie-breaking criteria whereby points are awarded to employees who had across-the-board ratings of "effective" on their last evaluation was within Board's discretion. Temecula Valley (Cole).
14. Respondents unsuccessfully argued that district should award more points to teachers holding BCLAD than to teachers holding CLAD when applying tie-breaking criteria. Respondents argued that a BCLAD certificate holder is authorized to do everything a CLAD holder is authorized to do but is also able to do so in a bilingual setting. ALJ determined that school board is vested with the discretion to develop tie-breaking criteria based on the needs of the district and its students under Education Code section 44955(b). San Francisco (Crowell).
15. District was not required to apply all tie-breaker criteria since all respondents who would be affected by the application were subject to layoff. District established nine criteria for employees with the same first date of paid service who were affected by the proposed layoff. The first eight criteria were based on objective standards. Criterion number nine was based on a comparison of the most recent employee evaluations which has a certain amount of subjectivity. District did not have to apply this criterion since all named respondents affected by application would be subject to layoff. Rim of the World (Flores).
16. District properly applied tie-breaking criteria to retain teacher who possessed conversational Spanish skills which enabled teacher to communicate with Spanish speaking students and parents. Ukiah (Johnson)
17. Respondent teachers unsuccessfully argued that the governing board's tie-break resolution was invalid on its face because it did not determine the order of importance of the tie-break criteria but left this task to the district. Education Code section 44955 does not preclude the governing board from delegating to its executive staff the responsibility of applying the tie-break criteria. Southern Kern (Benjamin).
18. Respondents unsuccessfully challenged administration's decision not to apply "Bilingual competency" as identified in the board's tie-breaking criteria. Prior to hearing, respondents argued administration should include native speakers or a college degree in Spanish in its definition of "Bilingual competency." District administration determined use of "Bilingual competency" was too vague to be applied fairly and decided not to apply that criteria. ALJ reasoned that it is reasonable for the district to conclude, after meeting with respondents, that the criterion "Bilingual competency" was too vague and ambiguous to be able to be applied fairly, and for that reason, it should be disregarded. Dixon (Crowell).

19. District administrators are authorized to implement the board's tiebreaker criteria through a point system where the board's tiebreaker resolution contained six criteria not in order of priority and did not refer to any points to be assigned in the criteria. Respondents unsuccessfully argued that district administration engaged in an improper delegation of authority and an unauthorized modification of the criteria adopted by the governing board. Hollister (Owyang).

**C. Miscellaneous**

1. First date of paid service as probationary employee determines employee's "hire date," not the date District "offers" employment. Pacheco (Geren).
2. The District is not obligated to use tie-breaking criteria rather than skipping. The language of the Board Resolution clearly states that tie-breaking criteria is not applicable to ". . . exemptions based upon District need (skipping criteria). . . ." San Marino (Ruiz).
3. Because the District was on notice that an employee would have finished her CLAD coursework by the end of January 2008 (because it asked the employee about the status of her CLAD), District required to credit an employee with her CLAD despite the fact that the employee failed to report that fact to the District. Western Placer (Lew).
4. An employee argued that a District's tie-breaking criteria, "seniority shall be determined upon a comparison of the most recent employee evaluations," was unfairly applied to her. The ALJ did not specifically rule on the efficacy or application of the tie-breaking criteria, as it did not affect the outcome of the proceeding as to the individual. Murrieta Valley (Sawyer).
5. Although the nature of Teacher's assignment prevented District's tie-breaking and competency criteria of being NCLB certified in the present assignment was not applied to her, Teacher claimed the NCLB certification criteria deprived her of right to retain employment. ALJ rejected the argument because Teacher did not establish that the standard had actually been applied to her detriment or that she was certificated and competent to render services for which a more junior employee was being retained to perform. However, ALJ recommended that District review its tie-breaker criteria to ensure that each element (i.e., NCLB certification in the current assignment) is available to all employees. Rialto (Ahler).
6. Where Teacher was qualified to receive Highly Qualified (HQ) designation under NCLB but did not actually receive HQ designation before the hearing because "her school" failed to timely process the paperwork for Teacher to attain HQ designation despite Teacher's numerous inquiries regarding status and despite repeated assurances to

Teacher that the paperwork would be taken care of and that Teacher would receive the tie-breaker point – District was estopped from denying to Teacher a tiebreaker point with regard to NCLB compliance / HQ designation. Temecula Valley (Cole).

7. ALJ upheld District's exclusion Multiple Subject holders who were assigned to full-time teaching positions at *elementary* schools from a tie-breaker that was conducted between two teachers who had the same seniority date and credential but who were teaching single-subject classes at a *high* school, based on the best interests of the District and its students. District administrator's decision to exclude Multiple Subject-holders assigned to elementary schools from the tie-breaker was based on her conclusion that it "was not practical" to have one of the two high school teachers travel to the elementary campus, 15 minutes away, to perform 0.2 FTE of elementary teaching services (thus displacing the teacher who had been with the students continuously from the start of the school day / for the other 80% of the day). Although "not practical" criteria was not specifically expressed in the tie-breaking criteria in the PKS Resolution, the exclusion of the elementary teachers was not arbitrary and capricious, and it was in the best interests of the District or its students. Valley Center-Pauma (Ahler).
8. Respondent teachers unsuccessfully argued that the proposed layoffs were arbitrary and capricious because district failed to comply statutory mandate that tiebreaking criteria be used to determine order of layoff. There is no need to determine the order of termination when all employees with the same first date of paid service are being laid off. Konocti (Rasmussen).
9. Respondent teachers with the same first date of paid service unsuccessfully argued that Education Code section 44955 required the district to apply its tie-breaking criteria even though it makes no difference to the elimination of their services. Section 44955 requires district to apply tie-breaking criteria when it affects the order of termination, and in this case it did not. Middletown (Benjamin).

## **VII. SKIPPING**

### **A. General**

1. The District was not required to pass a separate resolution defining "skipping" criteria. (Finding of Fact No. 11.) Although "it is the better practice to pass a skipping resolution (either separately or as part of the resolution for PKS reduction or elimination), this action is not required by either Education Code sections 44949 and 44955. (Finding of Fact No. 11.) Calaveras County (Woollard).

2. The fact that Respondents could obtain additional authorizations was not relevant when the Respondent did not actually possess that authorization as of March 15th. An employee may not skip or bump another employee with a credential obtained after March 15th. [Citations.] Lancaster (Montoya).

**B. Skipping Allowed**

1. The District is allowed to skip a junior secondary English teacher and lay off a more senior teacher because that teacher is uniquely qualified to teach the following classes: speech, oral interpretation, and debate. These classes are different than the standard “English” course. The District serves a very demanding community and the speech and debate classes, as well as the debate team, are an important component of the high quality services the District attempts to provide the community its services. San Marino (Ruiz).
2. “Unlike respondent, however, [a more junior teacher] holds a multiple subject credential which authorizes her to teach in a self-contained classroom. Consequently the District appropriately retained (‘skipped’) a more junior employee [name] to teach self-contained classes that respondent, although a more senior teacher, is not certificated and competent to teach.” (See part 17 of lengthy factual findings.) Curtis Creek (Woollard).
3. Although Respondent taught physical education for most of the current school year, he did not have a credential for physical education. When the District became aware, he was removed from PE and authorized to implement PE activities planned and supervised by a properly credentialed junior PE teacher for the balance of the school year. The District appropriately retained the more junior employee to teach PE. (See part 18 of lengthy factual findings.) Curtis Creek (Woollard).
4. District’s resolution proposed to retain teachers with BCLAD certifications if the BCLAD was required for the particular classroom assignments of the individual teachers. (Finding of Fact 28.) According to the ALJ, “[t]he District acted reasonably in implementing [the] Resolution . . . by ‘skipping’ only those teachers with BCLAD certifications were actually using the credential in their classroom assignments.” (Finding of Fact No. 29.) (Citing *Alexandar v. Delano Jt. Union High School Dist.* (1983) 139 Cal.App.3d 567, 576.) Sacramento City (Frink).
5. Since all classes within the District contain at least one student who is an English Learner, a very senior PE Teacher who does not possess a CLAD or equivalent authorization to teach EL students is not certificated and

competent to teach any PE class in the District, and therefore was properly laid off. Alhambra (Cabos-Owen).

6. Districts have discretion to determine whether teachers are certificated and competent to hold the position for which said teachers have been skipped and retained. Teachers who were skipped because they held a special education certification, BCLAD certificates, and a single-subject credential in math or science, were properly skipped as long as those teachers will be assigned to positions for which they were retained (i.e., must teach under the credentials for which they were skipped). Likewise, as long as Teacher will be assigned to teach in a Community Day School, District properly skipped Teacher who holds multiple-subject and BCLAD credentials based on Teacher's his many years of experience teaching in Community Day School or equivalent settings. Escondido Union [Elementary] (Johnson).
7. The Decision is unclear regarding whether EL authorization was deemed to be a general competency for all District teachers or whether skipping criteria for EL authorizations was stated in the PKS Resolution or elsewhere. Nevertheless, the ALJ upheld the District's act of issuing preliminary layoff notices to two senior teachers who failed to obtain authorizations to teach English Learner students and file the EL authorizations with the District in a timely manner. After refusing for approximately six years to acquire EL authorization in defiance of District requests, Teacher #1 completed course requirements for the authorization in January 2008 but failed to provide that information to the District until after the preliminary layoff notices had already been served in March 2008. Teacher #2 testified that she learned about the requirement for EL authorization a year before the layoff hearing and that she was scheduled to take the required courses in August 2008. The layoff notices to both teachers were upheld. Lake Elsinore (Johnson).
8. Junior teachers who possess a "District authorization" or "waiver" issued under Education Code section 44256 may be retained over more senior teachers who do not hold those authorizations. Such authorizations suffice as "credentials" for purposes of layoff because such authorization is "inextricably intertwined with a credential or certificate" issued by the CTC and is authorized under 5 CCR 80499. Lancaster (Montoya).
9. Districts do not have to depart from the seniority scheme in order to maintain ethnic or racial balance of staff in order to comply with Constitutional requirements pertaining to equal protection of the laws. Lancaster (Montoya).
10. Where counselor was skipped because she possessed additional teaching credentials and more senior counselor who did not have additional teaching credentials was laid off, the skip is only proper if the skipped

counselor is assigned to a teaching position under one of the additional credentials that caused her to be skipped. The skip would be improper if the skipped counselor is assigned to a counseling position for the ensuing school year. Sweetwater (Johnson).

11. Where PKS Resolution contained provision to skip those authorized to teach English Learner (EL) students, skipping of junior teachers who held authorizations to teach EL students survived challenge by senior teachers who did not possess EL authorizations but who were otherwise certificated to provide services at issue – even though the senior teachers were "in the process of securing such authorization." The senior teachers had been afforded adequate notice and a reasonable opportunity to secure EL authorization during the course of their employment, but did not do so in a timely manner. Yucaipa-Calimesa (Cole).
12. District properly skipped athletic director upon showing athletic director was chosen for position after a lengthy search due to the unique circumstances surrounding the re-opening of a high school. San Diego (Hjelt).
13. District properly “skipped” senior teacher that did not possess a CLAD certificate or its equivalent. District established that it sent teacher numerous notifications from March 2007 to March 2008 regarding the need to obtain proper authorization to instruct English language learners. ALJ also agreed that district was not required to move students around based on race, ethnicity or language to accommodate teacher’s lack of a CLAD certificate or its equivalent. Santa Cruz (Behe).

### **C. Skipping Not Allowed**

1. ALJ rules that District may not skip less senior employee with secondary degrees and EL authorization in order to layoff more senior employee with only a single subject business credential. (Findings of Fact 12 through 17, and 20) According to the ALJ, “[a]s the more senior business teacher, responded is fully credentialed and competent to teach the keyboarding business classes taught by Ms. Larson during the 2007-2008 school year,” “[t]he keyboarding classes are not a ‘specific course of study’ designed to teach limited English-proficient students English language skills or language development, and such an ability is not a requirement for teaching keyboarding classes.” (Finding of Fact No. 20.) The ALJ also noted that the Resolution did not include a definition of “competent” or “competency.” (Finding of Fact No. 20.) Calaveras County (Woollard).
2. Motion to invalidate Resolution with respect to layoff of County Charter School independent study program employee granted. County did not meet its burden to establish specific need to retain and/or skip junior

teachers over senior employee due to special training and experience. Glenn COE (Skarda).

3. The District did not establish the need to retain junior teachers (except teachers holding a Special Education Credential) with Cross-Cultural Language and Academic Development (CLAD) certificates over senior employees without the certificate. Thirteen percent of District students are ELL. Ninety-five percent of teachers hold CLAD certificates. It would be possible and not unduly burdensome to assign ELL students to CLAD certified teachers. The District is capable of making assignments and reassignments that would not require the senior teachers to be laid off. Dry Creek (Geren).
4. The District failed to identify a “specific course or course of study” pursuant to Education Code section 44955(d)(1) when it laid-off teachers who did not possess CLAD authorization in favor of junior teachers who did. The definitions of “course” and “course of study” under Education Code sections 51014 and 51015 make clear that classes being taught by teachers holding CLAD certificates do not become, *ipso facto*, a “specific course or course of study.” Citing *Alexander v. Board of Trustees* (1982) 139 Cal.App. 567 and *Travis Unified School District*, OAH 2003020278. Dry Creek (Geren).
5. The District was obligated to notify teachers that they would now be subject to layoff and not merely reassignment if they did not have a CLAD certificate. The District had previously represented that the absence of a CLAD might result in nothing more than reassignment. The first notice teachers received that their lack of a CLAD would result in layoff was when they received layoff notices. Dry Creek (Geren).
6. District improperly attempted to skip junior teacher with a .8 Art and .2 ROP assignment, where it only established that junior teacher possessed special skills and experience related to the .2 ROP assignment. District failed to prove that senior teacher did not have the training or experience necessary to teach the non-ROP courses. Acalanes (Anderson).
7. District did not establish written competency criteria regarding choral/vocal courses and therefore could not prove senior teacher lacked the training and experience necessary to teach choral music. Acalanes (Anderson).
8. Respondent teachers unsuccessfully argued that the position occupied by a senior teacher with permanent status serving under a Early Childhood Special Education Waiver that expires August 15, 2008 should be considered an opening that could be filled by one of them. ALJ determined that whether senior teacher will be credentialed next year to continue in her current assignment is a matter of speculation. County

superintendent is not required to take into account attrition that is not positive assured, and potential opening falls into this category. Santa Clara COE (Rasmussen)

**D. No Obligation To Skip**

1. Social Science teacher with a “significant” number of ELL students argued he should be skipped due to his possession of a BCLAD certificate. The District was not required to skip and retain the teacher. Corning UHSD (Skarda).
2. Despite adopting a Montessori Master Plan and despite difficulty training traditional classroom teachers to transition into the Montessori Program, the Governing Board had the discretion to determine whether Montessori credentialed teachers should be skipped. The Board’s refusal to not skip the Montessori credentialed teachers was not an abuse of discretion. Davis (Lew).
3. The Governing Board did not abuse its discretion when it decided to not skip certificated employees in the District’s GATE program, even though GATE is federally funded and certificated employees in other special programs, such as BCLAD authorized Spanish Immersion teachers, were skipped. Davis (Lew).

**E. Miscellaneous**

1. “The District has the burden to prove, by a preponderance of the evidence, that its decision to layoff or reduce the services of a more senior teacher, while retaining the services of a less senior teacher, is appropriate.” (See part 16 of lengthy factual findings.) Curtis Creek (Woollard).
2. District properly retained or “skipped” junior teacher because she was assigned to a community day school. A teacher must consent to work at a community day school pursuant to Education Code section 44865. At the hearing, all qualified teachers were offered the opportunity to “bump” junior teacher but declined. Mountain Empire (Ruiz).

**VIII. BUMPING**

**A. Partial Bumping**

1. Several teachers taught study skill periods to fill in the balance of their work days. Without any particular credential or competency, teachers assist students with whatever subjects need help. Respondents with greater seniority should bump any such more junior employees, whether Respondent gets a full-time or part-time position. Atwater Elementary (Walker).

2. ALJ concluded it was a matter left to be worked out between the District and [the employee], when as a result of bumping, an employee is left with a .3 FTE assignment. Western Placer (Lew).
3. Respondent unsuccessfully requested to partially bump a more junior teacher. Respondent, a .8 FTE music teacher, argued that she should be able to bump into a self-contained classroom teaching assignment held by junior teachers holding a 1.0 FTE position. ALJ reasoned that respondent was demanding an assignment where she would four days a week and that such a teaching assignment would not be practical or efficient in a small elementary program. Scotia (Crowell).

**B. Bumping Should Have Been Allowed**

1. Several teachers taught study skill periods to fill in the balance of their work days. Without any particular credential or competency, teachers assist students with whatever subjects need help. Respondents with greater seniority should bump any such more junior employees, whether Respondent gets a full-time or part-time position. Atwater Elementary (Walker).
2. Based on advice of counsel, the District did not allow a more senior full-time employee to “bump” a more junior part-time employee out of his or her position by relying on “the differences in scheduling between high school or middle school subjects such as P.E. or music, as compared with elementary - special subject P.E. prep or music prep.” (Finding of Fact No. 37.) The ALJ concluded “the District abused its discretion when it did not permit full-time employees slated for layoff in P.E. and music to ‘bump’ less senior part-time P.E. prep or music prep teachers. . . .” (Finding of Fact No. 37.) Sacramento City (Frink).
3. Respondent teacher holding single subject music credential with supplemental authorization in photography held to be competent to teach leadership classes, which did not require a specific credential or NCLB certification. Teacher can bump a junior teacher working in a .33 FTE leadership position and retain .33 FTE position, while laid off from remaining .67 FTE position. Caruthers (Sarli).
4. Community Day School (CDS) includes electives into which Respondent can bump. By virtue of his single subject credential, Respondent is authorized to teach in the CDS, and Respondent consents to such assignment. (Ed. Code § 44865.) A physical education credential is not required to teach a CDS PE class. Respondent also taught other electives previously, which are being taught in the CDS by a junior teacher. Respondent also previously taught in the CDS for three years and, at the request of the CDS principal to enable Respondent to better teach these subjects at the CDS, had taken and passed the CSET subtest that covered

reading, language/literature, history and social science. No evidence was offered that Respondent is not competent to teach those subjects at the CDS, and Respondent had extensive experience previously teaching the CDS population. Accordingly, Respondent can bump partial FTEs of junior teachers in a CDS program. (See parts 21, 22 and 23 of lengthy factual findings.) Curtis Creek (Woollard).

5. Respondent, a junior physical education teacher, successfully argued that district could not terminate her 1.0 FTE assignment to accommodate the right of a more senior teacher whose services are only being reduced by .2 FTE. Under Education Code section 44955, the district may terminate services only “when it shall have become necessary by reason of” reduction of a particular kind of service. District impermissibly sought to assign other senior teachers to pick up remaining .8 FTE of the junior teacher’s position. To eliminate junior teacher’s position would eliminate more jobs than required under the board’s resolution. Healdsburg (Benjamin).
6. Respondent counselor with an administrative services certificate unsuccessfully argued that she should be permitted to displace an administrator. Education Code does not provide any basis to remove a school district’s discretion in hiring administrators and/or permit a district employee who is facing layoff to use the layoff statutes to promote into an administrative position. Berryessa (Tompkin).

#### **C. Inverse Bumping**

1. While the District has an affirmative obligation to reassign senior teachers who are losing their positions, it does not have the same obligation to reassign senior teachers who are not losing their positions in an effort to save junior teachers. In short, the District cannot be compelled to engage in inverse bumping. Western Placer (Lew).
2. Although Respondent previously taught math, there is no duty to reassign a more senior math teachers to enable Respondent to retain additional classes, citing *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 568-69. (See part 13 of lengthy factual findings.) Curtis Creek (Woollard).

#### **D. Bumping Correctly Allowed**

1. Spanish Immersion Teachers holding a valid BCLAD authorization who were initially skipped by the Governing Board’s resolution, were properly bumped by senior elementary school teachers in the District who also held a BCLAD. Davis (Lew).

## **E. Bumping Correctly Disallowed**

1. Where assignment teaching middle school in departmentalized setting required not only multiple subject credential but also local Governing Board authorization and consent of teacher pursuant to Education Code section 44256(b), District correctly retained junior teacher while terminating senior Respondents who held multiple subject credentials but did not have local Governing Board authorization and had not given consent to assignment; granting of local authorization under 44256 is discretionary, and without such authorization Respondents were not “certificated and competent to render” the service in question. Beverly Hills (Schrenger).
2. Teachers who were not “highly qualified” in all applicable subjects under No Child Left Behind were properly disallowed from bumping into the alternative education program which requires teachers to teach a number of different academic courses. Davis (Lew).
3. Part-time certificated employees were properly disallowed from bumping into full-time teaching assignments. Davis (Lew).
4. Where an alternative education program is not structured to allow for positions to be split into single subjects such as mathematics, the District properly disallowed senior math teachers from bumping into the alternative education program because they were not “highly qualified” in all of the academic areas they would be required to teach in the program. Davis (Lew).
5. Teacher assigned to a self-contained classroom at the community day school for the past seven years did not have the experience required for competency to bump into the comprehensive high school. Corning UHSD (Skarda).
6. P.E. and music teachers possessing only single subject credentials are not highly qualified under NCLB and may not bump into the alternative education program. Madera (Woollard).
7. Teacher who did not meet competency criteria requiring prior experience in the same grade level was not allowed to bump, even into a “necessary small school” wherein any credential is sufficient with the teacher’s consent. Maxwell (Skarda).
8. Respondent teacher holding single subject music credential with supplemental authorization in photography was not competent to render services in alternative education program because she neither held a credential authorizing instruction of core subjects in a self-contained classroom nor was highly qualified to teach those core subjects under NCLB. Caruthers (Sarli).

9. Respondent teacher holding single subject music credential with supplemental authorization in photography could not bump junior employee teaching life skills classes because she lacked the classes required multiple subject credential. Prior assignment of teacher to life skills and other classes outside the scope of her credential was not pertinent to the issue of whether she is certificated and competent to teach life skills in the current school year. Caruthers (Sarli).
10. There is no authority that compels the District to terminate its agreement with the County Office of Education in order to allow a laid off certificated nurse to bump into a 0.4 FTE nursing position currently held by a County Office Employee. The 0.4 FTE employee is an employee of the County Office of Education and the District is not in a position to lay her off. The District is authorized by statute to provide mandated services by contracting with outside agencies. Amador (Sarli).
11. Senior teacher who did not possess CLAD certificate or equivalent could not bump junior teacher in District where every class contained at least one English Learner student. Alhambra (Cabos-Owen).
12. Where a very senior Teacher resigned and subsequently was rehired within 39 months of the resignation, her seniority date upon rehire became the date of rehire, but she regained permanent status immediately. Therefore, probationary employees with a higher seniority date than Teacher could not bump Teacher because Teacher had "permanent" status. El Monte (Flores).
13. Where District's PKS Resolution specified that competency included possession of EL authorization and District notified (in January) all teachers who did not possess EL authorizations that they must immediately apply for an emergency CLAD certificate and that they were expected to obtain EL authorization by August 15th, the District's decision to grant bumping rights only to persons with formal EL authorizations and application of that criteria to deny bumping rights was within Board's discretion and was not arbitrary or capricious. In addition, alleged statement (at an undetermined time) by District staff member telling a Respondent that she would not be fired on the basis of not yet possessing formal EL authorization did not prevent District from invoking its decision to refuse bumping rights to those who did not possess EL authorization, as the evidence did not establish that the comment was made after the Governor revealed the existence of the budget crisis. Nuview (Cole).
14. Where District's PKS Resolution specified that competency required "at least one (1) year of experience in the position or assignment within the past three (3) years" in order to bump a junior teacher out of the assignment, ALJ upheld the validity of that criteria and its application to a

senior teacher whose one year of experience was experience gained under an intern permit. Nuview (Cole).

15. Respondent, who holds a Multiple Subject credential, cannot bump (1) junior teachers who have a Multiple Subject plus a Board Resolution authorizing them to teach in their assigned single subject classes based on sufficient college credits, (2) junior teachers who have a Multiple Subject plus a Supplemental Authorization in the single-subject area to which the junior teachers are assigned, or (3) a junior teacher who has a Multiple Subject and who is in the midst of attaining Single Subject credential in her assigned teaching area at a high school, because Respondent is not certificated and competent to teach those courses. Parlier (Sarli).
16. PE Teacher who holds Multiple Subjects credential could not bump more junior certificated employees who teach middle school math and science, since all District middle school math and science classes are taught in departmentalized setting and PE Teacher's Multiple Subjects credential does not authorize him to teach those departmentalized classes. Temecula Valley (Cole).
17. Respondent teacher unsuccessfully argued that district was required to restructure the elementary school program so as to allow her to teach part time. Respondent's .6 FTE Spanish position at the middle school is scheduled to be reduced to .4 FTE for the 2008-2009 school year. District provided evidence that creating a .4 FTE position at the elementary school would require complete restructuring of the elementary school schedule. Loma Prieta (Anderson).
18. Respondent, a junior music teacher, unsuccessfully argued that the district should "skip" him where senior music teacher possessed county issued certificate as opposed to possessing a credential issued by the Commission on Teacher Credentialing. Junior teacher argued that he possessed higher qualifications and competency combined with valid single-subject credential in music. Sonoma Valley (Johnson).

#### **F. Miscellaneous**

1. It is not necessary to find that four interns were probationary in order for other teachers to move into their positions. If the vacated positions are not slated for PKS reductions, the District may reassign teachers into the position. Out of an abundance of caution, however, Districts should ensure that they are not reassigning teachers into temporary positions. Western Placer (Lew).
2. The fact that Respondents could obtain additional authorizations was not relevant when the Respondent did not actually possess that authorization as of March 15th. An employee may not skip or bump another employee

with a credential obtained after March 15th. [Citations.] Lancaster (Montoya).

## **IX. ASSIGNMENTS AND REASSIGNMENTS**

### **A. Displacement Of Interns**

1. It is not necessary to find that four interns were probationary in order for other teachers to move into their positions. If the vacated positions are not slated for PKS reductions, the District may reassign teachers into the position. Out of an abundance of caution, however, Districts should ensure that they are not reassigning teachers into temporary positions. Western Placer (Lew).
2. Where Teacher began the layoff year as a sixth-grade language arts teacher but was reassigned in January to a sixth-grade core language arts/social studies position, identification of Teacher as a "middle school English teacher" was erroneous and she could not be laid off. San Jacinto (Cole)

### **B. ELL Assignments**

1. It would be possible and not unduly burdensome to assign ELL students to CLAD certified teachers. The District is capable of making assignments and reassignments that would not require the senior teachers without CLAD certificates to be laid off. Dry Creek (Geren).

### **C. Inverse Bumping**

1. Although Respondent previously taught math, there is no duty to reassign a more senior math teachers to enable Respondent to retain additional classes, citing *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 568-69. (See part 13 of lengthy factual findings.) Curtis Creek (Woollard).

## **X. ATTRITION**

### **A. Attrition Must Be Considered.**

1. District must continue to consider employees who retired after Layoff Resolution as positively assured attrition when issuing the final layoff notices. Even though employees submitted formal retirement notices after the Board issued its Layoff Resolution, the District anticipated the retirements and considered them when making the layoff recommendation to the Board. Further, the Board stated in its Layoff Resolution that it considered "all . . . additional attrition which may occur before the start of the 2008-2009 school year in reducing these services." Accordingly, the

Board must continue to consider the retirements in making a final layoff decision. Oroville (Brandt).

**B. Attrition Need Not Be Considered**

1. District was not required to rescind preliminary layoff notices sent to properly-identified staff based on attrition that occurred after preliminary layoff notices were served. "The Education Code does not require a district or a school to rescind preliminary termination notices served on properly-identified teachers pursuant to the procedures set forth in section 44955, simply because post-notice attrition has taken place." Helix Charter High (Cole).

**XI. DOMINO THEORY**

**A. Not Applied**

1. Domino theory expressly rejected where a District retained one teacher while laying off eight others who were more senior and qualified to teach in her assignment. The ALJ concluded that the District was only obligated to rescind one layoff notice, applying the "corresponding number" standard articulated in *Alexander v. Delano Joint Union High School District* (1983) 139 Cal.App.3d 567. Western Placer (Lew).
2. Domino theory does not apply to invalidate layoff of senior employees where there was no evidence that the failure to notice one junior employee was the result of anything other than clerical error; thus actual prejudice was not shown. Carlsbad (Hjelt).
3. Domino theory does not apply to invalidate layoff of senior employees where evidence showed that District "inadvertently failed" to issue a March 15th Notice to one more junior employee. Rialto (Ahler)
4. The "Domino Theory" in which all senior teachers are spared if an erroneously retained junior teacher is occupying a position is no longer persuasive basis where the district makes a good-faith effort and substantially complies with the requirements that seniority be used to determine layoff order. San Diego (Hjelt).

**XII. MISCELLANEOUS**

**A. Effect Of Resignation On Seniority**

1. Where teacher testified that, in response to her request to be reassigned to different school site, District asked that she resign her position at site #1 before she would be assigned to Site #2 and assured that she would "pick up right where she left off," principles of promissory estoppel prevented

District from counting the resignation as a break in service, and Teacher's resignation did not effect her original seniority date. Rialto (Ahler).